

Executive Summary

This thesis aims to test the credibility of the Responsibility to Protect principle (“R2P”) by looking at how the principle was applied in Libya and addressing the question of why R2P was not applied in Syria. The first part of the thesis is about the origins and definition of R2P. The second part compares the reactions of the international community to the conflicts in Libya and Syria. The third part aims to analyse this information by addressing the question of selective application of R2P. The thesis concludes with four recommendations to the United Nations that may make timely and decisive application of R2P in future conflicts easier and more consistent.

R2P entails that the sovereignty of states is not only a right, but also a responsibility. It gives the international community a responsibility to protect populations of other states if these states fail to protect these populations themselves. R2P was adopted by the UN in 2005.

Uprisings in Libya began in mid-February 2011 as part of the wave of revolutions in the Arab World that came to be known as the Arab Spring. Given Gaddafi’s clear incitement to crush the opposition and rapid escalation of the conflict, the United Nations called on the international community to exercise its responsibility to protect. R2P was applied through Resolutions 1970 and 1973. Resolution 1970 called for non-military means to stop the Gaddafi regime from attacking its population. Gaddafi’s refusal to respond to the measures led to the adoption of Resolution 1973 on 17 March 2011, which allowed UN member states to employ “all necessary means” to protect the Libyan people.

The intervention was initially led by the US, UK and France, but soon taken over by NATO. Given the clear incitement of Gaddafi to crush the opposition, it seems fair to assume that NATO’s intervention prevented the Gaddafi forces to commit serious crimes against humanity. The intervention in Libya is therefore considered as a textbook example of how R2P should be applied in future situations.

However, when the uprisings in Syria began, the international community was far more reserved about intervention. Although R2P was developed as a principle that applied to all states at all times, Syria proved that there are many other factors involved apart from the protection of civilians. First of all, whereas regime change in Libya improved the living conditions of the population, regime change in Syria would not guarantee the safety of minority groups, due to ethnic tensions in the country. Second, whereas the opposition in Libya was quite well-organised, the opposition in Syria was fragmented. Even after almost a year, it is unclear who the opposition

in Syria is. This made it difficult for coalition forces to provide coherent assistance. Third, there has not been one event in Syria that immediately triggered an intervention. In contrast to Gaddafi's hate speech, the language of Bashar al-Assad did not constitute an incitement to crimes against humanity. Moreover, in Syria a battle on the scale of Benghazi had not taken place. Fourth, the Arab League urged the Security Council to take action on Libya, but was more careful with Syria, illustrating the importance of regional organisations. Fifth, given the location of Syria in the Middle East, a large-scale conflict in the country constitutes a significant risk of a regional war. Moreover, whereas the Libyan government did not have any close allies, the Syrian government maintained close relationships with other governments in the region, including Russia and Iran. Sixth, in terms of logistic possibilities, Syria was a far more difficult case than Libya. Whereas Libya is located on the coast and within reasonable distance of EU air bases, Syria is not. The imposition of a no-fly zone in Syria was therefore not possible. Finally, the permanent members of the Security Council, especially Russia and China, maintained close political and economic ties with Syria, especially in the field of oil politics and arm purchases, which made intervention in Syria far less attractive.

All the factors that have played a role in the decision to intervene in Libya but not in Syria have to a certain extent undermined the credibility of R2P. In terms of geopolitical and logistic considerations, Libya was a relatively easy case. Yet, Syria proved that economic, social and geopolitical considerations remain paramount to the protection of populations. Moreover, Libya and Syria proved that the Security Council – at least in its current composition – is not the appropriate body to authorise R2P interventions. It failed to prevent the crimes against humanity committed against civilians in Syria. Moreover, although R2P was adopted by all governments in the world, the decision on R2P intervention is now made by a Council that is dominated by Western countries. An independent commission or secretariat of R2P should therefore look into the possibility of enlarging the permanent membership of the Security Council, as to make implementation of the principle in the future easier and more consistent. This requires an amendment to the Charter of the United Nations. Furthermore, when the Security Council fails to authorise an intervention, the authorisation should be transferred to the General Assembly, to avoid that one or two permanent members block all possibilities for intervention to protect their own national interests.

Abbreviations

AL	Arab League or League of Arab States.
AU	African Union
BRICs	Brazil, Russia, India, China
ECOWAS	Economic Cooperation of West African States
EU	European Union
GA	The General Assembly of the United Nations.
GCR2P	Global Centre for the Responsibility to Protect
ICC	International Criminal Court
ICISS	International Commission for Intervention and State Sovereignty
IDP	Internally displaced person
NFZ	No-fly zone
OSAPG	Office of the Special Adviser to the Secretary General for the Prevention of Genocide
R2P	Responsibility to Protect
SG	Secretary-General of the United Nations
UN	United Nations
UNSC	United Nations Security Council

Glossary

African Union: union of all African states, apart from Morocco

Arab League or League of Arab States: a regional organisation of 22 Arab States in Northern Africa and the Middle East.

Arms embargo: a restriction on the import or export of arms.

Assets freeze: a restriction on the transfer of assets.

Charter of the United Nations: the treaty that establishes the United Nations

Crimes against humanity: acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. These acts include murder, extermination, enslavement, torture, rape, enforced disappearances, apartheid, deportation or forcible transfer of populations and imprisonment in violation of fundamental rules of international law.

Ethnic cleansing: any act designed to remove a particular ethnic group

ECOWAS: a regional organisation of West African states with the purpose of improving economic integration in the region.

General Assembly of the United Nations: As one of the five principle organs of the United Nations, it represents all the 193 UN member states. Main responsibilities include to oversee the budget of the UN, appoint non-permanent members to the Security Council, and make recommendations.

Genocide: acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group

International community: all member states of the United Nations

International Commission on Intervention and State Sovereignty: an independent commission set up by the Canadian government that came up with the idea of a “responsibility to protect”.

International Criminal Court (ICC): the international tribunal that prosecutes individuals for genocide, war crimes, crimes against humanity and ethnic cleansing.

Just cause: Military intervention for human protection purposes is only justified if there is an immediate threat to large scale loss of life or large scale ‘ethnic cleansing’.

Last resort: Military intervention can only be justified when all other non-military means have proven to be inadequate.

No-fly zone: a zone or territory over which aircrafts are not permitted to fly.

Political will: motivation to take political action

Precautionary principles: four principles formulated by the International Community on Intervention and State Sovereignty that justify an R2P intervention. These principles are: right intention, last resort, proportional means, and reasonable prospects.

Proportional means: the scale, duration and intensity of a planned military intervention should be the minimum necessary to secure the defined human protection objective.

Reasonable prospects: there must be a reasonable chance of success in meeting the purpose that has justified the intervention. The intervention is not justified if it would make the situation worse.

Regime change: the replacement of the old Head of State with a new one and a change of government

Regional organisations: organisations of countries located in the same geographic region, e.g. the European Union and the African Union

Responsibility to Protect (R2P): entails that states have a responsibility to protect their own population. If states fail to protect their population, the responsibility goes to the international community.

Right authority: the Security Council is the appropriate body to authorise an intervention. If the Security Council fails to deal with a conflict within a reasonable amount of time, the authorisation could go to the General Assembly or to regional organisations.

Right intention: the primary purpose of the intervention must be to halt or avert human suffering.

Rome Statute (or The Rome Statute of the International Criminal Court): the treaty that established the International Criminal Court. Definitions of 'genocide', 'war crimes', 'crimes against humanity' and 'ethnic cleansing' are stipulated in the Rome Statute.

Territorial integrity: the principle under international law that states should not interfere in the domestic affairs of other states.

Security Council: the body of the United Nations that is responsible for international peace and security. The Council is composed of five permanent members (China, France, Russia, the UK and the US) and ten non-permanent members who are in the Council for two years each.

Security Council Resolution: a decision of the Security Council. A resolution on "non-procedural matters" only passes the Council if nine of the fifteen members voted in favour of the resolution

and if none of the permanent members has vetoed it. Resolutions on “procedural matters” only require the votes of a qualified majority.

United Nations: international organisation that represents all governments in the world.

Veto power: the power of the five permanent members of the Security Council to block resolutions.

War crimes: includes killing, torture or inhuman treatment, wilfully causing great suffering or serious injury to body and health, the taking of hostages and unlawful deportation of people.

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Preface

My thanks go out to the people that put their energy and time in proof reading my work over and over again. First of all, I would like to thank my supervisor at the Hague University, Mr F. M. Termes, who has supported from the moment I first came into his office with no plans or ideas on what I wanted to write about at all. Second, I would like to thank the people of Bureau Brussels (where I did my internship from August to December 2011) for lending me a computer and office space on the Fridays they had given me off to work on my thesis. Third, I would like to thank my family for supporting me all the way and bringing me coffee during some long evenings. And finally, my special thanks go out to Susanne Heukensfeldt Jansen, who is at this very moment proofreading the introduction and executive summary for me during her working hours.

Introduction

The news reports of the year 2011 were dominated by the uprisings in Northern Africa and the Middle East region. This wave of revolutions was already soon referred to as the ‘Arab Spring’. The Arab Spring began with protests in Tunisia and Egypt, when people entered the streets demanding President Ben Ali in Tunisia and President Mubarak in Egypt to step down. They further called for the end of political oppression and corruption, elections, multi-party political systems and overall greater political freedom.

Presidents Ben Ali and Mubarak stepped down weeks after the beginning of the uprisings. Encouraged by the successes in Tunisia and Egypt, protests in Libya began mid-February 2011. Protests in Syria began in March. Demands of the protesters were similar to what the demands in Egypt and Tunisia had been. Both Libya and Syria had been ruled by a brutal political regime that had been in place for decennia with no prospects for improvement in the future (Franssen, 2012, pp.2-6).

Unlike Syria, the conflict in Libya escalated rapidly, with reports of hundreds of people killed within weeks. A few days after the beginning of the protests, it became clear that security forces used heavy weaponry and military aircrafts to attack the demonstrators (Global Centre for the Responsibility to Protect [GCR2P], 2011, February 22, pp.2). Moreover, unlike Ben Ali in Tunisia and Mubarak in Egypt, Gaddafi did not seem to have any intention of stepping down. On 22 February 2011, he declared on state television that he would not ‘give up’ and promised to go from house to house until the insurrection was crushed (The Times, 2011). He referred to the protesters as ‘rats’ and ‘cockroaches’. The exact same words had been used in Rwanda during the genocide, meaning that Gaddafi’s language was considered clear incitement to crimes against humanity and genocide. Given also the rapid escalation of the situation, military intervention by the international community was considered an “extreme necessity” (GCR2P, 2011, November 7, pp.3). On 22 February 2011, The United Nations High Commissioner for Human Rights Mrs Navy Pillay called on the international community to exercise its “Responsibility to Protect” the Libyan population from the crimes that were committed by the Gaddafi forces.

The link between Libya and the “Responsibility to Protect” is the subject of this report. The term “Responsibility to Protect” (from now on referred to as “R2P”), means that states have an individual responsibility to protect their populations from genocide, war crimes, crimes against humanity and ethnic cleansing. If a state fails to exercise this responsibility, this responsibility goes to the international community (the United Nations member states).

The thesis aims to test the credibility of R2P by looking at the application of the principle in Libya and the lack of application in Syria. It answers the following research question: What do the different responses of the international community to the conflicts in Libya and Syria say about the credibility of the Responsibility to Protect principle?

Libya is an important test-case for R2P for two reasons. First, because Libya was the first conflict in which a Security Council Resolution authorised an international R2P intervention. It was therefore the first time that an intervention was both multilateral (multiple countries took part in the military operation) and legal under international law. Moreover, Libya was the first conflict that involved the larger community. Before Libya, the term had been used in several conflicts, including Georgia (2008), Kenya (2008), and the Democratic Republic of the Congo (1997-ongoing). However, these conflicts never triggered the same massive and immediate response of the international community that Libya did.

The report is composed of three parts. Part one will start with a general introduction to the definition and background of R2P and explain the difference of R2P to earlier humanitarian intervention norms. It will then look more closely to the concept of R2P that was adopted by the United Nations. Part two will look at how R2P was implemented in Libya. First, chapter three discusses the role of the Security Council in the application of R2P. It will focus on the composition of the Council and the veto power of its permanent members. Chapter 4 will then look at how R2P was implemented in Libya under Operation Unified Protector. Part three aims to evaluate what the implementation of R2P in Libya says about the credibility of R2P. Chapter 5 will do this by comparing the situation in Libya to the ongoing conflict in Syria and discuss why the Security Council decided to refrain from intervention in Syria. Finally, chapter 6, discusses the lessons that can be learned from Libya. The report will conclude with an answer to the research question. This answer will be composed of a number of concrete recommendations to the United Nations for better implementation of the R2P in the future.

Methods

For this thesis, a lot of desk research was conducted. More than once had information to be revised, due to the still ongoing developments in Libya and Syria. Also due to these developments, it is possible that some of the information (for instance with reference to the number of civilian casualties) is already outdated. Apart from the desk research, two interviews were held. One with a junior advisor at the European Union's External Action Service who works on the responsibility to protect dossier, the other interview was held with a post graduate student who spent one year in Libya in 2010 to interview civilians about their freedom in Libya. Furthermore, a conference on "The Responsibility to Protect in Libya" organised by the Clingendael Institute was attended. The

purpose of this conference was to discuss what lessons can be learned from the implemented of R2P in Libya. The information collected from these interviews and during the conference has been used as background information for the thesis.

1. The Responsibility to Protect

The purpose of this chapter is to understand the origins of the responsibility to protect principle – from now on referred to as “R2P”. The first part of the chapter will look at the definition and background of the principle. The second part of the chapter provides a summary of what the principle exactly entails.

1.1 Definition

“Responsibility to Protect” means that the sovereignty of states is not only a right, but also a responsibility. States have an individual responsibility to protect their populations from genocide, war crimes, crimes against humanity and ethnic cleansing, whether these crimes are committed by state or non-state actors. The international community has a responsibility to assist states in exercising their responsibility. If states manifestly fail to protect their populations, the responsibility to protect the population goes to the international community.

1.2 Background

It is important to understand the timing of the need for new humanitarian intervention norms. In the past, the dominant principle in international law has always been that states should not interfere in the domestic affairs of other states. This approach changed after the end of the Cold War in 1989. It was replaced by a more civilized and humanitarian perspective, due to the possibility for the UN Security Council members to work together as a whole for the first time without being held back by the same conflicting interests that had fuelled the Cold War. Then the 1990s came, which proved the incapability of the Security Council to prevent mass atrocities. First Rwanda happened in 1994, where the Security Council stood by and watched the genocide of in between 5,000,000 to 1 million people. The following year the Council failed to prevent the fall of Srebrenica, costing the lives of in between 7,000 to 8,000 people.

The United Nations agreed that it could not let such atrocities ever happen again. In 1999, as an immediate response to the 1999 Kosovo crisis, then Secretary-General of the UN Kofi Annan addressed the General Assembly (GA) with the question on how the international community should react to genocide and mass atrocities like those that happened in the 1990s in the future. In the Economist magazine he wrote:

[State] sovereignty, in its most basic sense, is being redefined... States are now widely understood to be instruments at the service of their peoples, and not vice-versa. At the same time individual sovereignty – by which I mean the fundamental

freedom of each individual, enshrined in the Charter of the UN and subsequent international treaties – has been enhanced by a renewed and spreading consciousness of individual rights. When we read the Charter today, we are more than ever conscious that its aim is to protect individual human beings, not to protect those who abuse them (Bellamy, 2011, p.9-10).

Intergovernmental organisations, such as the Organisation for Security and Cooperation in Europe (OSCE) had existed for quite some time to develop mechanisms for conflict prevention. However, these organisations lacked tangible commitments, resulting in the failures to implement the ideas that already existed on paper (Gionet, 2010, par.3). The Canadian government was the first to pick Kofi Annan's idea up. It took a leading role in forming a Commission of experts with the task to find a set of guidelines that would shape humanitarian intervention in the future. This Commission was the International Commission on Intervention and State Sovereignty (ICISS). The Commission found these guidelines for humanitarian intervention in the Responsibility to Protect principle (R2P). Consequently, Kofi Annan's idea that sovereignty entails both rights and responsibilities was adopted by the ICISS. Their report, "The Responsibility to Protect", was published in late-2001 and immediately well received by many other states (Interesting is the date of release of the ICISS report. It was finished on 30 September 2001 and released in December, three months after the 9/11 attacks. Although R2P was already well thought-out before the attacks, the timing of release might explain the immediate approval of the principle by other governments.).

Questions of why it was the Canadian government that responded to Kofi Annan's calls are difficult to answer. However, when looking at the past, Canada has often played a leading role in the foreign policies of human security. For instance, Canada used to chair "The Like-Minded Group", a coalition of states that tried to motivate the wider international community to adopt the Rome Statute, supporting the creation of the International Criminal Court (ICC).

The ICISS was chaired by Gareth Evans and Mohammed Sahnoun. As Foreign Minister of Australia and President of the International Crisis Group, Gareth Evans had played prominent roles in developing the UN peace plan in Cambodia. Mohammed Sahnoun was at the time Special Advisor to the UN Secretary-General. Previously, he had worked as Special Representative of the Secretary-General for Somalia in 1992 and for the Great Lakes of Africa in 1997 as and as Special Envoy of the Secretary-General on the Ethiopia-Eritrean conflict in 1999.

The R2P as was developed by the ICISS aimed at the protection of populations from genocide, war crimes, ethnic cleansing and crimes against humanity and focuses on the responsibility of the international community. In the report, Gareth Evans noted that:

It is the responsibility of the whole international community to ensure that when the next case of threatened mass killing or ethnic cleansing invariably comes along, the mistakes of the 1990s will not be repeated. In short, the R2P principle meant that states could protect populations from atrocities taking place in other states (...) and to be ready to act in the cause of prevention and not just in the aftermath of disaster (ICISS, 2001, p.27).

