

**INTERVENTION FOR HUMANITARIAN PROTECTION
PURPOSES AND INTERNATIONAL LAW WITH
PARTICULAR CONSIDERATION OF THE CONFLICT IN
SYRIA**

Indice

INTRODUCTION	3
CHAPTER ONE	11
1 INTERNATIONAL LAW AND THE USE OF FORCE	11
INTRODUCTION	11
1.1. <i>History of the law on the use of force</i>	13
1.2. <i>The general principle on the use of force</i>	16
1.3. <i>Clarification of jus ad bellum terms and concepts</i>	20
1.4 <i>The Right to Self-Defense in International Law: The Legal Exception to the Prohibition of the Use of Force</i>	23
1.5 <i>Requirements for Acting in Self Defense</i>	28
1.6 <i>Attempts to Limit the Scope of the Prohibition of the Use of Force</i>	32
1.6.1 <i>Use of Force in Protection of Nationals Abroad?</i>	34
1.7 <i>The Lawful Uses Of Force Authorized By The UN Security Council</i>	40
1.8 <i>Humanitarian Intervention : a new possible exception to the use of force for preventing human right atrocities?</i>	45
1.9 <i>The Dilemma of Intervention</i>	49
1.10 <i>Beyond the Right of Humanitarian Intervention : some critical reflections</i>	53
1.11 <i>Final Considerations on the Use of Force and the Applications of Art 2(4)</i> 57	
CONCLUSION	64
CHAPTER TWO	66
2 THE DOCTRINE OF HUMANITARIAN INTERVENTION	66
INTRODUCTION	66
2.1 <i>The Concept of Humanitarian Intervention: the Origins and its Definition in International Law</i>	67
2.2 <i>Overview of International Humanitarian Law</i>	71
2.3 <i>Evolution and Practice of Humanitarianism</i>	75
2.3 <i>The Responsibility to Protect</i>	82
2.4 <i>How Does the Principle of R2P Work?</i>	89

2.5	<i>The Road to R2P in Practice</i>	99
2.6	<i>The Rwanda Genocide, 1994 :Challenges and Implications of Responsibility to Protect</i>	101
2.7	<i>The Responsibility to Protect in the Libyan Intervention: Ultimate Success or International Failure?</i>	108
2.8	<i>To What Extent Was the NATO Intervention in Libya a Humanitarian Intervention?</i>	113
2.9	<i>The Difficult Choice to Intervene: Final Reflections on the Dilemma Concerning the Management and Efficiency of Humanitarian Aid</i>	121
	CONCLUSION	130
	CHAPTER THREE	132
	3 THE SYRIAN CRISIS AND ITS EVOLUTION	132
	INTRODUCTION	132
3.1	<i>Syria's profile</i>	133
3.2	<i>Syria's civil war explained from the beginning</i>	138
3.3	<i>The Role Played by the UN in Syria: the Actions Implemented and their Effectiveness</i>	143
3.4	<i>Syria Today</i>	151
	CONCLUSION	155
	CHAPTER 4	156
	4 THE DOCTRINE OF HUMANITARIAN INTERVENTION AND RESPONSIBILITY TO PROTECT APPLIED TO THE SYRIAN CASE	156
	INTRODUCTION	156
4.1	<i>Application of the R2P Principle in International Responses to the Syrian Crisis</i>	157
4.2.	<i>A Conflict Without Truce : the Fate of Syria in the Indecision of the United Nations Members</i>	164
4.3	<i>The Type of Syrian Conflict and the Implications of its Legal Classification on the Application of the Principle of Humanitarian Access</i>	172
4.4	<i>Historical Antecedents: Similarities and Differences with the Syrian Case</i> 176	
4.5	<i>An endless succession of interventions with conflicting aims</i>	179
4.6	<i>Application of "just war" requirements to the Syrian case</i>	183
4.7	<i>Operations in Syria and the problems of qualification of armed conflicts</i>	190
4.8	<i>International Justice: Options for Syria</i>	197
4.9	<i>The Final Balance</i>	203
	CONCLUSION	207
	CONCLUSION	208
	BIBLIOGRAPHY	211

INTRODUCTION

Important historical events such as large-scale cross-border migration, as well as the bloody conflicts in Syria, Yemen, Libya, and Palestine draw the attention of the international community to the protection of civilians. This study focuses mainly on the analysis of the Syrian case. The first part of the thesis will focus on the legal concepts that underpin humanitarian law and the concept of the "responsibility to protect". The second chapter until the end of the work the analysis links both current and past events in which humanitarian intervention was considered. The theory of the responsibility to protect has been invoked to shape the responses to the crisis in Kenya and Libya in 2011 and, to a lesser extent, to the crisis in Syria (2012) and the humanitarian

crisis in Myanmar following the devastation caused by Cyclone Nargis.

In recent years, we are facing the constant blows inflicted on the rules governing relations between states and, therefore, the threat of undermining an already delicate and weak capacity of general international law to limit violence and prevent it from slipping into abyss of armed conflicts. The United Nations Charter refers exceptions to the use of force as the authorization of the Security Council under Chapter VII, concerning action with respect to the threat to peace, the violation of peace and the acts of aggression, or the rule concerning the individual or collective legitimate defense, enshrined in Article 51 of the Charter. It is clear that there is no authorization for the use of the armed coercive action by the Security Council, beyond the exceptions mentioned. However, despite this prohibition in the current United Nations system, the practice of States in some areas such as Kosovo and Syria and the growing lack of reaction of most States, which characterize the international community, leads to the belief that many States have begun to tacitly accept a divergent rule (that of intervening without

authorization from the Security Council). A divergence that was seized by the US representative during the heated debate in the Security Council, where the US intervention against Syria was addressed, which had stated *that "When the United Nations fails in adopting collective decisions, there are times when states are forced to act on their own"*, that is to say, without the endorsement or consent of the United Nations.

The general view of the Responsibility to Protect (R2P) as an emerging standard of customary international law is therefore challenged in the light of the conflict and will be analysed in the course of the thesis evaluating the reasons why it was considered not applicable by mass atrocities perpetrated in Syria since 2011. This thesis tries to outline a more realistic scenario on latest developments in the R2P doctrine in the face of the recent Syrian crisis, discussing whether it should be seen as a "missed opportunity" to demonstrate its applicability. For this purpose the thesis will be divided into four main sections: the first provides a brief overview of the development of the general principle of the use of force with its exceptions and authorized uses, the second aimed at laying the legal

foundations for a reflection on the application of humanitarian law and humanitarian intervention, the third illustrating the Syrian situation, the fourth dedicated to a conclusive analysis and comparison with other historical events past and present, will be linked by considerations of a legal nature to reflect on the criticalities found in each theatre of war offering a critical analysis of the reasons that lead the international community to remain inactive in not applying that doctrine . In particular, the controversial definition of the concept of intervention, which is the basis for any conflict in the qualification of the responsibility to protect, will be of fundamental importance. The concept of intervention is often related to the concept of "interference". Indeed, by summarising and proposing a new vision of humanitarian intervention, the concept of intervention can also define political action. The problem is that the intervention is identified as a military action against a state. On the contrary, the concept of interference is broader and include not only a military action, whether direct or indirect, but also a intervention which may involve cultural, economic or other forms of interference values, such as the dissemination of cultural models, which are can provoke reactions in the

population of a State which could destabilize the government or even induce riots or revolutions by the population as in the case of the revolt in Syria, which has now become a conflict that involves several actors and therefore has an international dimension. The conceptual contrasts we are going to talk about will be used in the course of this thesis as reference point to understand that currently either we opt for a more precise qualification of the responsibility to protect, or humanitarian intervention will always be characterized by contrasts that will make respect for human rights subject to evaluations often vitiated by opposing interests. From this point of view, it is the innocent population that will pay the price. The contribution of this work is certainly to be found in the observation that most of the interventions States or regional organisations in defence of a population are not often carried out as a condemnation, to violations of rights human but inspired by political and/or strategic motivations for the control of energy resources. This type of reflection will be present during the work and supported by studies and empirical evidence. The case of Syria is emblematic and allows us to qualify such statements not as mere places, but as facts supported by historical events.

Humanitarian intervention has been considered by many states, especially by those who suffer it, as an intrusion into the or undue limitation of their sovereignty. The overall purpose of the proposed thesis will be oriented to describe the positioning of the concept of responsibility to protect within internationalist studies: the evolution of the law in the field of human rights has required a change in international law with regard to humanitarian intervention. In the post second World War atmosphere, the growing global awareness of serious and repeated human rights violations has caught the attention of the international community like never before, and the question of intervention for human protection has turned into a serious question of contention. As a result, humanitarian intervention has undergone a transformation. The thesis begins by examining the concept of prohibition of the use of force in international law and the exception to this prohibition, in the name of humanitarian intervention. A central role in the thesis is occupied by the evaluation of the concept of responsibility to protect as a justification for humanitarian intervention with the aim of providing for the formation of a complete general framework of this doctrine within the international panorama.