1.3 Difference with earlier humanitarian intervention norms

R2P as developed by the ICISS derives from a modern understanding of sovereignty, namely that sovereignty is a responsibility and not a right. Externally, sovereignty implies the responsibility to respect the sovereignty of other states. Internally, sovereignty implies the protection of the population, the acceptance of the basic human rights of all. The ICISS report constituted a conceptual change compared to earlier intervention norms as it included both peaceful (diplomatic means, political dialogue) and coercive means (trade barriers, arms embargo's) for intervention. Furthermore, R2P is different from earlier humanitarian intervention norms for in least four ways:

- 1) A linguistic change was made from 'right to intervene' to 'responsibility to protect'. The principle does not give states a 'right' to intervene in the domestic affairs of other states. Rather, it gives the international community the responsibility to protect populations that are suffering from atrocities.
- 2) Its scope is limited to four crimes: genocide, war crimes, ethnic cleansing and crimes against humanity.
- 3) R2P is a multi-layered responsibility. First, the sovereign state has the responsibility to protect its own people. Second, the international community has the responsibility to assist the host state in keeping this responsibility. Third, there is a responsibility of the wider international community to engage and protect if the host state was attacking manifestly failing to protect its own people.
- 4) In contrast to earlier ideas of intervention, the principle only allows military action as a 'last resort'. The starting point of the principle is that of non-interference. Only when all other forms of non-coercive and coercive intervention have been proven inadequate is the use of force allowed ("*... when all order within a state has broken down or when civil conflict and repression are so violent that civilians are threatened with massacre, genocide or ethnic cleansing on a larger scale.*") (ICISS, 2001, p.31, 4.13).

In 2009, Michael Newman argued that the principle was new for another reason: because it accepted that there is a relationship between Western policies and the development and security problems in developing countries. Newman furthermore suggested that the acknowledgement of Western responsibilities for socio-economic problems made it possible to reach a consensus on the

principle. The principle was, in other words, not a pro-North and anti-South model, but applied to all states at all times (Newman, 2009, p.97).

1.4 A multi-layered responsibility

R2P as developed by the ICISS exists of three dimensions: the responsibility to prevent, the responsibility to react, and the responsibility to rebuild. These will now be shortly discussed (a synopsis of the report can be found in Annex I).

1.4.1 Responsibility to Prevent

What makes R2P unique is the factor of prevention. It requires the international community to intervene in the affairs of other states even before conflict breaks out. It aims to address the root and direct causes of internal conflict. This responsibility lies first and foremost with the sovereign state, but requires the assistance of the international community. The Commission considers prevention as the most important layers of R2P, as prevention should always be exhausted before the decision is made to intervene. However, this idea was challenged by Thomas Weiss, the ICISS research director. According to Weiss, the importance that was given to prevention was an unrealistic attempt to avoid the hard issues of responding to a conflict. It was merely an addition to the R2P to lessen the aggressive impact of the second dimension that required intervention (Bellamy, 2010, p.19). The responsibility to prevent works effectively if three conditions are met:

- The development of early warning mechanisms, as knowledge of the fragility of regions and the risks is essential to address the root causes of conflict. The ICISS identified four key dimensions of root causes: economic, political, legal and military. To tackle these causes and for the use of direct prevention, the Commission called for the creation of a pool of unrestricted development funding.
- A “preventive toolbox” would have to be developed that could address the same political, economic, legal and military problems, but within a shorter time span. Diplomatic prevention for instance includes involvement of the Secretary General and the application of targeted sanctions. Economic prevention can include the new funding for development projects, as well as threat of trade sanctions, withdrawal of investment, etc.
- Third, there must be political will of the international community to involve in the affairs of other states to prevent atrocities. There are three (more or less idealistic) elements that must help to mobilize support for early engagement in conflict situations. First, moral appeals can inspire and legitimize political actions. After what happened in Bosnia, Rwanda and Kosovo, the international community promised never to let anything similar happen again. Second, the sense of compassion among UN member states and painful lessons from the past must make it easier to change the perspective into a preventive one. Third, it is often financially more attractive to prevent conflicts than to finance coercive

action. Conflicts also often have bad consequences on the national interests of states (peace is generally better for business). In addition, preventing conflicts from breaking out means less threats of terrorism (terrorism is related to unstable states), less organised crime, less refugee flows to the developed countries and less health pandemics.

1.4.2 Responsibility to React

The second layer of R2P involves the responsibility to react: the reaction to situations of compelling need for human protection” (ICISS, 2011, p.29). Reaction must be done with appropriate measures, which may include coercive measures like sanctions and international prosecution. Non-military intervention is the starting point and must be applied first. Only in extreme cases is military action allowed. In order to define what an extreme case is and when military intervention can be justified, the ICISS introduced a set of criteria as preconditions for the justification of military intervention. These include the ‘just cause’ threshold, four precautionary principles and the requirement for ‘right authority’ (the question of who would authorise a military intervention).

According to the ‘just cause’ threshold, military intervention is justified in two extreme cases: (1) one being large-scale loss of life as the product of state action, state neglect, inability to act, or state failure, and (2) in case of actual or anticipated large-scale ethnic cleansing (ICISS, 2001, p.32). A clear definition of ‘large-scale’ is not provided, to avoid the risk that the international community is required wait until atrocities have happened before legally allowed to act. This leaves the decision of when to intervene open to the Security Council. Whether the actor that harms a populations is a state or non-state actor is irrelevant.

Apart from the ‘just cause’ threshold, four precautionary principles must be met in order for military intervention to be legitimate:

- Right intention: the primary intention of intervention must be to halt or avert human suffering. To secure the right intention, military intervention must always be multilateral or collective. The Commission clearly states that regime change and the occupation of territory, for instance, are not legitimate objectives. However, it acknowledges that overthrow of regimes might in some cases be essential for the protection of civilians. Furthermore, the Commission notes that the international community might have other motives for intervention apart from the humanitarian motive, but also notes that this should not be a reason to refrain from interference at all, as long as the protection of civilians is the primary purpose of intervention.
- Last resort: military action is only legitimate if all other non-military intervention possibilities have been proven unsuccessful or if there is reason to believe that they would

be unsuccessful. “The responsibility to react – with military coercion – can only be justified when the responsibility to prevent has been fully discharged” (p.36).

- Proportional means: “the scale, duration and intensity of the planned intervention should be limited to the minimum necessary to secure the humanitarian objective in question” (p.37). The effects on the political system and on the culture of the targeted state should be as limited as possible.
- Reasonable prospects: military intervention can only be justified when there is reasonable chance of success in achieving the objective of the intervention. Even if all other preconditions for interventions are met, intervention cannot proceed when there is a risk that the conflict will escalate in a larger conflict. What makes this last principle interesting is that it precludes military action against the five permanent members and other major powers in the Security Council. For instance, if Russia or the US would attack its own population, interference is not likely to be justified as it would not have a reasonable chance of success.

As part of the responsibility to react, the Commission also addressed the question of who would authorise a military intervention. Who would have the right to determine whether a military intervention for humanitarian purposes would be appropriate? The ICISS document acknowledges the Security Council as the principal institution and authority of the international community and refers to the UN as the “sole legitimate guardian of international peace and security”. According to the Commission, “collective intervention blessed by the UN is regarded as legitimate because it is duly authorised by a representative international body; unilateral intervention is seen as illegitimate because self-interested” (ICISS, 2001, p.48). This acknowledgement seems fair, given that the United Nations essentially represent every governmental body in the world, securing fair and well-thought out judgement that is not driven by the national political or economic interests of states. However, it also raises the question of how the UN, representing so many countries, could function in a timely and decisive manner if decisions on intervention must be made.

Within the Commission, it was agreed that the UN Security Council was the only legitimate body to respond to peace and security matters, despite the criticism of uneven performance, unrepresentative membership, and the double standards of the veto power. Nevertheless, this responsibility was not exclusive. In cases where the Security Council was unable or unwilling to authorise a military response, the authority can either go to the UN General Assembly or to regional (e.g. the African Union) or sub-regional organisations (e.g. ECOWAS), subject that they seek authorisation from the Security Council (ICISS, 2001, p.viii). This is for instance what ECOWAS did in Liberia and Sierra Leone in 1997. The possibility of transferring authority of intervention to the General Assembly was a way to avoid a situation in which an intervention was

blocked by the Council due to disagreement among the Council's members. Giving the authority to the General Assembly allowed the other members of the UN to continue examining the options for military intervention in a particular case even if the permanent members vetoed it.

Furthermore, the ICISS report called on the Council's five permanent members for a "code of conduct", meaning that they would not use their veto power to block intervention for human protection purposes when their national interests are not involved (Evans, 2002, p.107). In case the Council fails to discharge the responsibility, individual states are to explore other means of interference. However, Evans and Sahnoun noted that in case such an intervention turns out to be successful, this would undermine the credibility of the United Nations (p.108).

1.4.3 Responsibility to Rebuild

Finally, R2P included a responsibility to rebuild post-conflict areas. Interventions often break down governmental structures of the state. As a result, and due to the fact that the root causes that fuelled a conflict have often not disappeared, the risk that post-conflict states fall back into conflict is much higher than that of other states. In fact, the risk of post-conflict states of falling back into conflict in the first decade after the conflict is about 50% (Collier, 2008, p.34). The international community should therefore help states developing a strategic plan for rebuilding the country. This would involve full assistance with providing basic security systems for the population (establishing a functioning and fair judicial system, including courts and police forces), support of overall development of the country (including economic growth and increasing individual living standards), and addressing the causes of the harm the intervention was designed to halt or avert. Furthermore, the ICISS stresses the importance of generating reconciliation efforts not only on diplomatic level but especially on ground level, aiming to increase prospects on jobs and general living standards. Other concrete examples include repairing infrastructure, rebuilding housing, planting and harvesting, help with relocation of families and the return of internally displaced persons (IDPs). The ICISS, however, fails to address the question of money, leaving open the question of who should finance the rebuilding efforts.

On paper, questions on when a military intervention is justified and who should authorise it have been answered. The next chapter will look at R2P as adopted by the UN in 2005 and the positions of member state towards the principle.

2. The adoption of R2P by the United Nations

The responsibility to protect was adopted by the UN at the 2005 World Summit (a follow-up of the 2000 Millennium Summit, which led to the adoption of the Millennium Development Goals). This chapter will look at R2P as adopted by the United Nations and the positions of UN member states – especially of the five permanent members of the Security Council – towards R2P.

2.1 Adoption of R2P by the UN

As discussed in the previous chapter, R2P as developed by the ICISS exists of three dimensions: the responsibility to prevent, the responsibility to react, and the responsibility to rebuild. Of these three dimensions, the first two were adopted by the UN in 2005. These are stipulated in Articles 138 and 139 of the 2005 World Summit Outcome Document (all 191 member states agreed to the content of the document). Together, these Articles form an authoritative framework for the implementation of R2P.

Article 138 of the Outcome Document focuses on the individual responsibility of states to protect their populations from genocide, war crimes, crimes against humanity and ethnic cleansing and on the responsibility of the international community to assist States in exercising this individual responsibility:

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

Article 139 focuses on the role of the international community if the individual state fails to exercise its responsibility. The article stipulates the responsibility of the international community “to use appropriate diplomatic, humanitarian and other peaceful means in accordance with Chapters VI and VIII [of the Charter establishing the United Nations], to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.” These chapters both concern only non-military international intervention in disputes. Article 139 continues as follows:

(...) In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII on a case-by-case basis and in cooperation with relevant regional organisations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity (...) We also intend to commit ourselves, as necessary and appropriate, to helping States building capacity to protect their populations [from these crimes] and to assisting those which are under stress before crisis and conflicts break out.

The articles does not give a definition of ‘collective action’, thus leaving open the question whether this action is solely diplomatic form or could also be militarily. Instead it refers to Chapter VII of the UN Charter. Articles 39-51 of this Chapter are on action with respect to threats to the peace, breaches of the peace and acts of aggression. According to the Article 39, “the Security Council shall determine the existence of any threat to peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42 to maintain or restore international peace and security”. Consequently, these enforcement measures can be either diplomatic or militarily. Article 41 concerns the measures not involving the use of armed force, such as the interruption of economic relations and communication means. Article 42 calls for the implementation of all other forms of action under the condition that the measures provided for in Article 41 have proved to be inadequate. Such actions may include demonstrations, blockade, and other operations by air, sea, or land forces.

Neither the UN Charter nor the Outcome Document provides clear definitions of genocide, war crimes, ethnic cleansing and crimes against humanity. A reason for this might be that the SC wants to avoid that even in emergency situations, it has to wait with intervention before for instance a specific number of people have been killed. Furthermore, Article 139 shows that the responsibility to rebuild as was proposed by the ICISS was not adopted as such by the UN. The Article only mentions the commitment of the international community to help states with capacity building, but this is more a matter of prevention than of post-conflict assistance.

2.2 *Implementing the Responsibility to Protect*

In October 2006, South Korean foreign minister Ban Ki-moon was elected as Secretary-General of the United Nations. As Secretary-General in the midst of the R2P discussions, he argued that the task ahead is not to further discuss and renegotiate, but to implement what was already agree upon. In 2009, Ban Ki-Moon released the report *Implementing the Responsibility to Protect*, marking a major step forward in the evolution of R2P. The UN adopted a resolution (A/RES/63/308) taking

note of the report and promising to continue the debate on R2P in the General Assembly. Before starting off with the actual content of the report, Ban first aims to explain the basis for R2P in existing international law in three ways. First, the four crimes to which R2P relates (genocide, war crimes, crimes against humanity and ethnic cleansing), had already been embedded in international law. Second, states had a responsibility to prevent these crimes from happening under customary international law. Third, although by critics often argued otherwise, R2P as agreed on in 2005 is in fact consistent with the principle of non-interference as embedded in Article 2(7) of the UN Charter. Article 2(7) states that the principle of non-interference in the domestic affairs of other states “shall not prejudice the application of enforcement measures under Chapter VII” (Ban, 2009, pp.2-3). Chapter VII allows the use of force with respect to threats to peace and acts of aggression.

The report outlined a range of measures that the General Assembly and UN member states might consider to implement R2P. He summarizes need for the principle as follows:

Before responding, we should note that the worst human tragedies of the past century were not confined to any particular part of the World. They occurred in the North and in the South, in poor, medium-income and relatively affluent countries. Sometimes they were linked to ongoing conflicts but quite often – including in some of the worst cases – they were not. In retrospect, three factors stand out. First, in each case there were warning signs. Violence of this magnitude takes planning and preparation, as well as a contributing political, social and economic context. Second, the signals of trouble ahead were, time and again, ignored, set aside or minimized by high-level national and international decision makers with competing political agendas. Third, at times the United Nations – its intergovernmental organs and its Secretariat – failed to do its part (Ban, 2009, pp.6).

As a response to the unanimous affirmation of all Heads of States and Governments that each State has the responsibility to protect its population from the four crimes, and that the international community is prepared to take collective if states manifestly failed to exercise this responsibility, the report is a step-by-step strategy for handling the operational challenges of R2P and calls for action by the international community. Ban Ki-moon outlined three equally important pillars as the basis of R2P: (1) the protection of populations is first the responsibility of the State; (2) the international community must provide assistance and capacity-building to the State to help exercise this responsibility; and (3) if the State manifestly fails to protect its population, the international community should respond in a timely and decisive manner. The first two pillars focus mainly on

prevention. The last pillar sets out a framework for timely and decisive response. Each of the three pillars will be summarized shortly below.

1) The protection responsibilities of the State.

The first pillar calls for protection of incitement of to the four crimes. It is “the enduring responsibility of the state to protect its populations, whether nationals or not, from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement.” (Ban Ki-moon, 2009, par.11a).

The responsibility lies first and foremost with the State, and derives both from the nature of State sovereignty and from legal obligations. The State is the bedrock of the responsibility to protect. The role of the international community is supplement. Ban Ki-moon stresses the need for more research and analysis to better understand why some societies plunge into mass violence while others in similar circumstances do not. Moreover, as a first step towards full implementation of R2P, Ban Ki-moon encourages more States to become party to the Rome Statute of the International Criminal Court and to embody this in national legislation (when the Report was published, 108 States were party to the Rome Statute). Another step towards implementation is the need for all societies for self-reflection. Even stable societies should to ask themselves whether they are vulnerable to atrocities. Furthermore, states are urged to learn from the mistakes and process of reconciliation and reconstruction of countries that have suffered massive violence, but also from the developed mechanisms that were developed by countries that have not experienced such violence. Training and education programmes can be designed to help identify early warning indicators. Finally, individual responsibility is identified as a key to prevention. To avoid reoccurrence of atrocities elsewhere, the stories and lessons of victims and survivors must be more widely heard. The development of for instance national or transnational networks can help with this.

2) International assistance and capacity-building.

“Pillar two is the commitment of the international community to assist States in meeting those obligations.” (Ban, 2009, par.11b) Not only Member States, but also the civil society, private sector, and regional alliances and organisations must be committed and assist States in meeting their obligations in order to prevent crises and conflict to break out. The second pillar aims to help national governments when their leadership is uncertain about how to proceed or lacks the capacity to protect its own population. However, it is also noted that when atrocities will be committed by the State, the international community could decide to immediately move to the third pillar of timely and decisive response.