In order to justify certain analyses, the method of study used will be that of continuous theoretical and empirical comparison of different historical events , such as the Rwandan genocide of 1994 or Libyan resolution, concerning the concrete application of the responsibility to protect. From an empirical point of view, the verification of the application of the principles of humanitarian law will be based on Syrian events. The analysis of the Syrian case and the failure of states and no-state actors to adhere to the law in this particular case, will be aimed not only at conducting an historical or legal analysis; the purpose of the work in the last part of the thesis is to emphasize that the responsibility to protect could be at the heart of development and international relations. The final chapter argues that the Syrian case represents a failure to apply the concept of responsibility to protect: that catastrophic failure of the international community is concretized in the absence of effective actions for the protection of the population of Syria, that has allowed the parties in conflict, above all the Syrian government to carry out war crimes and crimes against humanity in complete impunity, with a budget which today is dramatic and catastrophic. UN and NGO estimates range

between 350,000 and half a million deaths. In the country, which had about 23 million inhabitants before the conflict, about half of the population was forced to leave their homes due to fighting. The French NGO Handicap International reported one million injured in 2017.

The purpose of my dissertation is to focus on how the doctrine on the responsibility to protect is relevant to understanding and analyzing the behavior of states in their approach to international relations.

The Syrian conflict in particular is a very significant case study for this type of approach: many different actors have faced the crisis trying to find a solution, but, and this is what is relevant, there has been no real cooperation and effective. In the complex system of international relations, each actor is guided primarily by the personal interests of the states, thus opening up a scenario that shows how each actor is more committed to pursuing his own benefits, rather than worrying about issues such as cooperation or the actual and ready intervention in unstable and precarious situations. Thus, in a scenario dominated by the change and the change in the established balances, the Syrian dynamics remained on the sidelines, closed by the divisions of the UN member states and the tensions that influenced relations with them States.

In particular, it will be a focus on the analysis of how and when the doctrine based on respect for the rules and principles of international law in matters of sovereignty, peace and security, human rights and armed conflict has worked and when it has failed.

CHAPTER ONE

1 International Law and the Use of Force

Introduction

In order to be able to examine the concept of R2P and how it applies to Syria, this chapter will carry out a first analysis

starting from a broader legal and political context such as that of international norms on the use of force, which constitutes one of the cornerstones of the international legal system. Declared in the art. 2 (4) of the Charter of the United Nations , this prohibition is also universally accepted as a norm of customary international law. The purpose of the chapter is to look at the prohibited and permissible use of force in International Relations. As the prohibition of the use of force is at the core of international legal efforts to prevent war, today it is part of a more complex international legal framework. The prohibition is secured by means of collective measures and the obligation to resort to peaceful means for the settlement of disputes. The issue concerning the use of force will be treated starting since its historical origins, dating back to the notion of “just and unjust war”. After various attempts with negative outcomes , the prohibition on the use of force will be subsequently consecrated in the Charter of the UN and become part of customary international law: but this ban is not absolute . In fact, there are two exceptions by virtue of which ,the use of force may be justified . These exceptions are : the use of force authorised by the Security Council under Chapter VII in case of a “threat to peace, breach of peace and act of aggression” and the right to use force under art. 51 in self-defense. Another important question that will be analyzed during the chapter, concern the qualification of the concept of humanitarian intervention in the light of adding another possible exception to the general prohibition on the use of force. Can this assumption be supported by state practice?

1.1. History of the law on the use of force

For centuries, states have resorted to the use of force in their international relations, to achieve particular and strategic aims. The use of force has proved, in its tragic consequences, as a method for resolving disputes between states. The states, initially, enjoyed the right to wage war without any internationally agreed regulatory framework. However, over time, things have changed with the emergence of concepts of "*just and unjust war*". The distinction between the two concepts, can be traced back to ancient Rome and the Fetials (fetishes), a group of priests whose main task was to maintain internal and external relations in a peace regime and which gave rise to fetal law (*ius fetiale*) - religious law that regulates the process of creation, interpretation and application of treaties, regulations and acts on the declaration of war. However, the concept of "just war" has changed and evolved over the centuries (Von Elbe, 1939). There was a general conviction that deliberations on war should first pass through these priests, who would then proceed to provide a judgment of the gods on justice with regard to the proposed course of action. If it was decided that a serious peace violation had occurred, as to provide a valid justification for a just war, the relatives would first turn to the guilty city for compensation. If, after a certain period of time, no adequate compensation was given, then the war could begin. The declarations of war were expressed in a lawsuit, in which the verdict transmitted by the fetials was intended to decide on the question whether the war could be conducted properly. Regardless of whether or not a war should be conducted (to enforce a verdict), then it would be the case of a new decision,