First of all, the second pillar highlights the important role of regional and subregional bodies in the prevention of the four crimes and general massive violence. For instance, the Economic Community of West African States (ECOWAS) established a partnership between governments and civil society organisations (CSO's) that has together developed an effective early warning and early response system. Second, UN member states are advised to help regional and sub-regional organisations to build civilian capacities for the prevention of crimes, especially considering that skills, experience and local knowledge is needed to intervene in situations of ethnic tension. Given that most of the "risk societies" lack military presence and expertise, it is suggested to create standby rapid-response civilian and police capacities that could respond to emergencies. Related to this, there should be a possibility of "preventive deployment", as collective military action might in some cases be the only way to help prevent the escalation of violence (Ban, 2009, par.39-41). Third, the UN should increase its rule of law assistance to Member States, as the rule of law is fundamental to prevention of massive violence. Fourth, assistance programmes of donor countries should be developed on a case-by-case and region-to-region basis. Fifth, as many – but not all – national conflicts occurred in very poor societies, development assistance programmes targeted at poor and minority groups in these countries and capacity-building programmes would be an effective tool to prevent such conflicts from happening. Finally, Member States are encouraged to establish a disciplined security sector or strengthen it if it is already there to lower the risk of inter-group violence.

3) Timely and decisive response

"Pillar three is the responsibility of Member States to respond collectively in a timely and decisive manner when a State is manifestly failing to provide such protection." (par.11c) The third pillar is incorporated in paragraph 139 of the Outcome Document. The Article legalizes the use of force in two cases: (a) if peaceful means are proven to be inadequate; and (b) if national governments are manifestly failing to protect their populations from the four crimes. Only in these cases may the international community, through the Security Council and in accordance with chapters VI and VII of the UN Charter (Chapter VI, Article 33: negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means; Chapter VII, Article 41: economic blockades, interruption of communication means, etc.), decide to take action on a case-by-case basis and in cooperation with (sub)regional organisations. Ban Ki-moon emphasises the need for 'timely response' to avoid that the international community waits too long before taking action, leaving only a choice between doing nothing and military intervention. He states that the R2P does not leave room for 'triggers' for action, as this would mean that the international community might have to wait too long before it can legitimately intervene.

With reference to the question of authorisation, Ban Ki-moon suggests that intervention would in the first place be authorised by the Security Council. He urges the five permanent members of the Security Council not to employ the veto in R2P situations, but to aim at reaching mutual agreement on R2P matters (Ban, 2009, pp.61). The report does not clearly indicate whether the SC would be guided by the General Assembly on R2P matters. However, when the Security Council is unable or unwilling to come to a mutual agreement on intervention and thus fails to take collective action, the General Assembly would take over this role in accordance with the “Uniting-for-peace” procedure. Under this procedure, the GA is also entitled to implement new measures (e.g. arms embargo’s, diplomatic sanctions), although these would not be legally binding. As with the R2P as developed by the ICISS, (sub)regional organisations would also be eligible to authorise intervention, but only with prior authorisation of the Security Council. By referring to the uniting-for-peace procedure, Ban Ki-moon has adopted all recommendations of the ICISS with reference to the authorisation procedures of R2P interventions.

2.3 The 2009 General Assembly Debate

As the previous section shows, the Ban Ki-moon’s report includes step-by-step strategies for member states that should make implementation of R2P possible. The report was published on 21 July 2009. A few weeks later, the UN General Assembly held one of its largest plenary debates. It was the first time an interactive dialogue between member states was held on the principle since its adoption in 2005. During the debate, 94 speakers took the floor, representing 180 governments. The debate was also attended by the Global Centre for the Responsibility to Protect and the People’s Coalition for Responsibility to Protect.

Overall, the positions of member states who still been sceptical about the principle in 2005 had been changed into more positive and constructive ones. The wish to put an end to atrocities proved to be stronger than ideological objections and “substantive reservations” (GCR2P, 2009, p.12). However, China was still more cautious about the principle, declaring to be open for discussion on implementation, but kept to its statement that “R2P cannot be used to put states under pressure as it remains a concept and lacks the force of international law” (p.10). Implementation of the principle can therefore only happen after the concerned state has given its consent. Interestingly, the positions of Russia and Brazil had changed into far more positive ones. Brazil noted that the “political boundaries of R2P were clearly set in 2005 and we are not mandated to alter them.” Russia added to this the importance of states to protect their own people (GCR2P, 2009, p.11).

One of the main outcomes of the debate was that the assertion that developing states were opposed to R2P contrasted starkly with the statements made in the debate of developing states (Global Centre for the R2P, 2009, p.11). The debate resulted in the following other areas of consensus:

- The R2P as adopted in 2005 was not open for renegotiation. The most important task now was to implement what had already been agreed upon;
- Sovereignty carries a heavy responsibility and R2P is an alley of sovereignty. With reference to the legal basis of R2P, many states, including India and Brazil suggested that R2P is in fact grounded in international law and that the principle is in line with the UN Charter.
- Two thirds of the statements of member states spoke positively of Ban Ki-moon's report. The three-pillar-strategy was endorsed by over 50 states and all states recognized the special importance of the first two pillars.
- The scope of the responsibility would be restricted to the four crimes.
- Mass atrocities committed within a state's borders can be considered as threats to international peace and security. Coercive military intervention is in such a case legitimate.

However, member states also expressed a number of concerns. A first area of concern involved the consistent implementation of the principle. Some states argued that R2P was applied selectively by the Council, referring to 'the inconsistent response to the bombardment of Gaza in January 2009, or Israel's occupation of Palestine' (GCR2P, July 2011, p.6). Secondly, member states found it difficult to agree on the implementation of the third pillar ('timely and decisive response'). Several states rejected the use of collective action, but more states noted that the use of force is warranted by the UN Charter to save lives. R2P could be misused for unilateral action purposes or as an excuse to intervene in the internal affairs of states. A third concern of member states was related to the authorization of R2P interventions and the lack of clarity on what would trigger timely and response. At what stage would intervention be required and who would authorise the use of force? Singapore and France, argued that the Security Council would be the appropriate body within the United Nations to authorise R2P actions. This would also include the General Assembly as the UN body to guide the Security Council in case the Security Council was unable or unwilling to respond to R2P emergencies. Other member states, including Sudan and Venezuela argued that the authorisation could only be given to the General Assembly (GCR2P, 2009, p.6-8). Table 3.1 on pages 34 and 35 provides an overview of the positions towards R2P that were put forward during the debate in 2009.

2.4 Challenges and criticism

The main challenge of implementing R2P and gaining acceptance of the principle among UN member states is to prove that R2P brings added value to already existing UN programmes in the field of humanitarian protection. According to Edward Luck, Special Advisor on the Responsibility to Protect to the Secretary General, R2P advocates have argued: (1) that existing capacities are often weak, underdeveloped and resource-starved; (2) that they have not proven effective in preventing and/or protecting populations from the four crimes; (3) that some of the worst genocides in history have not been causally linked to armed conflict; (4) that UN units with similar mandates are scattered, poorly coordinated, and do not share relevant information, analysis and assessment in a timely manner; (5) that they are not linked directly to principal organs of the UN; and (6) that adding R2P criteria and perspectives to the ongoing work of will add to the ability to prevent and deal with the four crimes (Luck, 2008, p.6).

Indeed, previous prevention mechanisms and humanitarian protection programmes have proven to be inadequate during the 1990s. This is why some advocates of the principle argue that more criteria are needed that shape humanitarian intervention in the future. They claim that the criteria for intervention that were agreed upon at the 2005 Summit are far too limited compared to what was proposed in the original R2P document. Indeed, there is no mentioning of the 'just cause' threshold in Articles 138 and 139. However, Alex Bellamy argues that it would have been impossible for the Security Council to agree on more criteria. Indeed, more criteria for R2P interventions were never included in the 2005 World Summit Outcome Document because of a lack of consensus on criteria among the Council's members. Most African states advocated for more criteria, but the US, China and Russia opposed them. It was feared that more discussion on criteria would have undermined the consensus on R2P. Bellamy therefore suggests that advocates should rather focus on the implementation of what was already agreed on. Michael Newman takes a whole different approach to the principle. Although he agrees that R2P is a doctrine with great potential, he believes that the potential of the principle is undermined as it separates the issue of human security from greater global development. Not addressing the existing international political economy that is favoured by the North constitutes a risk that developing countries may address to the principle as just another slogan to justify military intervention by the North in the South (Newman, 2009, p.93). Certainly, criteria that would shape R2P responses to crisis would prove this belief of Southern states wrong. On the other hand, apart from the argument that it would indeed have been difficult if not impossible for UN member states to agree on more criteria only so soon after the introduction of the principle, these criteria would likely become guidelines for military intervention (it seems impossible to create specific guidelines for the prevention of conflict, but easier to develop guidelines for timely and decisive response). This would seriously undermine the credibility of the prevention element of R2P.

American philosopher and historian Noam Chomsky is one of the main critics of R2P. He believes that R2P is only a new pretext to justify “humanitarian imperialism.” In an official statement to the UN of 23 July 2009, Chomsky suggests three things with reference to R2P: (1) that Thucydides’ maxim still applies today (“The strong do as they wish, while the poor suffer as they must.”) He refers to the Corfu Channel case of 1949, in which the International Criminal Court decided that: “[it] can only regard the alleged rights of intervention as the manifestation of a policy of force, such as has, in the past, given rise to most serious abuses and such as cannot, whatever be the defects in international organisation, find a place in international law. (...) From the nature of things, [intervention] would be reserved for the most powerful states, and might easily lead to perverting the administration of justice itself”; (2) that the own interests of intervening states still have priority, however “grievous” the effects on others might be; (3) that every use of force in the past – also in unjust interventions – has been justified on grounds of R2P, hence, that R2P is not an emerging norm but was considered a norm “as far back as we want it to go” (Chomsky, 2009, p.1).

Thus, Chomsky believes that R2P is just another way for Western states to justify interventions for the main purpose of pursuing national interests, whatever the consequences of this on the interfered state and its population might be. To test this theory, it is important to analyze the composition of the Security Council. The next chapter will therefore look at the role of the Security Council in R2P interventions and discuss the special status of the Council’s five permanent members.

3. The composition of the United Nations Security Council

The Security Council is the body of the United Nations responsible for international peace and security. According to the concept of R2P as developed by the ICISS, the authorisation of R2P interventions first goes to the Security Council. Only when the Council fails to authorise the intervention, either because it is unable or unwilling to do so, the authorisation goes to the General Assembly. The purpose of this chapter is to look at the current composition of the Council and to discuss the special position of its permanent members. This is important to better understand why the Council decided so easily on an intervention in Libya but failed to authorise a resolution on Syria. The chapter will furthermore look at possibilities to change the composition of the Council and how it should be changed to make implementation of R2P easier. Finally, table 3.1 on pages 34 and 35 provides an overview of the positions of all fifteen members of the Council towards R2P and their votes on Resolutions 1970, 1973, and the resolution on Syria.

3.1 The composition of the Security Council

The Security Council is composed of five permanent members (China, France, Russia, the United Kingdom and the United States) and ten non-permanent members. The non-permanent members are elected by the UN General Assembly for a term of two years. The composition as such is stipulated in Article 23 of Chapter V of the Charter of the UN. The Presidency of the Council rotates monthly in alphabetic order. Members of the UN who are not in the Council may attend meetings but do not have a vote in the decision making. All members of the Council have one vote. Decisions on procedural meetings and substantive matters require a qualified majority, meaning that at least nine of the 15 members must approve the decision. However, decisions on substantive matters (these are non-procedural matters, e.g. Resolutions 1970 and 1973) do not only require a qualified majority, but also the consent of all the five permanent members. Even if there is a qualified majority and only one of the permanent members rejects, the decision cannot pass the Council. This is called the “veto” power of the permanent members. This power provides the permanent members with a special status in the Council and therefore also on the world stage. In 2011, the non-permanent members of the Security Council were:

- Bosnia and Herzegovina
- Brazil
- Colombia
- Gabon
- Nigeria
- Portugal
- South Africa
- Germany
- India
- Lebanon

As of 2012, Azerbaijan, Guatemala, Morocco, Pakistan and Togo replace Bosnia and Herzegovina, Brazil Gabon, Lebanon and Nigeria. As the uprisings in Libya and Syria began in the first quarter of 2011, the focus will be on the response of the Security Council members of 2011.

With the debate that is now taking place on selective application of R2P, the discussion on the special status of the five permanent members is back on the table. At the General Assembly Debate that was held in mid-2009, many UN member states, including India, the Gambia and Sudan, expressed their concern relating to the composition of the Council. India called for a reform of the composition of the Council, arguing that the current composition permitted too much influence over Council decisions of a few Western states. Indeed, when the Charter of the United Nations came into force in 1945, the five permanent members of the Council more or less represented the countries that had come out of the Second World War the strongest. However, a lot has changed in the past 60 years. Countries like Brazil, India and Japan are on their way to become the world's biggest growing economies. An increasing population growth has made India the second most populous country in the world. Moreover, the Council's representation is not only outdated, it is in geographic terms not representing the world in a fair way at all. Three of the five permanent members are European countries (Russia included). One country represents Asia. Neither Africa nor South America is represented in the Council at all. It is not a surprise that countries like Brazil, India and South Africa now claim they have a right to permanent membership as well. This leads to think that if the UN wants to avoid a situation in which member states that do not feel represented by the UN will try to find an alternative to the UN, some sort of change in the functioning of the Security Council will have to happen in the near future.

3.2 Composition and selective application

Table 3.1 on pages 34 and 35 provides an overview of the 2009 positions towards R2P of all the fifteen member states that were in the Security Council in 2011. The table also includes the voting behaviour of these states with reference to Resolutions 1970, 1973 and the proposed resolution on Syria. As the table shows, all fifteen member states were in favour of Resolution 1970, which called for non-coercive sanctions on Libya. However, when Resolution 1973 was put to a vote, five member states abstained (China, Russia, Brazil, Germany and India). Interestingly, Russia and China did not employ their veto. Then when a resolution on Syria was put on the table, Russia and China vetoed it. Brazil, India and Lebanon abstained.

It would be naive to think that the permanent composition is not a reason for selective application of R2P. National interests do play a role in the decision making (chapter 5 will look further into this). Given the different positions of UN member states towards R2P, a different composition of the Council is likely to have led to different outcomes. For instance, if pro-intervention countries

like Germany and Nigeria had been in the Council instead of China and Russia, intervention in Syria would have been far more likely to be agreed on. Likewise, if Brazil and India, who are more cautious of the principle, had been in the Council instead of the UK and France, past interventions would have been unlikely to ever have happened. In this sense, Noam Chomsky's first remark ("the strong do as they wish, while the poor suffer as they must") seems right. Then again, both the ICISS report and Article 139 of the 2005 Outcome Document stipulate that collective action should only be considered on a case-by-case basis. Apart from the atrocities that are committed, factors such as geo-political considerations and the chances of a successful outcome play a role in determining whether a military intervention is appropriate. In this context, implementation of R2P is in a way allowed to be selective. So the question then is not *if* the composition of the Security Council is reason for selective implementation, but what can be done to make implementation easier and as consistent as possible.

3.3 Changing the composition

Essentially, a root cause for the Security Council's difficulties to implement R2P is that the permanent members have completely different positions towards R2P. Three members (US, UK and France) support R2P while the other two (China and Russia) are quite cautious of the principle. The different ideologies of how states should react on other state's internal crisis cause disagreement among the members and make timely and decisive response difficult. Logically speaking, if the goal is to make implementation of R2P easier, the only way to do this is to change the composition of the Council in such a way that all permanent members have similar positions towards R2P. However, this would of course severely undermine the credibility of the United Nations as an organisation that represents all governments in the world. Of the fifteen members of the Council, eight members are fairly supportive of R2P (France, UK, US, Bosnia & Herzegovina, Germany, Nigeria, Portugal, South Africa), five members are cautious to not supportive (China, Russia, Brazil, Colombia, India), and two states have not put forward a clear position (Gabon and Lebanon). Provided that the fifteen members more or less represent the positions of all 193 member state governments, this means that about 55 per cent of the governments in the world is supportive of R2P and tends to intervene sooner in the affairs of other states than 30 per cent of the governments. About 15 per cent has no clear position. If one would change the composition of the Council with the purpose of making application of R2P easier, the Council would be either composed of "supporters" of R2P, leaving the 30 per cent of the world unrepresented, or "non-supporters", neglecting the 55 per cent. As it is not likely that if the composition would ever change, all the "new" permanent members would share the same position towards R2P, replacing the current permanent members with new members seems not to be the best way to make implementation of R2P easier. Conflicting national interests and different ideologies of countries is

a problem of all times and all places. They will therefore also in a new composition play a key role in the Security Council's decision making.

3.4 The Charter of the United Nations

Changing the current composition raises yet another problem: it would require the consent of the five permanent members. This is embedded in Chapter V of the UN Charter. The composition of the Council with China, France, Russia, the UK and the US as the permanent members is stipulated in Chapter V, Article 23 of the UN Charter (UN Charter, Article 23(1)). According to Article 27(3), decisions of the Security Council on matters other than procedural matters "shall be made by an affirmative vote of nine members including the concurring votes of the permanent members". Again in Article 108 it is stipulated that all permanent members must agree with all amendments to the Charter. Considering that the permanent members are not likely to just give up the special status in the world that the veto power has given them, in legal terms it is impossible to change the composition. This leaves two 'legal' possibilities: keeping things the way they are with the risk that no change will undermine the credibility of the United Nations in the future, or adapting the Charter of the UN Charter, allowing a change of the Security Council corresponding to the developments on the world stage.