which must be taken by the king, the senate, or even (in subsequent periods) by the entire population.¹ The doctrine of "just war" was further influenced by the doctrine of Christian theologians such as Saint Augustine and Saint Thomas Aquinas. The latter, famous for his *Summa Theologica*, stated that the three criteria for a just war were three: first of all it should be promoted by a sovereign authority (prohibition of conducting a private war), secondly it must have a just cause (punishment of criminals), thirdly a just cause must always be accompanied by the right intention. However, along with the emergence of independent states in Europe, the doctrine has begun to evolve and change with the times. In light of the growing number of sovereign states and the hunger for power, wars have begun to be seen and defined as a legal affair rather than a matter of moral judgment. It was no longer possible to judge whether the reason that each state used to justify the use of force was right or not. This approach was supported by the current of positivism, which focused strongly on the idea of sovereignty and on the Peace of Westphalia of 1648, which established a European system of balance of powers. This system survived in Europe until the beginning of the twentieth century, effectively coming to an end with the outbreak of the First World War.² After the First World War, great efforts were made to reconstruct international relations between states through the establishment and functioning of an international institution whose main role was to ensure that such acts of aggression were not repeated in the future. The League of Nations (LON) was

¹ Reichberg et al., 2006, pp. 47–8.

² Alvarez, J. E. (2008) 'The schizophrenias of R2P' in Alston, P. and MacDonald, E. (eds) *Human Rights, Intervention, and the Use of Force*, Oxford, Oxford University Press.

Keep on learning

30 of 34 <http://www.open.edu/openlearn/people-politics-law/exploring-the-boundaries-international-law/content-section->

0?utm_source=openlearnutm_campaign=olutm_medium=ebook Friday

created in 1919 precisely for the purpose of achieving this goal. As part of the 1919 League of Nations Pact, member states had to resolve disputes between states through arbitration or seek other forms of judicial agreement with the League Council. However, the Pact did not actually eliminate the right of states to resort to war, although it subjected this provision to various limitations. In 1928 a further attempt was made to regulate the use of force through the signing of the General Treaty for the renunciation of war as an instrument of national politics, more commonly referred to as the Kellogg-Briand Pact. The parties to this treaty stated that "*they condemn the use of war*" and agreed to "*renounce it as an instrument of national politics in their mutual relations*" (Article 1). The outbreak of the Second World War in 1939 once again marked the end of the attempt to resort to peaceful international relations. The tragic events, but above all the outcomes of this international conflict, led to the adoption of the United Nations Charter (United Nations Charter) in 1945, which led to the development of a framework for regulating the use of force by the community members of the international society. That system remains in force. The current legal framework regulating the use of force in international law is enshrined in the UN Charter. The maintenance of international peace and security is the primary purpose of the UN (Article 1(1) UN Charter). This includes:

“prevention and removal of threats to the peace, [...] the suppression of acts of aggression or other breaches of the peace, [...] and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace”

The UN Charter further provides that:

*“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”*³

It is important to underline that the prohibition of use of force is not absolute. However, as the wording of Article 2, paragraph 4 suggests, the use of force is admissible in circumstances that relate to the purposes of the UN. Chapter VII of the Charter of the United Nations ("Action for the respect of peace, violations of peace and acts of aggression"), outlines the exact moment in which the State can resort to the use of military force against other states. The force can be used against another state when: this act is expressly authorized by the United Nations Security Council or when a state acts in self-defense.

1.2. The general principle on the use of force

In November 2010, the Executive Committee of the International Law Association approved a proposal for the establishment of a Committee on the use of force, with the task of producing a report on aggression and the use of force. In 2016, the Executive Committee extended the Committee for another two years. The Committee met at the ILA Conferences

³(Article 2(4) UN Charter)

in Sofia, Washington and Johannesburg in 2012, 2014 and 2016, as well as at the University of Essex, United Kingdom (2012), the University of Cambridge, United Kingdom (2013) and the Institute Max Planck from Heidelberg, Germany (2017).⁴ It was completed in April 2018. The Committee's mandate focuses mainly on the international law on the use of force (*jus ad bellum*); it does not deal directly with international humanitarian law or international human rights law, even though both these areas of law are equally involved in every circumstance in which armed force is being used. The difficulty of the treatment lies not in the definition of the rules of international law on the use of force, which is in any case relatively easy, although it may be difficult to apply these rules in practice.⁵ The main rules are contained in the Charter of the

⁴ Professor James A. Green, Professor Christian Henderson, Professor Claus Kreß, Professor Sean Murphy, Professor Tom Ruys and Ms Elizabeth Wilmshurst, individually or on at least one occasion jointly, prepared drafts for particular sections. In addition, the Chair and Rapporteur wish to acknowledge the excellent editorial assistance of Alfredo Crosato Neumann in the preparation of the final draft of the report, and the valuable assistance at committee meetings of Rachel Borrell, Nathan Derejko, and Erin Pobjie.

⁵ The political organs of the United Nations, in particular the General Assembly, have contributed to the law through consensus resolutions: Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (Friendly Relations Declaration) (UNGA res. 2625(XXV)); Definition of Aggression (UNGA res. 3314(XXIX)); Declaration on the Non-use of Force (UNGA res. 42/22). So too has the International Court of Justice in a series of judgments and advisory opinions: *Corfu Channel Case, Judgment of April 9th, 1949, I.C.J. Reports 1949*, p. 4; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 14; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226; *Oil Platforms (Islamic Republic of Iran v. United States of America), Judgment, I.C.J. Reports 2003*, p. 161; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136; *Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Uganda), Judgment, I.C.J. Reports 2005*, p. 168. See also C. Gray, "The International Court of Justice and the Use of Force", in C. J. Tams and J. Sloan (eds.), *The Development of International Law by the International Court of Justice* (Oxford: Oxford University Press, 2013), at pp. 237-261; C. Kreß, "The International Court of Justice and the 'Principle of

United Nations and in customary international law. The Charter contains, among the general principles of the United Nations, a prohibition of threat and use of force (Article 2, paragraph (4), which is also obviously a fundamental part of customary international law⁶ . However, the Charter refers to two exceptions to the general prohibition. Firstly, forced measures may be adopted or authorized by the Security Council, which acts in accordance with Chapter VII of the Charter. Secondly, force can be used in exercising the right of individual or collective self-defense, recognized in Article 51 of the Charter. Another exception that can be added to the other two, but which remains doubtful and controversial, is the use of force to ward off an overwhelming humanitarian catastrophe (sometimes referred to as "humanitarian intervention"). However, this is not officially mentioned in the Charter and should be sought in the subsequent practice of the Parts of the Charter of the United Nations and in customary international law. Furthermore, the force used upon request or with the consent given by the government of the territorial state, which is not a real exception, is controversial too. The use of force in retaliation (punishment, revenge or reprisals) is illegal⁷ . Together with the

Non-Use of Force””, in M. Weller (ed.), *The Oxford Handbook of the Use of Force in International Law* (Oxford: Oxford University Press, 2015), at pp. 561-604.

⁶ *Nicaragua v. United States of America*, *supra* n. 2, at paras. 188-190

⁷ Friendly Relations Declaration, *supra* n. 2 (“States have a duty to refrain from acts of reprisal involving the use of force”). See also S. Darcy, “Retaliation and Reprisal”, in M. Weller (ed.), *The Oxford Handbook of the Use of Force in International Law* (Oxford: Oxford University Press, 2015), at pp. 879-896.

primary obligation of peaceful settlement of disputes⁸ , the prohibition of the use of force is at the heart of the collective security system of the United Nations Charter. In the era before the entrance of the Charter, the Alliance of the League adopted a formulation that failed to achieve its goal, as it focused on the prohibition and regulation of "recourse to war" thus giving rise to loopholes that allowed permitted uses of strength not qualified as war. This was followed by the Kellogg-Briand Pact of 1928, in which the parties condemned the use of war for the solution of international disputes and abandoned it as a tool of national politics in their mutual relations⁹ .

The United Nations Charter, which reflects a greater desire to avoid the use of force, has broadened the ban by forcing states not to use "force", in contrast to the more restricted term "war". Article 2, paragraph 4, has been described as the cornerstone of the Charter and it is a fundamental tool for achieving the so desired global peaceful order. It contains an explicit prohibition, stating that:

"All members will refrain from their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other way incompatible with the purposes of the United Nations."

According to that, two fundamental points must be resolved:

⁸ UN Charter, Articles 2(3) and 33.