3.5 Veto power and enlargement

So changing the composition of the Council by replacing some of the permanent member states with other states is not likely to happen in the near future. The current permanent members would never agree to such a change of membership. Moreover, it is unlikely to make application of R2P easier or in any way less selective. The decisions of the Council would only represent one part of the world's governments, probably not even half of it. This is why it is important to think further. One possibility is to keep the composition as it is but to touch the veto power of the permanent members. At the 2009 General Assembly Debate, over 35 member states called on the five permanent members to refrain from using their veto power in R2P cases, including Denmark, Italy, South Africa, Switzerland and Norway. What is more, according to Noam Chomsky, the Security Council cannot be considered as 'neutral' as the five permanent members are not equal in their veto power. Since the 1960s, the US (43 veto's) and the UK (10 veto's) are far in the lead. Russia vetoed four resolutions, China and France only three. Chomsky therefore suggests that the veto power should be eliminated (Chomsky, 2009, p.7). Indeed, this proposal seems a fair way to avoid that the permanent members abuse their veto power by blocking R2P interventions that might coincide with national interests. However, the same problem occurs as with changing the composition: all the permanent members must agree with amendments to the Charter. Considering that the permanent members are very wedded to their veto power and to the special status that they

have in the world, they will never agree with a written rule that says they cannot use their veto in R2P cases.

Another possibility is simply to enlarge the permanent membership. Extending the permanent membership with countries like India, Brazil and South Africa would add to the UN's credibility as an organisation that represents all regions and most common positions of governments towards R2P in the world. However, a problem remaining is that more permanent members will make reaching a consensus even more difficult. The national interests of the current five permanent members is already blocking possibilities for R2P interventions. Imagine how difficult it will be to reach consensus if the Security Council is enlarged with three more countries, all with their own ideas and interests. Consequently, an additional change to the UN Charter can be made that will allow the Council to authorise R2P interventions that have the consent of the majority of the Council. For instance, this means that if there are eight permanent members, the Council may still authorise an R2P intervention if two member vetoed the proposal, provided that the other six members are in favour of an intervention. Such a "coalition of the willing" would not abolish the veto power, but will allow some flexibility, making timely and decisive implementation of R2P easier.

3.6 The Security Council as the appropriate body to authorise R2P interventions

The failure of the United Nations to do something about the crimes against humanity that are committed in Syria raises the question of whether the Security Council is the appropriate body to authorise R2P interventions. The ICISS report stated that it is, but that authorisation can be transferred to the General Assembly if the Council is unable or unwilling to authorise action. In the case of Syria, The Council is clearly divided on what to do with Syria, failing to come to an agreement. Since the beginning of the uprisings in Syria, more than 7,500 people have been killed, according to UN statistics (CNN, 2012, pp.1). Clearly, the Council has failed to prevent the crimes against humanity that have been committed. This must surely be the kind of situation that the ICISS and Ban Ki-moon had in mind when writing their reports, stating that authorisation must be transferred to the General Assembly if the Security Council failed to come to an agreement.

So the current permanent composition of the Security Council exists of the countries that came out of the WWII as the most powerful. Due to the large scale economic and social developments on the world stage, change of composition will have to happen in the future if the UN wants to keep up its credibility as an organisation that represents all countries in the world. More importantly, as was discussed in the first and second chapter, when R2P was first proposed by the ICISS in 2001, it was introduced as a principle that was not developed by the "North" to justify interventions in the "South". On the contrary, the principle is universal and enduring; it applies to all states at all times.

Controversial then is the fact that with the situation as it is now, decisions on R2P interventions are made by a Council that is dominated by Western states.

Table 1: Votes in the Council on resolutions

	Resolution 1970 - arms embargo - assets freeze - travel bans - referral to ICC	Resolution 1973 - no-fly zone - cease-fire - take “all necessary means”	Resolution on Syria	Position of governments towards R2P in 2009
China	yes	abstained	veto	Cautiously supports R2P but claims that R2P cannot be used for the purpose of regime change or to put pressure on a regime; action can only be undertaken with consent of the state. Governments have a primary responsibility; the international community should assist states whilst respect the sovereignty and territorial integrity. China requires a study to early warning mechanisms.
Russia	yes	abstained	veto	Did not embrace R2P in 2005. Position changed later into a more positive one. Emphasizes the importance of states to exercise “self-control”; international action can be taken when states cannot protect their people.
France	yes	yes	yes	Strong supporter of R2P from the beginning. Sees the UN Security Council as the only appropriate UN organ that should authorize an intervention. Argues that R2P should not limited to the four crimes.
United Kingdom	yes	yes	yes	Strong supporter of R2P. Calls for an “R2P-culture” that will make timely and decisive response easier in the future.
United States	yes	yes	yes	Calls for strengthening UN mediation teams, more study to causes of mass atrocities.
Bosnia & Herzegovina	yes	yes	yes	Supporter of R2P.

Brazil	yes	abstained	abstained	Emphasizes the importance of pillar two; pillar three should only be considered as measure of last resort in exceptional cases; political boundaries as set in 2005 cannot be changed.
Colombia	yes	yes	yes	Cautious but constructive. Notes that states must build capacities to protect civilians and that international cooperation can be useful.
Gabon	yes	yes	yes	No information.
Germany	yes	abstained	yes	Strong supporter of R2P. Emphasizes importance of pillar two. Use of force must be carefully considered.
India	yes	abstained	abstained	Coercive action decision only on case-by-case basis and only when peaceful means are proven inadequate. Calls for change of SC's permanent membership. Failure of SC is due to lack political will, not of authority.
Lebanon	yes	yes	abstained	No information.
Nigeria	yes	yes	yes	Very positive towards R2P. Refers to Africa's history of atrocities.
Portugal	yes	yes	yes	Strong supporter of R2P.
South Africa	yes	yes	abstained	Supporter of R2P but asks for guidelines that could form a framework for response. Calls for the P5 to refrain from using veto in R2P situations. R2P should only be used in exceptional cases.
Libya	-	-	-	Never put forward a position.
Syria	-	-	-	Did not embrace R2P in 2005 as there is no basis for R2P in international law/the UN Charter.

(GCR2P, 2009).

Chapter 4: The implementation of R2P in Libya

The purpose of this chapter is to examine how the intervention authorised by the Security Council was actually implemented in Libya. It will first give a short summary of what Libya looked like before the uprisings began in mid-February 2011. Then, the chapter focuses on the coercive response of the international community authorised under Resolutions 1970 and 1973 of the Security Council.

4.1 What was Libya like before the protests?

In 2010, Libya ranked 53rd on the Human Development Index. This ranking index, published annually by the United Nations Development Programme, ranks all countries in the world according to levels of human development. It looks at factors like accessibility to health care, illiteracy, purchasing power parity and GDP. As number 53 on the ranking, Libya is – apart from the Middle Eastern countries Kuwait, Bahrain, the United Arab Emirates and Qatar - Africa's best developed country. Egypt (101) and Tunisia (81) have significantly less human development. Given the fact that conflict is most likely to occur in the least developed countries, it was in terms of development statistics quite a surprise for the international community that the conflict in Libya evolved so fast.

The uprisings in Libya began in mid-February 2011 as part of the Arab Spring. Protesters demanded political changes and greater political freedom. On the 15th of February, a couple 100 protesters in Benghazi – Libya's second largest city – clashed with Gaddafi forces after they had been protesting against the earlier arrest of a human rights lawyer. The protests quickly evolved into a large scale conflict throughout the country. Unlike Ben Ali in Tunisia and Mubarak in Egypt, Gaddafi had clearly no intention of giving into the demands of the protesters. On 22 February, Gaddafi gave a speech on state television, making clear to the Libyan population and the international community that he was not planning to step down. He referred to the opposition as "rats" and "cockroaches" that had to be crushed. Given that this was the exact same language that had been used in Rwanda during the genocide, this was an immediate trigger for the international community to take action.

As a response to Gaddafi's incitement to crimes against humanity, the UN High Commissioner for Human Rights Navi Pillay and the UN Special Advisers for the R2P reminded Libya of its responsibility to protect its population by preventing the acts of and incitement to war crimes, genocide, crimes against humanity and ethnic cleansing. Libya was suspended from the Arab

League and three days later also from the UN Human Rights Council. By then, 200 people had been reported dead.

4.2 Resolutions 1970 and 1973 – Operation Unified Protector

Given the lack of response by Gaddafi to calls of the international community to stop the violence, France, the UK, the US and Germany called for a resolution to stop the illegitimate use of force by the government troops against civilians. Resolution 1970 (“on the situation in North Africa”) was unanimously adopted by the Security Council on 26 February 2011 (the complete resolution can be found in Annex IV). It called for the following actions:

- a) The imposition of an arms embargo;
- b) The enforcement of a travel ban for sixteen individuals, including Gaddafi himself;
- c) A referral to the International Criminal Court, urging Libya and involved organisations to cooperate with the investigations of the Court and the Prosecutor (par.6);
- d) Member States were called on to immediately freeze the assets and economic resources of Gaddafi and five of his family members. For this measure too, a Committee was established to judge on a case-by-case bases when the freeze of assets would not be applied. These assets would later be made available again.

At first the opposition seemed quite well organised. However, after a few weeks Gaddafi’s forces gained back control over the cities of Benghazi and Misrata. Gaddafi threatened to go ‘house by house’ until the opposition was crushed. The sanctions against Libya did not seem to halt the crimes against humanity from taking place: according to estimates by the Libyan League for Human Rights and the International Federation for Human rights, between 3,000 and 6,000 people had been killed in between 15 February and 5 March 2011 (Adams, Siddique, Jones, 2011). Moreover, the Security Council argued that the conflict was a threat to international peace and security. Therefore, NATO member states stepped up surveillance in beginning of March. It deployed aircrafts that provided detailed information on what was going on in Libyan airspace. Alliance ships were also sent to the Libyan coast for support.

Although several UN member states argued that they would not support coercive measures (including Germany, China and Russia), a proposal for a second resolution was presented within weeks. Resolution 1973 was adopted on 17 March 2011 and called for immediate coercive actions (the complete resolution can be found in Annex V). These included a cease-fire, a no-fly zone over Libyan territory (as was specifically called for by the Arab League), further deployment of assets freezes, and an arms embargo and travel ban. In addition, the resolution authorised member states to use “all necessary means” to protect Libyan civilians (Resolution 1973, par.6-8, 17, 18). Although China, India, and Brazil supported the Russian view that the international community

should only try to put pressure on the regime by using diplomatic means, they abstained when the Resolution was put to a vote. A qualified majority of the ten non-permanent members of the Council voted in favour.

The initial coalition was led by France, the UK and the US under operation Odyssey Dawn. On 31 March, NATO took sole command of the operation, renaming it operation Unified Protector. As of 5 April 2011, the operating contributing countries were Belgium, Bulgaria, Canada, Denmark, France, Greece, Italy, the Netherlands, Norway, Qatar, Romania, Spain, Sweden, Turkey, the United Arab Emirates, the United Kingdom and the United States. Mandated under Chapter VII of the UN Charter, Operation Unified Protector began on 23 March 2011. NATO members agreed that all necessary means would be employed until:

- 1) All attacks on civilians and civilian-populated areas had ended;
- 2) The Gaddafi regime had withdrawn; and
- 3) The Gaddafi regime permit access to humanitarian aid for the population.

The mission would be concluded immediately after these goals had been reached (NATO, 2012, pp.9-10). In June 2011, the key organisations were advised to start planning a rebuilding strategy for Libya. It was agreed that NATO would only play a part in the reconstruction of Libya if it was explicitly asked to do so and if it was needed. Resolution 2009 was adopted on 16 September, establishing a UN support mission in Libya (UNSMIL) to help with the reconstruction of the country.

On 20 August 2011, with support of NATO, the rebels had gained control over Tripoli, Libya's capital city. By then, around 30,000 people had been killed and at least 4,000 were reported missing (Laub, September 2011). In September, France was the first to recognize the National Transitional Council as the legitimate government body in Libya. The rest of the international community immediately followed.

Within a month later, on 20 October Gaddafi was captured and killed by rebel forces when he tried to flee from Sirte. The next day, it was decided that the operation would end on 31 October after 214 days. Until then, NATO forces would continue to monitor the situation and respond to threats to civilians if necessary. According to Kees Homan, former Major General in the Dutch Navy and Advisor at Clingendael Institute in The Hague, a total amount of 25,000 flights have been deployed, including 8,000 bombing flights which together have damaged or destroyed over 5,000 objectives (Homan, 2011, p.27).

Although this chapter is only a very short summary of the timeline of the Libyan civil war and the reactions of the international community, it does provide a factsheet of the events in Libya and the responses of the international community. Given the scale and rapid development of the conflict, the measures authorised by Resolution 1973 were a 'last resort'. After it had become clear that Gaddafi would not step down and was in fact planning on crushing the opposition, the international community tried to force Gaddafi to stop the violence by the imposition of non-military coercive means with Resolution 1970. When these means proved to be inadequate, the Security Council employed military means, including the no-fly zone. And eventually, they worked, having prevented probably hundreds if not thousands of deaths. This means that in relation to R2P, the intervention in Libya went exactly as it was supposed to happen. In this context, Libya did not undermine the credibility of the R2P. But then the already ongoing conflict in Syria escalated. It follows that after Libya, the response of the international community to Syria would severely test R2P's feasibility, especially with reference to the question of selective application. The next chapter will therefore further discuss the selective application of R2P by comparing both conflicts and discussing the Security Council's responses.

5. Selective implementation of R2P: a case study of Libya and Syria

This chapter aims to address the question of whether selectivity undermines the credibility of R2P. A case study of Libya and Syria is included to illustrate the selective application. First, the chapter will look at cases of selective application of R2P in the past. Second, the chapter will compare the reactions of the permanent members of the Security Council to Libya and to Syria. Finally, the chapter will explain the main differences and similarities between the two conflict and discuss how these have influenced the decisions of the Security Council members.

5.1 Selective implementation in the past

As mentioned in the previous chapter, one of the main concern of member states of the UN at the General Assembly Debate in 2009 was the selective application of R2P, meaning that when given two similar conflicts, R2P was mentioned only in one but ignored in the other. Looking at the responses of the international community to past conflicts with an international character, it can be concluded that conflicts have not one specific trigger that determines whether R2P should be applied or not. One of the most prominent advocates of R2P, Alex Bellamy (2011) argues that since the adoption in 2005, the principle has been used inconsistently as a diplomatic language for humanitarian intervention by (inter)national governments and civil society organisations. Among the governments that made use of the principle are those of Egypt (for protecting the people in the Gaza), Russia (for justifying its intervention in South Ossetia in 2008), and India (reminding Sri Lanka of its responsibility to protect all populations under its care in 2008 and 2009). In his book *Global Politics and the Responsibility to Prevent*, he provides a list of conflicts that have occurred since 2005 with the death toll of each conflict. He presents the following figure:

Reference to R2P in the conflicts:	R2P not discussed in the conflicts:
Kenya (2008) 1,500 killed (since 2005)	Iraq 70,000 killed (since 2005)
Darfur 250,000 killed, 2 million internally displaced persons (IDP's)	Afghanistan 8,000 killed (5,000 since 2005)
DRC (1997-ongoing) 2 million killed (5,000 since 2005)	Somalia 16,500 killed (since 2006), 1,9 million internally displaced persons
Myanmar (natural disaster) 138,000 killed, 1,5 million IDPs	Sudan 5,000 killed (since 2005, including Darfur)

Guinea 156 killed, 1200 injured	
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Table 5.1 Application of R2P in conflicts since 2005 (Bellamy, 2011, p.51-67).

The table clearly shows that the implementation of R2P lacks consistency, meaning that in practice at least, it is first and foremost a political instrument and not so much a technical one. However, not all conflicts are the same. In the cases of Afghanistan and Iraq, the atrocities were primarily committed by non-state actors. Large military forces were already in place to halt the atrocities. Therefore, it was never certain that more military force from outside would have any added value. Moreover, given the fact that the Western state actors were also responsible for civilian casualties, a Western-led R2P intervention would have been unlikely to have the purpose of protecting civilians. Instead, the primary objective of an intervention would be related to national security issues and the fight of the ‘war on terror’.

Another example is Sudan. In May 2008, a conflict between the government forces and the rebel group SPLA forced 50,000 civilians to flee and left dozens dead (Bellamy, 2011, p.67). Yet, the international community lacked interest or political will to look at the situation more closely, even despite the fact that there was clear potential for escalation of the conflict and risk of mass atrocities.

To table 1 two more conflicts can now be added:

Libya (2011) 30,000 killed (Laub, 2011).	Syria (2011) 7,500 killed, 12,400 IDP's (CNN, 2012, pp.1)
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5.2 What happened in Syria?

As part of the Arab Spring and motivated by the successes in Tunisia and Egypt, the conflict started with peaceful protests in January 2011. The first demand of protesters was for president Assad to step down. Apart from that, they demanded the ending of the Ba’athist rule that had been in place since 1963. During this time, the Ba’ath party was the sole authority in the country. No other political parties were permitted. The Ba’athist party (Ba’ath means “rebirth” and “renaissance”) existed of Arab nationalists and Arab socialist. The political party opposed western imperialism and aimed at the unification of the Arab world in a single state, free from western control and influences. The Syrian protesters further demanded that the political reforms that had been promised to them by Assad when he took over power would be implemented, equal rights for the Kurds, and more political freedom in general. Syria had been in a state of emergency for 48 years. During this time, demonstrations and public gatherings were not permitted. Considering the regime’s history of silencing opposition, and after what had happened in Libya, it was feared by

the international community that the regime would be willing to do whatever it takes to stop the protests. On 21 April 2011 Bashar al-Assad introduced a law that required government permission for demonstrations, calling into question the sincerity of the government's commitment to reform. A few days later, the Global Centre for the Responsibility to Protect (GCR2P) published its first open statement on the situation in Syria. The GCR2P is an independent research and advocacy organisation established in 2008 and dedicated to develop the R2P principle from a doctrine into reality. As a recognized organisation by the United Nations, the Centre attends the most important debates on R2P within the United Nations.

In the statement, the GCR2P requested the Syrian government to immediately stop attacking unarmed protesting civilians which constituted in crimes against humanity and to uphold its responsibility to protect. It urged the Security Council, the EU, and the UN Human Right Council to hold emergency sessions to discuss the situation and to condemn the violence against civilians that has been committed. According to the Centre, by then over 1,000 protesters had been killed and more than 10,000 had been detained (Global Centre for the Responsibility to Protect [GCR2P], 2011).

More open letters by the Centre, human rights organisations, and NGO's followed in which was plied for action by the Security Council to stop the crimes against humanity that were taking place within the Syrian borders. At this point, the risk that the conflict will soon break out in civil war had increased significantly compared to the situation in min-January. In a briefing by UN High Commissioner on Human Rights, Mrs Navy Pillay, it is stated that in November, over 5,000 Syrian civilians had been killed since the protests began in early March 2011 (UN News Centre, 2011, pp.1). It was estimated that an additional 14,000 had been reported to be in detention. Although it is difficult to verify the reports given that until recently, no monitoring bodies of any international organisation were allowed on Syrian grounds, Mrs Navi Pillay stresses that crimes against humanity were very likely to occur, mentioning reports of widespread and systematic use of torture and extensive reports of sexual violence. She urged the Council to refer the situation to the ICC and called for the deployment of international and independent bodies that could monitor the situation in the streets. In the second half of August, several member states had employed their own measures against Syrian regime. Sanctions including travel bans, asset freezes and oil embargos were imposed by the European Union, the US, Norway, Switzerland and Turkey.

In November 2011, the Free Syrian Army asked the international community for a no-fly zone, weapons, and a security zone. During the same time, Turkey declared to recognize and support the Free Syrian Army in fighting the regime of Bashar al-Assad. These recent developments mark a turning point after the first eight months of protest in Syria and would mark the right time to start

an intervention. Yet, the Security Council refrained from taking any steps towards the adoption of a resolution on Syria. The next part of this chapter will discuss the factors that influenced the Council's decision not to act.

5.3 Disagreement in the Security Council

One reason for the Council's failure to authorise an intervention is simply because Libya happened first. The North-African region was already under close observance after what happened in Egypt and Tunisia. When the uprisings in Libya escalate in mid-February, this was the first conflict the international community responded to. The next moment, military troops were involved. When the mission finally ended in October, nobody wanted to commit immediately to a new intervention with the risk that it would again result in a large-scale military operation. This is also linked to the still ongoing economic crisis in Europe. Moreover, in Syria no battle similar to the scale of Benghazi had taken place yet. The conflict did not escalate at the same rate as it did in Libya and there appeared no clear imminent threat to the lives of Syrian civilians.

But the conflict in Syria did continue, costing the lives of now 5,000 civilians. The 66th General Assembly Debate of the UN was held in the second half of September 2011. The theme of the general debate was the role of mediation in settlement of disputes by peaceful means. During the debate, a number of countries spoke of the need for consistency in applying R2P, referring to the inadequate response to crimes against humanity in Syria. After months of debating and redrafting a resolution on Syria while crimes against humanity were committed against Syrian citizens, a draft resolution was put forward by the Council on 4 October 2011. This was only one week after the 66th General Assembly Debate, during which many world leaders strongly condemned the criminal violence committed by the Syrian regime against its people. However, when the resolution was put to a vote, Russia and China employed their veto, blocking the possibility for the Council to take any action.

5.4 The 66th General Assembly Debate

So disagreement among the permanent members made it impossible for the Council to authorise an intervention Syria. Much of the disagreement can be explained when looking at the statements put forward by the permanent members during the general debate. Russia and China had from the beginning been sceptical about another intervention, stressing the need for political dialogue between the Assad government and the opposition. Both countries furthermore agreed with Syria's claim that political transformation would need time.

In Syria's opening statement at the general debate, Syrian Minister for Foreign Affairs Walid Al-Moualem, argued that the problem in Syria comprised of two elements: the implementation of the

promised reforms, and the pressure on the Syrian government of external forces. With reference to the implementation of reforms, he stated that president Bashar Al-Assad has expressed his desire to accomplish the promised political, social and economic reforms within a time frame of six months. He noted that prior to the recent uprisings, demands for political reform had already been met, referring to the president political parties act to guarantee political pluralism, the information act for independent media, the parliamentary elections act and the local administration act. Yet, the external pressure enforced the internal demands to take a backseat:

Syria exercised its responsibility to protect its citizens. It acted to guarantee their safety and stability against the danger of foreign intervention that takes a different form with every passing day (...). Popular demands and claims have been manipulated and used as stepping stones to sabotage our security by armed forces and became the new pretext for foreign interventions (Walid Al-Moualem, 2011, 2:00:00-2:17:15).

Syria further argued that implementing political reforms is a work in progress that requires time and national dialogue. In the light of the renewed stability of the country, foreign intervention would in fact not be in the interest of the Syrian people:

(...) In fact the more ground we cover towards stability and reform, the stronger the foreign incitement. Armed violence surges in tandem with multiple economic sanctions. By targeting the Syrian economy with sanctions, the United States and the European Union jeopardize the interests and the basic daily subsistence needs of the Syrian people. This cause cannot in any way be reconciled with pronouncements of concern of interest, security and rights protection of Syrian populations and human rights. It further runs counter to the basic principles of human rights in defence of which these States base their interference in our internal affairs (Walid Al-Moualem, 2011, 2:00:00-2:17:15).

Russia was eager to believe that Assad's promised political reforms would be implemented. It argued that as long as there was a change that Assad would implement the reforms, it was wrong to take action and provoke violence. Indeed, the concessions that Assad had made in April 2011 proved Assad's "good" intentions. For instance, on 19 April 2011, Assad signed a law that would lift the emergency law. He also released large numbers of detainees that had been imprisoned for protesting. Furthermore, as it did in Libya, Russia plied for more dialogue and political settlement between authorities and the opposition. It suggested a lifting of the no-fly zone and encouraged the opposition and the League of Arab states to negotiate with the Assad regime and take the necessary

efforts to come to agreements on the future of Syria. Moreover, it condemned the attempts to go beyond the Security Council mandate, arguing that it undermined the authority of the Security Council and multiplied the suffering of innocent civilians (GCR2P, 2011, p.14).

China focused more on the issue of territorial integrity (the principle under international law that states should not involve in succession movements and border changes of other states). It agreed with the Syrian government that what happens in Syria is a matter of domestic affairs and that the situation in Syria did not affect international peace and security. A foreign intervention would therefore not be legitimate. Furthermore, China noted that:

(...) We believe that a Syria-led, inclusive political process aimed at promoting reform and advanced through dialogue and consultation is the right way to resolve the current crisis in Syria. The international community should respect the sovereignty, independence and territorial integrity of Syria, and handle the Syrian issue in a prudent way so as to prevent further turbulence in Syria and its repercussions on regional peace (GCR2P, 2011, p.19).

Although Russia clearly did not approve the violence that was committed against the protesters, it agreed with Syria that the international community had to respect Syria's territorial integrity. Conversely, all EU members of the Council and the US, together with Gabon, Colombia and Nigeria (temporary members of the Council) were in favour of Security Council action. The UK called on the Security Council to act, arguing that the care that is required when it comes to the internal affairs of a sovereign state cannot be an excuse for indifference to crimes against populations in such a state (GCR2P, 2011, p.17). Moreover, the UK emphasized the need for the deployment of human right monitors in Syria and the importance of assisting the Arab League in putting pressure on the Assad regime and monitoring his next moves. Germany stated that it would continue to press for a resolution and for more sanctions against the regime, not only to show solidarity with the Syrian people, but also to keep up the credibility of the international community (GCR2P, 2011, p.19).

What made it more difficult for the Security Council to act is the refusal of both Russia and China to participate in any debate on Syria. For instance, in early December of 2011, France, supported by the other EU member of the Council requested a briefing on Syria. However, Russia only wanted to take part in the briefing after the compromise that the focus would change to a more general one of "The Situation in the Middle East." In this way, Russia could say that it was a general briefing on the Middle East, whereas other Council members could say that it was a briefing focused on the situation in Syria. This position of China and Russia in the Syria discussion

is linked to their argument that some of the Council members – however eager to talk about Syria – previously refused to receive briefings from the UN High Commissioner for Human Rights on the human rights situations in Gaza and the Occupied Palestine Territories (OPT). Herewith they point at the selective approach of some of the Council members.

5.5 Differences between Libya and Syria

Apart from the disagreements in the Security Council, there are a number of other factors that must be taken into consideration before an intervention in Syria can be implemented. Article 139 stipulates that intervention must take place on a case-by-case basis. Libya and Syria are two different cases, requiring both individual assessment. It is therefore important to discuss the differences and similarities between the two conflicts when assessing the selective application of R2P.

In terms of demands of the protesters, both conflicts are quite similar. As part of the Arab Spring, the general demands included democracy, free elections, respect of human rights, and above all regime change. In Libya, the opposition called in the first place for the end of the Gaddafi regime. Furthermore, they demanded a return to the Constitution that was abolished by Gaddafi in 1951, and a transition to a multi-party democracy. In Syria, the first demand of protesters was for president Assad to step down. Apart from that, they demanded a multi-party political system, the implementation of the political reforms that had been promised to them by Assad, equal rights for the Kurds, and more political freedom in general.

So the demands of the protesters in Syria and Libya seem to be quite similar. Yet, when looking deeper into each conflict, it is clear that there are much more differences between the two conflicts than similarities. Major differences exist with reference to the organisation of the opposition, the chances of success of regime change, the geo-political situations of both countries and the regional impact of intervention.

5.5.1 Ethnic tensions

First of all, the demographic of both countries is completely different. Libya has a demography of tribes which have settled themselves in more or less their own separate territories. Syria's demography on the contrary consists of different ethnic and religious groups, all living together on a relatively small territory (Franssen, 2012, pp.7-8). One of the major problems of regime change in Syria is that it would not guarantee the safety of minority groups in the country. When looking at the composition of the opposition, the Syrian protesters mainly include Sunni Muslims and Islamists. These groups represent about three quarters of the Syrian population. Minority groups have only participated in the uprisings in relatively small numbers. This is due to the fact that,

although minority groups were not always granted equal rights, they have always been more or less protected by the Assad regime. Bashar Al-Assad's autocratic but secular rule secured the rights of different religious groups to practice their religion (Reuters, 2011, pp.1-2). The Alawite sect for instance is the largest religious minority group in Syria, comprising about 3.5 million people. Given the place of the Alawite sect in the Syrian society in the past and present, it is not surprising that Alawite members fear about their future if Assad steps down. During the time of the Ottoman regime, the members of the Alawite sect were oppressed by Sunnis. Today, the Assad family, member of the Alawite sect, has been in power for 63 years. If the Sunni Muslim population takes over power from Assad, there is a risk that they will want to take revenge on the Alawite population for being in power and oppressing the population for so long.

Likewise, the Kurds and Christians fear that Muslim dominance will threaten their human rights that had been secured by Bashar al-Assad. The Kurdish populations, making up about 9% of the population, has participated in the protests in relatively small numbers compared to the Syrian Arab population (U.S. Department of State, 2012). Although the Kurds have for long been treated as second class citizens (they were for instance not granted the status of citizen), Assad respected the presence of minority groups in his country and he seemed to have convinced minority groups such as the Kurds and the Christians that they are probably worse off without Assad's strong leadership. They fear that if Assad leaves, the country will be fragmented. The Sunni Muslims then takes over power, which may mean the end of a secular state, leading to the restriction of freedom of religion and in the worst case the persecution of the Christian minority. The Christian population therefore tends to support Assad. Consequently, the Kurds are distrustful of Turkey's support of the Syrian opposition. Given the history of Kurdish oppression in Turkey and the situation of the Kurds in Turkey today, it is not surprising that the Kurds are quite sceptical of the friendly relationship between Turkey and the Syrian National Opposition.

5.5.2 Organisation of the opposition

Apart from the different demographics of both countries, major differences between Libya and Syria exist with reference to the organisation of the opposition. In Libya the opposition was well-organised. Quite soon after the beginning of the uprisings, Eastern Benghazi became liberated territory, providing the opposition with a safe area where it could enlarge and organise itself. Furthermore, the composition of the opposition was quite coherent. It consisted of civilians, mainly young men, and military troops that had abandoned Gaddafi's regime. Moreover, the chances of success in Libya were much higher as Gaddafi's army was quite small (he wanted to keep it small in case it would pledge a coup). This made it relatively easy for opposition forces to fight the army.

In Syria on the other hand, the opposition is composed of different groups with different interests. Due to the lack of unity among protesters, Syria's opposition is far from being as strong and consistent as the Libyan opposition was. Even 11 months after the uprisings, the Syrian opposition remains fragmented (Slim, 2012, pp.1). In fact, no one really knows who the opposition is. Unlike in Libya, the Syrian opposition does not have people representing it. In addition, due to arms control by the Syrian government on the Syrian borders, the Syrian opposition was forced to locate itself in neighbouring countries (Franssen, 2012, pp.10). Furthermore, as deserting soldiers brought only light weaponry and munitions, the Free Syrian Army adopted a guerrilla-style tactic, which makes it logistically difficult for coalition forces to provide coherent assistance. Another major difference is that because the Libyan opposition was backed by ex-government forces and military troops, the unrest quickly escalated into a national military conflict. In Syria however, there was considerably less participation of armed forces in the protests. Protests had been relatively peaceful for months. A civil war on the scale of Libya has therefore not (yet) occurred.

The fragmentation of the Syrian opposition, both in geographic and ideological terms, make not only communication between opposition groups difficult, the guerrilla-style tactics make it impossible for the international community to provide any kind of support. Additionally, tension in Syria between ethnic and religious groups make Syria a much more difficult case than Libya. Overthrowing the Assad government in the same way as was done in Libya, might constitute in a fragmentation of the state. Hence, given Syria's fragmented society and the organisation of the Syrian opposition, chances of a successful outcome of overthrowing the government were considerably less in Syria than in Libya.

5.5.3 Direct incitement to crimes against humanity

In Libya, there was one event in particular functioned as a trigger for action by the international community. This was the television appearance of Gaddafi in February, in which he said to go house-by-house to kill all Libyans that would not support him. Consequently, the speech constituted in clear and direct incitement for crimes against humanity. An immediate trigger for intervention as such has not yet occurred in Syria. Assad's language is much more peaceful. Moreover, the fact that the Syrian government kept its officials from making provocative statements during UN discussions, and Assad's promises to implement new political reforms contributed to the willingness of the international community not to put too much pressure on Syria.

5.5.4 Links with Al Qaeda

Finally, Libya has the second largest number of foreign members for Al Qaeda in Iraq. Even though the United States did not supervise the intervention in Libya but only played a

assisting/supporting role, they still can have a strong influence on the decision making of the Security Council and on the drafting of resolutions. Therefore it is very well possible that the US lobbied for an intervention in Libya to be 'closer to the enemy', to make sure that Al Qaeda fighters would not profit from the political vacuum that would leave Libya with after the revolution. Moreover, rebel groups usually tend to settle in regions that are in chaos and not under government control (Collier, 2011, p.35). By gaining control over the region, the UN member states, especially the US and EU, might have hoped to prevent Al Qaeda from settling in Libya.

The same fear for terrorist links now plays a role in Syria. On 27 February 2012, US Secretary of State Hillary Clinton called on the international community not to arm the rebels in Syria as this could lead to supporting the Al Qaeda and Hamas. She argued that it would be difficult to get the arms to rebel fronts, also because Syria lacks an operational base and people representing the opposition. Furthermore, she said that it was not certain where the arms would go ("Arming Syria rebels could help al-Qaeda: Clinton", 2012, pp.1, 5).

5.5.5 Role of regional organisations

Another factor that explains the different approach of the international community towards Syria is the role of regional organisations. From the beginning, the Arab League urged the Security Council to take action on Libya, explicitly calling for a no-fly zone and other necessary measures to stop Gaddafi from attacking his population. However, the Arab League is much closer to Bashar al-Assad. Where it suspended Libya entirely Initially it suspended Syria only for four days, giving Assad's regime the chance to stop attacking the population. Linked to this is the relationships of both countries with the Security Council members. Just as Libya did not have close allies within the Arab League, neither did it within the Security Council. Lebanon, the only member of the Arab League that is also in the Security Council, maintained quite a hostile relationship with Libya. Syria on the other hand maintained close relationships with the Russian and Iranian government. Especially Syria's relationship with Iran makes the issue of interference in Syria even more delicate. At the General Assembly Debate, Iran clearly opposed any form of western intervention in Syria by stated that "Real freedom, justice, dignity, well being, and lasting security are the rights of all nations. These values can neither be achieved by reliance on the current inefficient system of world governance, nor through the invasion of the world by arrogant powers and the gun barrels of NATO forces" (GCR2P, 2011, p.7).