⁹ R. Lesaffer, "Kellogg-Briand Pact (1928)", in R. Wolfrum (ed.), *Max Planck Encyclopaedia of Public International Law*, Vol. VI (Oxford: Oxford University Press, 2012), at pp. 579-584

first of all the nature of the forbidden force; and secondly if the purpose for which force is used is a determining factor in its prohibition.¹⁰

1.3. Clarification of jus ad bellum terms and concepts

The nature of the principle of the prohibition of the use of force, was the subject of the debate during the drafting of the United Nations Charter. The coercive measures in themselves are not equated with the type of force envisaged by Article 2, paragraph 4, but the possibility of violation of other prohibitions remains, such as the principle of non-intervention¹¹. Article 2 (4) it is mainly be considered with reference to the use of "armed" or "physical" force¹². And it is precisely this interpretation that

¹⁰ C. H. M. Waldock, "The Regulation of the Use of Force by Individual States in International Law", in 81 *Recueil des Cours* 451 (1952); D. W. Bowett, *Self-Defence in International Law* (Manchester: Manchester University Press, 1958); I. Brownlie, *International Law and the Use of Force by States* (Oxford: Oxford University Press, 1963); T. M. Franck, *Recourse to Force: State Action Against Threats and Armed Attacks* (Cambridge: Cambridge University Press, 2002)

¹¹ *Nicaragua v. United States of America*, *supra* n. 2, at para. 228 (financing the *contras*)

¹² L. M. Goodrich and E. Hambro, *Charter of the United Nations: Commentary and Documents* (Boston: World Peace Foundation, 1946), at p. 70; N. Schrijver, "Article 2, paragraphe 4", in J. Cot *et al.* (eds.), *La Charte des Nations Unies* (Paris: Economica, 3rd ed., 2005), at pp. 437-466

has been confirmed in the list of examples that are contained in the Declaration of Friendly Relations¹³ .

In fact, the latter also states that the prohibition of force also extends to the use of indirect force, intended for example as that aimed at arming the rebel groups¹⁴.

The reference in Article 2, paragraph 4, to the use of force "against the territorial integrity or political independence of any state" has been invoked to justify uses of force in circumstances that could be claimed to have other objectives (to example humanitarian intervention). If a use of force is not against any of these qualifications, then such use of force does not fall within the scope of Article 2, paragraph 4. However it has been argued that this interpretation, is unsustainable for at least two reasons .

First of all, the examination of the *travaux préparatoires* of the Charter shows that the reference to territorial integrity or political independence was not intended to restrict the prohibition, rather, it was a specification that intended to recognize the equal sovereignty of weaker or postcolonial states¹⁵. Secondly, Article 2, paragraph 4, goes on to affirm "*or in any other way incompatible with the purposes of the United*

¹³ Friendly Relations Declaration

¹⁴ *Ibid.* See also *Nicaragua v. United States of America*, *supra* n. 2, at para. 228.

¹⁵ Brownlie notes that it was "not intended to be restrictive, but, on the contrary, to give more specific guarantees to small states and that it cannot be interpreted as having a qualifying effect". See Brownlie, *supra* n. 8, at p. 267.

Nations". In the San Francisco conference it was then specified that

*"the intention of the authors of the original text was to state in the broadest terms an absolute all-inclusive prohibition, the phrase "or in any other way" was designed to ensure that there are no loopholes "*¹⁶.

A further controversial issue is whether there is a gravity threshold below which a use of force does not fall under the prohibition of Article 2, paragraph 4. While it has been stated that there is a *de minimis* threshold¹⁷ , there is no sufficient evidence in favor of this or against this. Cases where states have not invoked a violation of Article 2, paragraph 4, can more simply indicate for example, a political decision not to invoke a violation of Article 2, paragraph 4. Of course, a law enforcement situation may turn into one that involves a prohibited use of force¹⁸ .

It is possible that the differentiation in these cases is based on the level of force or the nature of the force.

The relatively and intentionally wide range referred to in Article 2, paragraph 4 reflects the general objective of the United

¹⁶ 6 U.N.C. I. O. Docs. 334 (1945), at pp. 334-335. See also the rejection of the UK argument in *Corfu Channel*, *supra* n. 2. ¹⁸ *Nicaragua v. United States of America*, *supra* n. 2, at paras. 191, 195; Eritrea-Ethiopia Claims Commission – Partial Award, *Jus Ad Bellum – Ethiopia’s Claims 1-8*, 19 December 2005, XXVI RIAA 457, at para. 11

¹⁷ *Nicaragua v. United States of America*, *supra* n. 2, at paras. 191, 195; Eritrea-Ethiopia Claims Commission – Partial Award, *Jus Ad Bellum – Ethiopia’s Claims 1-8*, 19 December 2005, XXVI RIAA 457, at para. 11.