5.5.6 Geopolitical considerations

Apart from all of the above mentioned factors, military intervention in Syria would also in geopolitical and logistic terms be rather difficult. For this reason, an intervention in Syria might never have been seriously considered by any of the permanent members (F. Rathje, personal

interview, December 13, 2011). Geopolitically because Syria lies in the centre of the Middle East. It is located in between countries that are politically unstable. The possible spill over effect of large-scale conflict in Syria would be tremendous, potentially causing a massive regional war. Take for instance Lebanon, a country that is politically unstable and still recovering from its civil war, where new acts of violence have already been reported as a result of the uprisings in Syria (Franssen, 2012, pp.14). So the problem is that there are so many players involved in Syria that there is always at least one player that thinks a decision on Syria is not a good idea. Countries like Iraq and Israel might agree that Assad's rule in Syria is not ideal, but at least they know what they have. These countries are afraid of the influence that a regime change in Syria might have on their bilateral affairs. Also, the current state of crisis allows Russia, China, and Iran to exercise more control over the region. Improving diplomatic ties with the Syrian government could influence Syria to move away from the Obama administration. Finally, Russia and China might fear that too much UN intervention in national conflicts will one day lead to an intervention in Chechnya or Tibet or Xinjiang.

5.5.7 Operational considerations

Operationally, an intervention in Syria similar to the one in Libya was impossible for three reasons. First, because in Libya, there was a clear division between the opposition and Gaddafi forces. In Syria, the opposition is fragmented; with crackdowns in every city, the people were basically all over the place. A no-fly zone would in this sense not work, because you cannot protect people from one actor. Second, the difference in logistic requirements with reference to for instance the location of the countries and the landmass is an important factor. Libya is located on the coast, within reasonable flying distance of EU air bases and no need to fly over hostile territory. Syria, on the other hand, is landlocked in centre of the Middle East region. Access to EU air bases would be difficult, if not impossible. The flow of refugees also played an important role. For instance, there have been discussions on the establishment of a protected humanitarian buffer zone in Syria on the border with Turkey. It would be a protected zone where people could flee from violence. But can this be implemented this without invading in Syria? Third, in contrast to Libya, there was a clear lack of knowledge on the situation in Syria. Until recently, neither the UN, nor the Arab League had people on the ground in Syria to witness and publish reports on what was exactly going on in the streets. Reports that were published by human rights organisations were criticised by Russia, China and India, questioning the sources of these reports as nobody could get in the country (this was still before the Arab League launched a observatory mission in Syria on 26 December 2011).

5.6 Political and economic interests of UN member states

Until now, the chapter has only discussed all "neutral" factors that must be taken into consideration before the decision on an R2P intervention is made. Even though each of these factors are very

important, probably the most influential factors remain to be the national interests of the members states of the Security Council. This part of the chapter will therefore discuss the foreign relations of both Libya and Syria with the permanent members. Table 5.2 presents the main import and export partners of Libya and Syria.

Table 5.2 Economic interests. Percentage of GDP.

	Import partners	Export partners
Libya	Italy 16.3%, China 10.3%, Turkey 9.7%, France 6.8%, Germany 6.4%, South Korea 6.2%, Egypt 5.7%, Tunisia 4.8%	Italy 31.6%, France 13%, China 9.2%, Spain 9.1% Germany 8.4%, U.S. 4.5%
Syria	Saudi Arabia 11.2%, China 10.1%, Turkey 7.6%, UAE 5.5%, Italy 5.5%, Russia 4.6%, Lebanon 4.4%, Egypt 4.3%, Iran 4%, South Korea 4%	Iraq 30%, Lebanon 11.7%, Germany 8.8%, Italy 8.8%, Saudi Arabia 5%

(CIA World Factbook, 2010).

5.6.1 Foreign relations of Libya

As the table shows, Italy maintains a very strong economic relationship with both countries, but with Libya in particular. Indeed, given that Libya has long been occupied by Italy in the first part of the 20th century, it is not surprising that the relation between the two countries has remained a strong one, especially in the field of oil (Italy's oil company ENI is in fact one of the biggest oil companies in Libya). However, as Italy is not a member of the Security Council and therefore does not have direct influence on R2P decision making. More interesting are the economic relations of China, Russia and France with Libya and Syria. According to Chris Hedges (2011), Middle East bureau chief for the New York Times, the intervention in Libya never aimed at establishing a democracy or saving innocent lives. Instead, it was driven by the wish of Western states, including China and Russia, to dominate Libya's natural resources. Libya has the ninth largest oil reserves in the world, amounting in an estimated 44 billion barrels of oil ("Libya," CIA, 2011). It is the largest proven oil stock in Africa and Europe's single largest oil supplier. In the article "Libya: here we go again" Hedges writes that the National Transitional Council promised to oust China and Brazil from the Libyan oil fields and turn them over to Western companies (Hedges, 2011, pp.5).

In fact, in September 2011, the Libyan oil company Agoco ("Arabian Gulf Oil Cooperation") declared: "We don't have a problem with Western countries like the Italians, French and U.K.

companies. But we may have some political issues with Russia, China and Brazil" (UPI Newspaper, 7 September 2011, pp.5). Agoco is the currently only operating oil producer in Libya, meaning that it basically has power over all of Libya's oil supply. Unfortunately for Russia, China and Brazil, all three states maintained close ties with the Gaddafi regime. In the first stages of the revolution, China had offered to sell weapons worth \$200 million to the regime to help avert the downfall of Gaddafi ("Italy's ENI leads race for Libya oil deals", 2011, pp.2). Also Brazil and Russia had been Libya's main suppliers of arms. Given Agoco's announcement, none of these countries are likely to profit at all from the final outcome of the intervention in Libya.

Western companies, on the other hand, seem to profit far more. The number one National Transition Council, Moustapha Abdeljalil recently reported that the States would be rewarded "according to support" given to the insurgents (Daly, 2011, pp.10). If this is true, the United Kingdom would receive quite a lot of reward: in September 2011, the Guardian estimated that total UK spending on military operations in Libya could well pass £1.25 billion (Hopkins, 2011, pp.7). This is around \$1,93 billion. However, other sources suggest that these costs are significantly lower, at \$333 million (UK Ministry of Defence, December 8, 2011). The United States scores ranks first place, having spent an estimated \$896 million at least on the operation between the beginning of March and the 31st of July (Dwyer, 2011, pp.1). According to the French online newspaper *Le Parisien*, by the end of October, the intervention had cost France between €300 and €320 million (*Le Parisien*, 2011, pp.1). This is around \$387 million. Table 5.3 provides an overview of the total costs of the intervention of the three countries.

Table 5.3 Total spending of France, the UK and US on Libya

Country	Total spending (\$)	By
United States	896,000,000	Late August 2011
France	387,000,000	31 October 2011
United Kingdom	333,000,000	31 October 2011

Before the intervention, France was the biggest buyer of crude oil after Italy, importing 15% of Libya's crude oil revenues (*My Telegraph*, September 6th). The French oil company Total is one of the biggest oil investors in Libya. If the Western powers will be rewarded by the new Libyan government according to their support, France would be a major profiteer of the intervention in terms of oil politics. Interestingly, France was the first (European) country that urged for humanitarian intervention in Libya. Moreover, Sarkozy was the first to recognize Libya's NTC as Libya's legitimate governmental body. The UK and the US quickly followed. In September 2011,

multiple online newspapers, including the Washington Post and the Telegraph, reported that days before military intervention in March, the NTC promised France to give 35% of its crude oil revenues in exchange for France's support of the opposition. This agreement was supposedly made at the international conference on Libya in London, held on the 29th of March (Reuters, 2011, pp.2). The 35% agreement was later denied by French foreign minister Juppé (However, to the statement he added that it would be "logical" for countries which strongly supported the opposition to also play a role in the reconstruction of Libya.).

Another answer to France's eagerness to intervene is related to Sarkozy's political and economic situations at home. After the revolution in Tunisia a few months earlier, Sarkozy had been badly embarrassed due to the fact that he had maintained close connections with Tunisian dictator Ben Ali for a long time. He might have hoped that his leading role in Libya's intervention has helped to clear up his image. Likewise, what goes for France – and for UK's David Cameron for that matter – go for the US (O'Connell, 2011, pp.13). Susan Rise, currently ambassador of the US to the UN, had also been ambassador to the UN at the time of the genocide in Rwanda. This might explain the main role she played in the US decision to support the withdrawal of UN peacekeepers. The eagerness to intervene in Libya might have helped to erase this part of history.

5.6.2 Foreign relations of Syria

France's relation with Syria is somewhat different, going back to the beginning of the 20th century. After WW I, France was given a mandate over Syria. Syria was occupied from 1920-1946. After independence, the relation between Syria and France remained relatively strong, despite of different positions on the Syrian policy in Lebanon. The strong relation between the two countries, based on historic ties and mutual interest, might have influenced France to be a bit more reserved with Syria. Moreover, according to the Oxford Business Group, the EU is Syria's main trade partner, accounting for 27% of the country's export and 40% of its imports (2010, p.26). Europe and Syria are therefore likely to be quite happy with the situation as it is.

Also the economic and diplomatic relations of Russia and China with Syria appear much stronger than the relations of these countries with Libya. Diplomatic relations between China and Syria were established in 1956. Since then, they have maintained significant trade relations. According to the CIA World Factbook, 10% of Syria's imports come from China, worth nearly \$2.2 billion. This makes China Syria's main importer. However, the export from Syria to China is less than 1% of Syria's total trade volume. Furthermore, China is a main investor in Syria's oil industry. The state-owned fuel-producing company China National Petroleum Corporation (CNPC) is China's largest oil and gas company. CNPC is a joint venture partner with the Syrian national oil company and Shell in the Al-Furat Petroleum, the main oil producing consortium in the country.

Russia's relationship with Syria is mainly militarily and economic. From 1971 to 1992, the Soviet navy had a naval base in the Syrian city of Tartus. In 2008, Russia announced plans to restore this base (Matthews, 2011). Moreover, Syria is one of Russia's best clients in the defence industry (Russia is the world second largest arms exporter, the US is the largest.). In fact, during the Cold War, the Soviet Union became Syria's main supplier of arms. Due to this, Syria had created a debt of around \$13 billion by 1990. Interestingly, in 2005 Russia agreed to drop 73%. The remaining 27% (\$3.6 billion) would be used for the development of joint water, oil, gas, or other industrial projects in either country (Weitz, 2010, p.30). In mid-August 2011, Russia announced that it would continue to export arms to Syria, arguing that it would not threaten regional security. It is estimated that Russia's turnover in the arms industry would exceed \$12 billion in 2011. Arm contracts with Syria would amount in at least \$4 billion (Matthews, the Daily Beast, 2011). With reference to economic relations between the countries, Russia is Syria's 6th greatest importer, responsible for 4.6% of all of Syria's import (The CIA World Factbook). In 2011, The Moscow Times reported that Russia's exports to Syria were worth \$1.1 billion in 2010. In addition, Russia's investments in the country were valued at \$19.4 billion in 2009. Another interesting fact relates to Russia's natural gas plant in Syria. In 2010, the Russian gas construction company Stroytransgaz was involved in projects in Syria for an estimated share of \$1.1 billion.

5.7 The role of Turkey

Given all these factors and the national interests of member states involved, there seems little for the international community left to do with reference to an intervention in Syria. The EU and US can try to convince Russia to allow intervention, but then intervention still depends on Russia. Bordering Syria in the North and given the long and friendly relationship between Turkey and Syria, Turkey seems to be the only country left that can put the pressure that is needed in Syria in order to achieve desired political change. Countries like China, Russia, and Iran will not profit from regime change in Syria. Given their relationship with Assad, these countries more influence in the region when the current regime stays in power. However, what happens in Syria is of great interest to Turkey. In recent years, Turkey's focus on the western world has shifted more towards the Arab World and the Middle East. The country has been quite involved in the events that happened in Egypt and Tunisia. Refugee flows from Syria have already reached the Turkish borders. As a key actor, it can impose buffer zones where refugees can flee, impose more economic sanctions against Syria, and support the Syrian Free Army (Roborg, Pauw & Witteman, 2012).

In the beginning, Turkey seemed to have faith in the promises of Assad that he would give into the demands of the protesters. Nevertheless, due to the lack of significant changes by the Assad regime, Turkey later called on the international community to take a more assertive position:

Only friends can speak the bitter truth (...). However, the Syrian leadership has resisted heeding our warnings. Now, every drop of blood spilt is tearing apart the Syrian leadership from its people. Turkey will continue to support the democratic demands of the peoples, both in Syria and other countries, and encourage regimes to take steps in this direction. We expect and urge the international community to do the same (GCR2P, 2011, p.17).

5.8 Conclusion

In 2011, Aiden Hehir, Director of the Security and International Relations Programme at the University of Westminster, argued that R2P is in fact only a slogan that lacks the legal, political and institutional reform that is needed to really change something. Furthermore, he argued that Libya has proven that the response of the “international community” depends on the national interests of the five permanent members of the Security Council (Hehir, 2011, pp.3). It seems that a case study of Libya and Syria has proven this assumption right and with this also Noam Chomsky’s second comment on R2P, namely that the own interests of intervening states still have priority, however “grievous” the effects on others might be. Nevertheless, although the conflicts in Libya and Syria seem to be quite similar on the surface, many factors have played a role in the decision not to intervene in Syria. Not only was the opposition in Libya far better organised than in Syria, making it easier for the international community to provide assistance, but in Libya it was also quite clear that the population was worse off if Gaddafi would remain in power. In Syria, chances that a foreign intervention would be successful and would guarantee the safety of the population were limited. So given all these geopolitical and logistic considerations, Libya was a relatively easy test case. Syria proved that economic, social and geopolitical factors remain to be paramount to the protection of populations. It can therefore be concluded that the application of R2P is relatively easy in ‘neutral’ areas, but fails to be applied in cases of conflict in which many different players are immediately involved. Even though Libya is a text book example for R2P interventions, the comparison with Syria at least for a bit undermined the credibility of the principle.

6. Lessons from Libya

The purpose of this chapter is to summarize what can be learned from how the responsibility to protect was implemented in Libya. It will do so by focusing on issues with reference to early warning assessment and prevention (6.1), the importance of regional organisations (6.2), the functioning of the Security Council (6.3), the link between R2P and regime change (6.4), Resolution 1973 (6.5), criteria for intervention (6.6), and casualties (6.7).

6.1 Prevention

The problem with Libya was that there was only one option left: coercive intervention. One of the main things that we have learned from this is that in the future, the international community has to engage much earlier in situations where there is a potential risk of genocide, war crimes, crimes against humanity or ethnic cleansing. Most genocidal acts that have happened in the past, from Rwanda to Bosnia, could have been predicted and prevented if more attention had been paid to a number of indicators of genocide. For instance in the case of Rwanda, before the genocide in 1994 the country had had a history of ethnic tension between the Hutu's and Tutsi's. In 1963 a massacre had taken place, killing between 10,000 and 14,000 Tutsis and a smaller number of Hutus (Dorn, W., Matloff, J., & Matthews, J. 1999, table 1). Moreover, the country was overloaded with weapons, mainly imported from Uganda, indicating a risk of conflict. To predict future crisis and conflict, it is therefore essential to develop tools and instruments that help to identify the potential risk. Individual states must ask themselves whether they are vulnerable for mass atrocities. They can do this by looking at structures of security, justice, and organised crime in the country. If states see a potential risk, the international community can assist in reducing the risk.

Recently, the Special Adviser to the Secretary-General for the Prevention of Genocide Francis Deng in cooperation with the Special Advisor to the Secretary-General on R2P Edward Luck has developed such a tool. This instrument, called the "Analysis Framework", is a checklist of eight indicators that help detect situations where there is a risk of genocide (Office of the Special Advisor on the Prevention of Genocide [OSAPG], 2009). The complete Analysis Framework can be found in Annex VII.

It looks at inter-group relations in a state, the occurrence of hate speech in local media, the state's history of human rights, and the presence of illegal arms. The checklist can be applied to a specific country or specific situation to find out whether there is a potential risk of genocide or crimes against humanities in the future. The factors are not linked to each other. When the problems of

one of the eight categories are addressed, it is assumed that the risk of genocide will decrease. The framework comprises the following eight factors:

1. Inter-group relations, including record of discrimination and/or other human rights violations committed against a group. Main issues to be analysed for this factor are the relations between groups in terms of tension, power and economic relations, past conflicts, past and present patterns of discrimination, past human rights violations and the history of genocide or related crimes against a particular group.
2. Circumstances that affect the capacity to prevent genocide. These include the existence of effective legislative protection; independent judiciary and effective national human rights institutions, presence international assistance or neutral security forces, lack of accountability for past crimes against humanity, and the existence of independent media. Moreover, the extent to which vulnerable groups have access to state protection and (judicial) structures or institutions must be considered.
3. Presence of illegal arms and armed elements: the number of accessible arms in the state, the presence of armed groups in the state and links of these groups to the government, information on the origins of these groups (who forms them and who arms them).
4. Motivation of leading actors in the State/region; acts which serve to encourage divisions between national, racial, ethnic, and religious groups. The focus is laid on possible underlying political, economic or military tensions between groups or motivation to target one particular group, including hate speech in local media, propaganda campaign against one particular group, and the construction of separate identities, for instance by using words such as “us” and “them”. Furthermore, attention must be paid to the role of foreign or non-state actors, including governments of neighbouring countries, refugee groups, and armed (rebellion) groups in the greater region.
5. Circumstances that that could indicate future plans to commit genocide. For instance, changes in the legislation to that touch the rights of particular groups, increases in arms flows, sudden strengthening of military forces, training of the population, and hate speech.
6. The occurrence of genocidal acts, including the occurrence of killings, abductions, disappearances, torture and rape. Other issues that require to be analyzed include depriving citizens from primary needs, such as clean water, food, and medical services, programs intended to halt procreation and the forcible transfer of children.
7. Evidence of intent “to destroy in whole or in part...” This indicator looks at the violence that has already been committed. Apart from hate speech, focus must also be on systematic discriminatory acts, gross violations of human rights (killing, torture, etc.), the atrocities committed and their nature, the employed means to commit crimes against humanity.

8. The presence of triggering factors, including all upcoming events and developments that could destabilize the country, for instance: upcoming elections, change of government, natural disasters, the increase in opposition capacity and the commencement of armed hostilities.

When looking more closely to these indicators and when applying them to Libya, it seems that also the conflict in Libya could have been predicted. The overall situation of human rights in Libya – or the absence of it – should have been a clear indicator that someday things would go horribly wrong. Libya has a history of political, ethnic and religious oppression. Discrimination was especially directed at foreigners in Libya and migrant workers. Moreover, Libya's constitution does include human rights. According to Article 11 of Libya's Constitution of 1951, Libyan citizens are equal before the law "without distinction of religion, belief, race, language, wealth, kinship or political or social opinions" (Libya's Constitution, 1951, Art.11). After the coup in 1969 that was led by the Libyan army and put Gaddafi in power, the Constitution no longer had any significance. Instead, Gaddafi published the 'Green book', which more or less functioned as the new constitution. However, the document failed to provide most basic human rights. In 2010, Amnesty International published a critical report on human rights in Libya, which raised a lot of concerns about restriction of freedom of expression, association and assembly. It also stated that "hundreds of cases of enforced disappearance and other serious human rights violations committed in the 1990s, 1980s and 1990s remain unresolved, and the International Security Agenda, implicated in those violations, continues to operate without impunity" (Amnesty International, 2010, pp.1). According to a 2006 Country Report on Libya by the US Bureau of Democracy, Human Rights and Labour, one Libya's main problems in the area of human rights was the discrimination against women, ethnic minorities, refugees, asylum seekers and foreign workers (according to the report, foreign workers constituted around 1.6 million of the 3.2 million workforce). Other problems included reported torture, disappearances, denial of fair public trial, corruption and lack of transparency, trafficking in persons, and the continued restriction of freedom of speech, press, assembly and association. Furthermore, there was virtually no independent media in Libya: the state owned and controlled all print and broadcast media. In addition, throughout Gaddafi's period in office, there have been multiple cases of crushing the political opposition. One example: in May 2005, a prominent opposition journalist and anticorruption activist was abducted, abused and killed. Family members of convicted oppositionists were also punished in terms of denial of access to water, electricity, telephone, fuels, food, and official documents (US Bureau for Democracy, 2006, pp.2).

Libya history includes multiple cases of heavy violence, although crimes against humanity on the scale of Benghazi in 2011 have not happened in recent history. In the 1970s, Gaddafi attempted to

invade Chad, claiming the life of some 4,000 Libyan soldiers (International Crisis Group [ICG], 2010). In the 1990s, hundreds were killed during a brutal campaign against Islamist radicals. What is more, much of the countries' income from oil was spent on arms purchases (The Economist, 24 February 2011, pp.8). Recent developments in the country that could indicate incitement to mass human rights violations include lifting the arms embargo on Libya by the UN in 2002, allowing a significant increase in Libya's arms purchases.

Libya was a case that everyone was surprised about, but we should not have been. The above discussed information meets at least four of the eight criteria, namely the first (past and present discrimination against specific groups), the second (absence of legislative protection and independent media), the fourth (strong divisions between racial, ethnic and religious groups), and the sixth (the occurrence of abductions, disappearances, tortures and rape). And only a small part of the situation in Libya is assessed. The number of arms that circulates in the country has for instance not been discussed. Moreover, Gaddafi did not tolerate dissidents: cases of capital punishment of dissidents authorised by Gaddafi himself have been broadcasted on state television channels (Eljahmi, 2006, pp.1). Taken all this information into consideration, it is not surprising that there was a lot of fear, hate, and uncertainty among the Libyan population which would eventually have found its way out in some kind of conflict or revolution. Even though a massive genocide was prevented in Libya, the international community could have engaged much earlier if it had only looked at indicators of violence. Especially with the knowledge on human rights in Libya that was available years ago, it was not necessary to sit and wait for something to happen. Historically, interventions have always come as a response to conflicts that were already happening. This certainly seems to still be the case today. However, the essence of R2P is in the element of prevention. Consequently, if R2P is to be adopted and implemented appropriately, the international community must change its way of thinking from a reactive way (let's get troops on the ground) to a preventive way. Furthermore, even if countries apply the OSAPG Framework, no state will want to admit that there is a risk of genocide among its population. Therefore, the behaviour of states towards genocide must change to make the topic easier to address.

6.2 What do Libya and Syria say about the importance of regional organisations?

Libya has demonstrated that the role of regional organisations in developing R2P intervention strategies should not be underestimated. Regional organisations such as the African Union, ECOWAS and the Arab League are important key players in mediation and diplomacy. First, because they have a better understanding of the culture and underlying motives of the conflict. Second, because they often have a closer relationship to the government of the concerned state, meaning that they would probably not profit from destabilizing the region. Secondly, because the concerned country might be more intimidated by regional organisations. For instance in Syria,

Assad would probably not have mind only western pressure. The West never really liked him anyway, so if the Arab League had not put pressure on him, it would all have been a lot easy for Assad. But the Arab League suspended Syria as a member and as of 26 December 2011 they have first-hand information on what is going on in the country. In Libya, the Security Council adopted resolution 1970 only after the Arab League had urged the need for action. Shortly after, it was the Arab League that stressed the need for a no-fly zone. Likewise, the lack of action of the Security Council in Syria is partly due to the lack of action by the Arab League.

6.3 The Security Council as the only appropriate body to authorise R2P interventions

This leads to another lesson: that thinking that with the introduction of the R2P ‘the West’ would only intervene for the protection of civilians rather than its own national interests is naive. Western states like the US, the UK, Italy and France must always have known that large-scale human rights violations were taking place in Libya. Yet, they decided to ignore this so that they could continue maintaining their very beneficial diplomatic relations with Gaddafi. Moreover, chapter three of this thesis on the composition of the Security Council concluded that the current composition does not represent all governments and all positions towards R2P in the world. Furthermore, in geographic terms, the current composition of the Council undermines the claim that R2P is not a model developed by the North to justify interventions in the South. So what does all of this say about the credibility of the Security Council as the only appropriate body to authorise R2P interventions?

As discussed in the previous chapter, oil politics have played a big role in the decision to intervene, whether this was the first and sole purpose of Western governments, or only an additional consideration. It proves that R2P is not driven solely by the moral or ethic considerations of saving lives. In September 2011, it was estimated that already five international oil producers were present in Libya. Of these five, France and Italy can be considered as the biggest “winners”. However, the fact that national interests do play a role does not mean that the Security Council is not a legitimate body to authorise interventions. National interests will always play a role. The United Nations is the only organisation in the world that represents all national governments. Moreover, the fact that national interests play a role in deciding on intervention should not be a reason to refrain from intervention at all. In a state of conflict in which hundreds of people are killed per day by outside forces or by their own government, civilians do not care on the motives of foreign forces to intervene. The primary need is for the atrocities committed to them to stop. Time should not be spend on what the exact motives for an intervention would be. The decision of whether an intervention is appropriate should in the first place not be based on the motives of the interveners, but on the needs of the populations under attack. From this point of view, selective implementation of R2P therefore does not undermine the credibility of the Security Council, as long as the primary purpose for R2P intervention is what it was meant for: the protection of civilians.

Another lesson that can be learned from Libya with reference to the functioning of the Security Council is the major importance of the US in the Council. Of the 193 UN member states, only sixteen took part in the military operation. This is both due to the lack of political will (motivation to take political action) among several member states, and the lack of capacities of several member states to actively engage in an intervention. Although the US had 'given' Libya to Europe, saying that it would only play a supporting role in the intervention, the implementation of the military operation depended much on US support. The United States was responsible for providing 75% of the intelligence and information capacities, almost all resources to eliminate Libyan air defence, 80% of air refuel capacities and the supply of precision-guided munitions to compensate other state's shortages (Homan, 2011, p.4). Due to the lack of capacity of other UN member states, an intervention on the same scale would not have happened if the US had not refrained from providing logistic assistance. Even though countries like India, Germany, Russia and Brazil are among the largest spenders to the UN, the US still remains to be the backbone of the United Nations, at least in operational terms.

6.4 The link between R2P and regime change

At the 2009 General Assembly debate, Brazil and China argued that the humanitarian motive for intervention was used as a smokescreen for intervention for regime change purposes. South Africa argued that international actors must respect the will, sovereignty and territorial integrity of the country concerned, and refrain from advancing political agenda's that go beyond the protection of civilian mandates, including regime change. However, regime change is what eventually happened in Libya. Russia, China and Brazil argued that NATO overstepped the Security Council mandate when it used force to overthrow Gaddafi. The problem is that a military intervention with the main purpose of regime change is not in accordance with R2P and there is no basis for it in international law. R2P interventions are only legitimate if they aim to halt one of the four crimes (genocide, war crimes, crimes against humanity and ethnic cleansing). Nevertheless, an the article "Libya's Pathway to Peace, published in the New York Times on 14 April 2011 suggests that the regime change was intended. In the Article, Barack Obama, David Cameron and Nicolas Sarkozy announced that "it is impossible to imagine a future for Libya with Gaddafi" (Obama e.a., 14 april 2011, pp.3). For the future success of R2P interventions, it is therefore important to discuss whether there is in fact a link between R2P and regime change.

In an interview Felix Rathje – adviser on the responsibility to protect at the European External Action Service (EEAS) – argues that there is no general link between the two (F. Rathje, personal interview, December 13, 2011). In the case of Libya, the international community tried blockades, mediation and preventive diplomacy. The protection of civilians was not possible without trying to

enforce the indictment of the court on Gaddafi. Military intervention was the last resort. Furthermore, Special Advisor to the Secretary General on R2P Edward Luck responded to questions on regime change in Libya as follows:

I should say that it isn't the goal of the responsibility to protect to change regimes. The goal is to protect populations. It may be in some cases that the only way to protect populations is to change the regime, but that certainly is not the goal of the R2P per se (Luck, 2011).

So in the case of Libya, regime change was not the primary goal of the intervention, but eventually turned out the only way to protect the population. Then, maybe a main lesson from Libya is that an R2P intervention with the purpose of regime change isn't so bad. What if it is the regime that the population needs protection of? If regime change is the only way to protect citizens, then maybe that is what is needed. However, it seems that the West had not really thought through the consequences of its actions. Ultimately in Libya, the overthrow of Gaddafi with support of NATO was one of the reasons why China and Russia did not want another resolution on Syria. This was primarily because they fear that if regime change will be accepted by the international community, this will eventually be used to overthrow their own governments. Moreover, not all states agree with the Western view that democracy is the only right way to organise a state. Countries like Russia and China hold very tight to their view that it is better not to interfere in the domestic affairs of other states. If these other states organise their society according to different ideologies that might restrict the freedom of their people but do manage to keep control over the population, then that is the way it is (Roborg, Pauw & Witteman, 2012).

6.5 Resolution 1973 and the use of force

Consequently, although regime change cannot be the purpose of R2P interventions, if regime change is the only way to secure the protection of civilians, the Security Council has the legitimacy to authorise it. Related to this is the evaluation of Resolution 1973. Without a Security Council mandate, the NATO would never have acted. Given that future decisions on intervention will be made in the light of Libya, Resolution 1973 adds a significant meaning to "the protection of civilians".

The debate that is now coming up is whether the resolution is too general about when the use of force is permitted. The resolution was drafted, negotiated and adopted in a few days. To come to a consensus in the Council, the final draft of the resolution is rather vague about when military intervention is permitted. It rules out military troops on the ground but also crucially states that "all necessary means" to protect civilians may be employed. Resolution 1973 does not provide an

agreed definition of “protection of civilians”, but seems to go far beyond this definition (“all necessary means...”). What is more, although Resolutions 1970 and 1973 are regarded to as the first resolutions that implement R2P, both texts fail to even mention R2P. The Resolution itself is therefore rather ambiguous, leaving quite a lot of room for manoeuvre.

So Resolution 1973 called for military intervention to protect civilians. However, Russia and China argue that NATO did much more than that. At first instance, the support of the opposition was the only way to protect civilians. Yet after a while, the protesters had become outcome rebels. Yet they still received support of the international community. Russia and China argue that from the moment NATO started bombing Libyan cities, it participated in a civil war, intervening in the territorial integrity of Libya. Even though the opposition army supported NATO and even though in the end the intervention is considered as a military success, NATO therefore might have overstepped the Security Council’s mandate. Furthermore, Professor of Law and International Dispute Resolution at the University of Notre Dame Mary Ellen O’Connell argues that the intervention was anything but a last resort. In Bosnia and Rwanda, it took the Security Council years to decide on a resolution. In Libya, Resolution 1970 was unanimously adopted a three days after Gaddafi’s threat on public television. Resolution 1973 was adopted when the sanctions of Resolution 1970 had hardly been put into place. The opposition had announced that it did not want to negotiate with the Gaddafi forces that might could have led to Gaddafi stepping down in exchange for amnesty or a safe haven abroad (O’Connell, 2011, pp.9). Operation Unified Protector almost immediately began, on 23 March 2011. NATO bombings began only a month after the uprisings had begun. Bearing this in mind, the question which then remains is what would have happened if NATO had refrained from participating in the war.

According to the Global Centre for the R2P, NATO did not overstep the mandate. There was a fear in Libya and among the UN member states of the faith of civilians living in the territories that were occupied by the opposition if Gaddafi would regain control over these regions. Given his incitement to crimes against humanity and hate speech, military support of the opposition was considered as part of the protection of civilians (GCR2P, 2004, p.4). Moreover, alternatives to Resolution 1973 were limited. The conflict evolved so rapidly and the risk of large-scale crimes against humanity was so big that coercive intervention was an “extreme necessity”. One alternative would have been a full scale intervention, including troops on the ground. Though given that some of the Security Council members had trouble supporting Resolution 1973, this idea seems very unrealistic. Another alternative would have been not to intervene in Libya at all. However, given Gaddafi’s clear incitement for crimes against humanity (mainly the hate speech on national television and his governments sending troops to the protesters), doing nothing would undermine the agreements that were made in 2005 to protect the civilians of other states if those states proved

to be unable or unwilling to protect the population themselves. Furthermore, the international community could have chosen to focus solely on negotiation and let diplomacy run its course. But given the scale of the crimes against humanity that were taking place, there was a big risk that mediation on diplomatic level would have killed a far greater number of civilians in the street. So as there was no indication that Gaddafi wanted to negotiate about stepping down, the alternative of not involving in Libya's affairs was not a very realistic option either. Imagine what would have happened to the credibility of the United Nations as the only safeguard of international peace and security if its members had not employed coercive military means to fight the Gaddafi forces, giving Gaddafi all the space he needed to clear out the opposition. Given Gaddafi's incitement to committing atrocities, it goes without saying that the Security Council members were highly motivated to do whatever they had to any bloodshed that could have been prevented, not even to mention the huge pre-disaster it would cause for Western Heads of States like Sarkozy, Cameron and Obama.

6.6 The option of more criteria

The evaluation of Resolution 1973 leads to another question: should there be more rules than in the future to make timely and decisive response easier? In a recent letter to the UN, Brazil proposed more criteria, more layers for intervention to limit the manoeuvrable ability of the principle in the future. This would make it harder to use the principle for other purposes than that of the protection of civilians. After Libya, Aiden Hehir (2011) argued that R2P did not add anything to earlier humanitarian intervention norms as it lacked substantial legal, political and institutional reform. He stated that more criteria were needed to make R2P effective (Hehir, 2011, pp.8). Without a legal reform, the implementation of the principle would determine on the national interests of the Security Council's permanent members. The problem is that more criteria would not capture the essence of R2P. For instance, it would mean that the Security Council might have to wait for a certain number of people to be killed before an intervention would be legitimate. Besides, according to Bellamy, more criteria would only be of value in one of the two circumstances: (1) to legitimize an intervention not authorised by the Security Council; and (2) if the Security Council has become *too* proactive and should be constrained. However, as criteria cannot prevent that R2P will be abused for interventions not authorised by the Security Council, Bellamy suggests that rather than trying to convince governments to adopt criteria, R2P advocates should instead focus on the implementation of R2P as it is (Bellamy, 2011, p.169).

6.7 Casualties

The majority of responses and analysis of the intervention in Libya are positive. Libya is considered a military success to remove Gaddafi and free the Libyan people. Yet, in the conflict that lasted for six months, thousands of people were killed. As professor of Law and International

Dispute Resolution at the University of Notre Dame Mary Ellen O'Connell states: "tens of thousands killed is no measure of success in a revolution that should have been peaceful" (O'Connell, 2011, pp.5). Exact numbers are difficult to find, due to the fact that the Gaddafi regime kept a hold on information flows. In December, Russia's foreign minister asked the UN for a thorough investigation into the deaths of civilians during the conflict. The Libyan deputy ambassador to the UN Ibrahim Dabashi said that there was no need for this: 40,000 Libyans died, including the civilian casualties due to the NATO attacks. O'Connell argues that so many people got killed due to the intervention by NATO. Before Gaddafi announced that he would go "house-to-house" in Benghazi if the opposition would not lay down their arms, around 250 people had been killed. In late August, the National Transitional Council announced that over 50,000 people had been killed.

7. Recommendations

The purpose of this chapter is to think about ways that make implementation of R2P in the future easier and as consistent as possible. The responsibility to protect was developed as a principle that is universal and enduring. It applies to all states at all times. Yet, Libya and Syria showed that the principle does not work like this in practice. The chapter will therefore discuss six recommendations that could make application of R2P easier and less selective in the future.