¹⁸ T. Ruys, *Armed Attack and Article 51 of the UN Charter* (Cambridge: Cambridge University Press, 2010), at pp. 12-13.

Nations Charter to reduce the use of force by States to the point where it can only take place with the authorization of the UN Security Council or self-defense against an armed attack.

1.4 The Right to Self-Defense in International Law: The Legal Exception to the Prohibition of the Use of Force

The right to self-defense is another exception to the general prohibition of the threat or the use of force, as can be seen from the main aims of the United Nations. The center of the question is not whether the right to self-defense exists, but when exactly the states have the right to make use of this principle which represents an important exception to the prohibition of the use of force. Can be applied even before or only after being the victim of an armed attack? What constitutes an armed attack? The right to self-defense allows states a legitimate use of force to protect their sovereignty, political independence and security without incurring in international responsibility. However, in order to exercise this right it is necessary that there has been an armed attack. In addition, states are required to provide proof that the force has been used necessarily, proportionately and immediately, in addition to informing the UN Security Council

19. The right to self-defense refers to the concept of defensive use of force that arises with the law of nations. The defensive use of force was a sovereign right that belonged to every state and therefore the origin of self-defense was the sovereignty of

¹⁹ rebaz khdir, *The Right to Self-Defence in International Law as a Justification for Crossing Borders: The Turkey-PKK Case within the Borders of Iraq*, 4(4) russian Law Journal 62–80 (2016).

the state²⁰. Other scholars argued instead that the right to self-defense originates from the concept of "just war" which it was already present in ancient Greece and Rome. A just war would have been against a state, when the state violated its obligations and refused to repair the damage afterwards²¹. But the modern origin of the concept of self-defense goes back to the Caroline incident between the British and US governments in 1837²². In the first half of the 19th century, while Canada was under British domination, there was a rebellion against the system of British colonialism²³. On the night of December 29, 1837, the *Caroline*, an American ship that would bring assistance to the rebels, was moored on the American shore of the Niagara River. British troops crossed the river and attacked the ship, killing some Americans and setting fire to the ship. From this moment, tensions arose in relations between London and Washington. On one hand, the United States has declared that British troops have crossed their borders and violated the principle of sovereignty, but the British on the other hand have

²⁰ Murray Colin Alder, *The Origin in International Law of the Inherent Right of Self-Defence and Anticipatory Self-Defence*, 2 *the western Australian Jurist* 115 (2011).

²¹ Kinga Tibori Szabó, *Anticipatory Action in Self-Defence: Essence and Limits under International Law* 32–33 (Hague: T.M.C. Asser Press, 2011)

²² Anthony Clark Arend, *International Law and the preemptive Use of Military Force*, 26(2) *the Washington Quarterly* 90 (2003)

²³ *British-American Diplomacy: The Caroline Case*, Yale Law School Lillian Goldman Law Library (May 2, 2016), available at: http://avalon.law.yale.edu/19th_century/br-1842d.asp#web1.

justified their attack by virtue of the principle of self-defense. Although Great Britain apologized for the act after numerous and intense diplomatic exchanges, the Caroline case has decreed the modern practice of the right to self-defense in international law. During this diplomatic correspondence between the parties was outlined a scheme with the key elements for a legitimate use of self defense. The US Secretary of State, Daniel Webster, stressed that for legal self-defense in international law, the British government must prove:

*“It will be for [Her Majesty’s Government] to show, also, that the local authorities of Canada, - even supposing the necessity of the moment authorized them to enter the territories of the United States at all-did nothing unrosanable or excessive. Undoubtedly it is just, that while it is admitted that exceptions growing out of the great law of self- defence do exist, those exceptions should be confined to cases in which the need for self-defense, instantaneous, overwhelming, without choice of means and no moment of deliberation and assuming that such a need existed at that time:the act justified by the need for self-defense must be limited by that necessity and kept clearly within it.”*²⁴

During the negotiations for the adoption of the United Nations (UN) Charter²⁵ at the San Francisco Conference of 1945, the right to self-defense was expressly enshrined in Article 51 and

²⁴ Webster, D. and Fox, H. S. (1857) ‘Correspondence between Great Britain and the United States, respecting the Arrest and Imprisonment of Mr. McLeod, for the Destruction of the steamboat Caroline – March, April 1841’ *British and Foreign State Papers 1840–1841*, vol. 29, pp. 1126–1142 [Online].