7.1 Change perspective of international community

The essence of R2P is not the military response, but the element of prevention. However, the international community failed to prevent the conflict in Libya (and in Syria). This is partly due to the fact that the international community has always operated from a 'reactive' point of view. In 2005, the international community adopted the change of perspective from "right to intervene" to "responsibility to protect". This is why right now, the international community should change its behaviour from a reactive (let's get boots on the ground) to a preventive one. Furthermore, the international community should change its behaviour towards genocide. Right now, states find it difficult to recognize that their country has a history of genocide. This means that even if indicators like the Analysis Framework suggest that a state is vulnerable for crimes against humanity, these states are unlikely to admit this risk to the international community. A different approach towards genocide and crimes against humanity is required so that it becomes easier to address these problems and to seek international assistance.

7.2 Better understanding on the link between R2P and regime change

For now, the uncertainty about regime change among the Security Council members has blocked the Council from developing a timely and decisive response to the crimes against humanity that are taking place in Syria. Therefore, it is important that the relationship between R2P and regime change is further discussed. This will make timely and decisive action by the Security Council members easier. Better understanding about the link is the only way in which the permanent members can come to a consensus in the future on military interventions.

7.3 Enlarge the Security Council's permanent membership

Chapters 3 and 6 discussed the question of the Security Council as the appropriate body to authorise R2P interventions. It concluded that due to the large scale economic and social developments on the world stage, no change in the permanent composition of the Council will severely undermine the credibility of the United Nations. The problem with changing the current composition or touching the veto power is that it requires a change of the Charter of the United

Nations, which in its turn requires the consent of the permanent members. And they will never give it. Given that the Charter of the United Nations dates back to 1945, maybe the time has come to change it. First of all, the Council could be enlarged with for instance Brazil, India and South Africa. This would significantly add to the world's geographic representation in the Council. However, more permanent members will make it even more difficult to unanimously agree on R2P interventions. Therefore, an additional change to the UN Charter can be made that will allow the Security Council to authorise R2P interventions that have the consent of the majority of the permanent members. For instance, this could mean that if there are eight permanent members, the Council may still authorise an R2P intervention if two member vetoed the proposal, provided that the other six members are in favour of an intervention. Such a change would not abolish the veto power, but will make timely and decisive implementation of R2P easier as it would avoid a situation in which one or two countries continuously block possibilities for intervention to protect their national interests.

These proposals for change need to be researched and tested thoroughly before they can ever be implemented. The Global Centre for the R2P seems to be the perfect body to carry out and authorise such research to Security Council-related alternatives. The Centre should also look into the question which countries would be eligible to be considered as permanent member of the Security Council. In studying this, the Centre must take into account the positions of different candidate countries towards R2P, and to make sure that the Council is not dominated by either critics or advocates of the principle.

7.4 Roadmap for authorisation

It seems that the topic of prevention is too much prioritized, as to avoid what is really complicated, namely the question of response. In the case of Syria, it should not have been a question of if an R2P intervention was appropriate, but of how an intervention should be implemented. Although exact numbers were not available, there was no doubt that crimes against humanities were committed by government forces. Furthermore, R2P was developed during a time dominated by peace and acceptance among the most influential states in the world. This friendly atmosphere makes it easy to assume that in future conflicts, the international community will manage agree on R2P interventions, although maybe with some difficulty. But maybe this view is way too optimistic. What if we have gotten used to making global decisions in a mutual friendly environment among the largest states in the world? What if, hypothetically, China, Russia or the US suddenly finds itself in a huge national conflict in which the government attacks its own people? With the practices of today, a legitimate R2P interference one of these states will never be possible. This leads to think that guidelines are indeed needed that will make a timely and decisive response easier in future emergencies, even if not all Security Council members agree.

However, the arguments that made more criteria impossible back in 2005, still count today. R2P is still such a new concept that it will be difficult for all the member states of the United Nations to agree on more criteria. Moreover, more criteria would undermine the credibility of R2P, as it would mean that R2P becomes a model for military intervention. This is not compatible with the claim that the most essential part of R2P is prevention. Apart from this, if more criteria are needed to make sure that the Security Council acts in accordance with what R2P was meant for, this would undermine the claim that the Council is a appropriate body to authorise R2P interventions.

The fourth recommendation is therefore to transfer the authorisation of R2P interventions to the General Assembly if the Security Council members spend too much time discussing and redrafting resolutions, while civilians fall victim to any of the four crimes. Transferring the authorisation to the General Assembly if the Security Council seems unable or unwilling to come to an agreement, is an idea that was already discussed in the original idea of R2P developed by the ICISS. It has however never been mentioned in any conflict. Yet, in the case of Syria, the Council has failed to prevent the crimes against humanity that have been committed. This must surely be the kind of situation that the ICISS and Ban Ki-moon had in mind when writing their reports, stating that authorisation must be transferred to the General Assembly if the Security Council failed to come to an agreement.

Transferring authorisation to the General Assembly avoids the situation in which all possibilities for intervention are blocked because of disagreement in the Council. What is more, it would add to the credibility of the claim that R2P is not a model developed by the North to justify interventions in the South. If authorisation is transferred to the General Assembly, all UN member states are involved in the decision making. It would make R2P a principle of all governments.

Conclusion

With the knowledge we had on Libya before the revolution, the international community should have engaged much earlier. Nevertheless, generally speaking the intervention itself in Libya was quite successful. It is impossible to know how many people would have died if the West had not intervened, but given the fact that the opposition did not seem to have everything in control, it is safe to assume that way more civilians would have been killed by the Gaddafi regime if there had been no intervention at all. According to Gareth Evans, “the Libyan case was, at least at the outset, a textbook case of the R2P norm working exactly as it was supposed to, with nothing else in issue but stopping continuing and imminent mass atrocity crimes” (Evans, 2011, p.7). Indeed, the international community successfully reached the main objective of the intervention: the protection of civilians. The United Nations Security Council had employed all possible forms of peaceful coercion to convince Gaddafi to put a halt to the crimes against humanity that were committed to his own population. Only after Gaddafi did not respond to these measures, Resolution 1973 called for “all necessary means” to protect civilians. The use of force has therefore not undermined the credibility of R2P.

However, after the successes in Libya, the conflict in Syria has severely challenged the credibility of R2P with reference to the selective application of the principle. Roger Shanahan (2011) of the Lowy Institute for International Policy argued that Libya has proven that R2P is “theoretically impractical”. He sketches a situation with two cities (symbolising Benghazi in Libya and Hama in Syria) to illustrate how R2P is put into practice:

Imagine two Arab cities of approximately 700,000 people, each surrounded by the military forces of autocratic regimes intent on crushing rebellions against its rule.

In one case, the West mounts an argument based on the concept of R2P and the UN authorises ‘all necessary means’ measures to protect civilians in the city. The Arab League supports action and government forces are attacked by coalition warplanes, sparing the city and its inhabitants. In the other case, there are harsh words of condemnation from some Western countries and eventually from the Arab states and the UN Security Council President, but only well after government forces enter the city and large numbers of people are killed (Shanahan, 2011, pp.5-6).

One of the reasons why R2P does not work in practice is because the concept is not used by the academic theorists that developed it. The implementation rests on “the practitioners of the day”,

national governments whose decision making depends on conflicting national interests and the factors involved in one particular case. It seems that this theory is indeed proven to be right by Libya and Syria. Then again, the articles of the Outcome Document state that R2P interventions should be dealt with on a case-by-case basis. As was described in the previous chapter, Syria was a completely different case than Libya. Ethnic tension, the fragmented opposition, the role of the Arab League and geopolitical considerations, made Syria a far more difficult case than Libya, with limited chance of success of an intervention.

Although the factors that led to the decision not to act on Syria seem fair considerations, it cannot be denied that all they have not undermined the credibility of R2P. R2P was developed as a principle that is universal and enduring. Given the geopolitical and logistic considerations, Libya was a relatively easy case. Yet, Syria proved that there are so many more factors involved. Economic, social and geopolitical considerations remain to be paramount to the protection of populations. Therefore, it seems that Libya and Syria proved that implementation of R2P is relatively easy in 'neutral' areas, but fails to be applied in cases of conflict in which many different players are immediately involved.

Moreover, Libya and Syria proved that the decisions of the Security Council are influenced by the conflicting national interests of its permanent members. In the case of Syria, the Security Council proved unable to take decisions in a timely and decisive manner even when massive human rights violations are taking place. What is more, although R2P is a principle that was accepted by all states and applies to all states, the decision on R2P interventions lies with a Security Council that is dominated by Western countries. Consequently, the Security Council – at least in its current composition – is not the appropriate body to authorise R2P interventions. If the Security Council want to remain the only appropriate body to authorise interventions, something must change in its permanent composition. As replacing the current permanent members with other countries is unlikely to make implementation of R2P easier or any less selective, an independent commission or secretariat should look into the possibility of enlarging the permanent membership. Furthermore, when the Security Council fails to authorise an intervention, or when it fails to come to an agreement within a reasonable amount of time given the gravity of the crimes committed against populations, the authorisation should be transferred to the United Nations General Assembly.

Then again, R2P is a fairly new concept. It would be naive to assume that implementing it on the scale of Libya for the first time will go perfectly. The principle needs to be applied to more conflicts to find out whether it is credible and whether it will be enduring. For now, the acceptance of the international community that sovereignty entails not only rights, but also responsibilities, is a major step in the evolution of humanitarian intervention perspectives. Nothing like it has ever

existed in the past. It cannot be expected that countries like China and Russia just go and change their whole perspective on humanitarian intervention at once. In 2009, their positions had already changed into far more constructive ones compared to 2005, so it seems that these countries are on the right track. Furthermore, discussion is still needed to better understand what it is exactly that R2P entails, especially with reference to the link between R2P and regime change, the role of regional organisations, criteria for implementation of the principle, and the right authorisation of interventions. Indeed, goes without saying that mutual understanding and agreement is essential for the credibility of R2P. Finally, the fact that national interests play a role in deciding on intervention should not be a reason to refrain from intervention at all. The decision of whether an intervention is appropriate should in the first place not be based on the motives of the interveners, but on the needs of the populations under attack. National interests may therefore to a certain extent be involved, as long as the primary purpose for R2P intervention is what it was meant for: the protection of civilians.

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Annex I: ICISS Synopsis

THE RESPONSIBILITY TO PROTECT: CORE PRINCIPLES

(1) BASIC PRINCIPLES

- A. State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself.
- B. Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.

(2) FOUNDATIONS

The foundations of the responsibility to protect, as a guiding principle for the international community of states, lie in:

- A. obligations inherent in the concept of sovereignty;
- B. the responsibility of the Security Council, under Article 24 of the UN Charter, for the maintenance of international peace and security;
- C. specific legal obligations under human rights and human protection declarations, covenants and treaties, international humanitarian law and national law;
- D. the developing practice of states, regional organizations and the Security Council itself.

(3) ELEMENTS

The responsibility to protect embraces three specific responsibilities:

- A. **The responsibility to prevent:** to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk.
- B. **The responsibility to react:** to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention.
- C. **The responsibility to rebuild:** to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert.

(4) PRIORITIES

- A. **Prevention is the single most important dimension of the responsibility to protect:** prevention options should always be exhausted before intervention is contemplated, and more commitment and resources must be devoted to it.

- B. The exercise of the responsibility to both prevent and react should always involve less intrusive and coercive measures being considered before more coercive and intrusive ones are applied.

THE RESPONSIBILITY TO PROTECT: PRINCIPLES FOR MILITARY INTERVENTION

(1) THE JUST CAUSE THRESHOLD

Military intervention for human protection purposes is an exceptional and extraordinary measure. To be warranted, there must be serious and irreparable harm occurring to human beings, or imminently likely to occur, of the following kind:

- A. **large scale loss of life**, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or
- B. **large scale ‘ethnic cleansing’**, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.

(2) THE PRECAUTIONARY PRINCIPLES

- A. **Right intention**: The primary purpose of the intervention, whatever other motives intervening states may have, must be to halt or avert human suffering. Right intention is better assured with multilateral operations, clearly supported by regional opinion and the victims concerned.
- B. **Last resort**: Military intervention can only be justified when every non-military option for the prevention or peaceful resolution of the crisis has been explored, with reasonable grounds for believing lesser measures would not have succeeded.
- C. **Proportional means**: The scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the defined human protection objective.
- D. **Reasonable prospects**: There must be a reasonable chance of success in halting or averting the suffering which has justified the intervention, with the consequences of action not likely to be worse than the consequences of inaction.

(3) RIGHT AUTHORITY

- A. There is no better or more appropriate body than the United Nations Security Council to authorize military intervention for human protection purposes. The task is not to find alternatives to the Security Council as a source of authority, but to make the Security Council work better than it has.
- B. Security Council authorization should in all cases be sought prior to any military intervention action being carried out. Those calling for an intervention should formally request such

authorization, or have the Council raise the matter on its own initiative, or have the Secretary-General raise it under Article 99 of the UN Charter.

- C. The Security Council should deal promptly with any request for authority to intervene where there are allegations of large scale loss of human life or ethnic cleansing. It should in this context seek adequate verification of facts or conditions on the ground that might support a military intervention.
- D. The Permanent Five members of the Security Council should agree not to apply their veto power, in matters where their vital state interests are not involved, to obstruct the passage of resolutions authorizing military intervention for human protection purposes for which there is otherwise majority support.
- E. If the Security Council rejects a proposal or fails to deal with it in a reasonable time, alternative options are:
 - I. consideration of the matter by the General Assembly in Emergency Special Session under the “Uniting for Peace” procedure; and
 - II. action within area of jurisdiction by regional or sub-regional organizations under Chapter VIII of the Charter, subject to their seeking subsequent authorization from the Security Council.
- F. The Security Council should take into account in all its deliberations that, if it fails to discharge its responsibility to protect in conscience-shocking situations crying out for action, concerned states may not rule out other means to meet the gravity and urgency of that situation – and that the stature and credibility of the United Nations may suffer thereby.

(4) OPERATIONAL PRINCIPLES

- A. Clear objectives; clear and unambiguous mandate at all times; and resources to match.
- B. Common military approach among involved partners; unity of command; clear and unequivocal communications and chain of command.
- C. Acceptance of limitations, incrementalism and gradualism in the application of force, the objective being protection of a population, not defeat of a state.
- D. Rules of engagement which fit the operational concept; are precise; reflect the principle of proportionality; and involve total adherence to international humanitarian law.
- E. Acceptance that force protection cannot become the principal objective.
- F. Maximum possible coordination with humanitarian organizations.

(ICISS, 2001, p.xi-xiii).

Annex II: *Implementing the Responsibility to Protect*, paragraphs 11 and 12

11. The provisions of paragraphs 138 and 139 of the Summit Outcome suggest that the responsibility to protect rests on the following three pillars:

Pillar one : The protection responsibilities of the State

- (a) Pillar one is the enduring responsibility of the State to protect its populations, whether nationals or not, from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement. The latter, I would underscore, is critical to effective and timely prevention strategies. The declaration by the Heads of State and Government in paragraph 138 of the Summit Outcome that “we accept that responsibility and will act in accordance with it” is the bedrock of the responsibility to protect. That responsibility, they affirmed, lies first and foremost with the State. The responsibility derives both from the nature of State sovereignty and from the pre-existing and continuing legal obligations of States, not just from the relatively recent enunciation and acceptance of the responsibility to protect;

Pillar two: International assistance and capacity-building

- (b) Pillar two is the commitment of the international community to assist States in meeting those obligations. It seeks to draw on the 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. Too often ignored by pundits and policymakers alike, pillar two is critical to forging a policy, procedure and practice that can be consistently applied and widely supported. Prevention, building on pillars one and two, is a key ingredient for a successful strategy for the responsibility to protect;

Pillar three: Timely and decisive response

- (c) Pillar three is the responsibility of Member States to respond collectively in a timely and decisive manner when a State is manifestly failing to provide such protection. Though widely discussed, pillar three is generally understood too narrowly. As demonstrated by the successful bilateral, regional and global efforts to avoid further bloodshed in early 2008 following the disputed election in Kenya, if the international community acts early enough, the choice need not be a stark one between doing nothing or using force. A reasoned, calibrated and timely response could involve any of the broad range of tools available to the United Nations and its partners. These would include pacific measures under Chapter

VI of the Charter, coercive ones under Chapter VII and/or collaboration with regional and subregional arrangements under Chapter VIII. The process of determining the best course of action, as well as of implementing it, must fully respect the provisions, principles and purposes of the Charter. In accordance with the Charter, measures under Chapter VII must be authorized by the Security Council. The General Assembly may exercise a range of related functions under Articles 10 to 14, as well as under the “Uniting for peace” process set out in its resolution 377 (V). Chapters VI and VIII specify a wide range of pacific measures that have traditionally been carried out either by intergovernmental organs or by the Secretary-General. Either way, the key to success lies in an early and flexible response, tailored to the specific needs of each situation.

12. If the three supporting pillars were of unequal length, the edifice of the responsibility to protect could become unstable, leaning precariously in one direction or another. Similarly, unless all three pillars are strong the edifice could implode and collapse. All three must be ready to be utilized at any point, as there is no set sequence for moving from one to another, especially in a strategy of early and flexible response. With these caveats in mind, some examples of policies and practices that are contributing, or could contribute, to meeting pillars one, two and three are set out in sections II to IV below. The way forward is considered in section V. In particular, five points are set out in paragraph 71 that the General Assembly may wish to consider in its review of the overall strategy set out in the report. Some initial ideas on early warning and assessment are set out in the annex. Later in 2009, I will submit to the Assembly modest proposals for implementing improvements in the early warning capability of the Organization, as called for in paragraph 138 of the Summit Outcome.

(Ban Ki-moon, 2009, pp.11-12).

Annex III: *The 2005 World Summit Outcome Document*, paragraphs 138 and 139

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

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.

(United Nations General Assembly, 2005, September 15, pp.138-9).