²⁵ Charter of the united Nations (adopted June 26, 1945 and entered into force october 24, 1945).

became part of international conventional law. The International Court of Justice itself (ICJ) made explicit the right and scope of its applicability, in a number of cases, such as military and paramilitary activities in and against Nicaragua (1986) ²⁶, the legality of the threat or the use of nuclear weapons (1996) ²⁷ and the legal consequences of the construction of a wall in the occupied Palestinian territory (2004) ²⁸. Self-defense is the second exception to the prohibition of the use of force in Article 2, paragraph 4, of the Charter of the United Nations. The Charter seeks a balance between the recognition of the right of states to defend themselves, at the same time aiming to limit the use of force through article 2 (4). It is therefore imperative that the right to self-defense be interpreted so as to allow states to protect themselves from armed attacks, without becoming a pretext for unjustified uses of force. Therefore, Article 51 of the Charter was formulated as follows:

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain

²⁶ case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), ICJ Judgment, June 27, 1986.

²⁷ Legality of the threat or use of Nuclear weapons, Advisory opinion, July 8, 1996, ICJ reports (1996)

²⁸ the Legal Consequences of the Construction of a wall in the occupied Palestinian territory, Advisory opinion, July 9, 2004, ICJ reports (2004).

international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.”

In the interpretation of this article, scholars have divided themselves in two different currents of thought: a group of scholars interprets it restrictively and limits the scope of the applicability of the right to use force against an effective military attack. In their view, a state can only exercise the right to self-defense in response to an ongoing armed attack. The attack must therefore be a real attack and the victim must be a real victim, otherwise the use of force would be illegitimate ²⁹. The second group believes instead that the article can be interpreted more widely. According to this current, states can exercise the right not only to fight an effective military attack, but also in response to an imminent armed threat to their sovereignty, political independence and security. This thought starts from the assumption that the right to self-defense was a preexisting custom practice before being included in the UN Charter. Necessity, proportionality and immediacy are also conditions that a state should encounter before and during the use of force, otherwise such use would become illegal. Necessity means that the state must not have other effective and

²⁹ shah 2007, 97.

available means except resorting to the use of force ³⁰. Proportionality means that force must not exceed the scope of the attack and be limited to eliminating the threat. Immediacy means that any response must be instantaneous. However, this represents the less rigid condition because a response to an armed attack can be delayed if it is necessary to collect evidence or any other logical conditions.

1.5 Requirements for Acting in Self Defense

As we have seen in the course of this paragraph, article 51 recognizes the right of states to self-defense, on the condition, however, that the states that exercise this right satisfy two requirements: the first requirement is that:

“[m] easures taken by Members in the exercise of this right of self-defence shall be immediately reported to the security Council and shall not in any way affect the authority and responsibility of the security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.”

³⁰ Christopher Greenwood, *Self-Defence*, Max Planck Encyclopedia of Public International Law (2011) (May 3, 2016), available at: <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e401?prd=EPIL>.

The failure of the member states to satisfy this first requirement makes the request for self-defense less acceptable and is considered a violation of the UN Charter: however, it does not make the use of force completely unlawful. The second condition is that states can take actions only “[u]ntil the security Council has taken measures necessary to maintain international peace and security”. These requirements are binding pursuant to chapter VII of the UN Charter and hopefully attempt to reach a resolution of the dispute by peaceful means. The language version of the Charter provides that the right to self-defense is available “if an armed attack occurs”. Another important aspect concerns the time span that is reflected in the use of the word “happens”, which seems to exclude the possibility of acting in self-defense before an armed attack occurred. The debate on the legitimacy of anticipatory self-defense was one of the most controversial issues surrounding the right to self-defense under international law.

An interpretation of Article 51 of the Charter excluded any possibility of preventive action, and provides for recourse to self-defense only if an armed attack actually took place. Secondly, this self-defense is admissible in the face of imminent attacks. The broad interpretation of the latter position, sometimes called preventive self-defense and which allowed for self-defense in relation to more temporally remote threats, was adopted by the George W. Bush administration following 11 September, with particular reference to “States rogue”, terrorists and weapons of mass destruction³¹. However, this

³¹ *The National Security Strategy of the United States of America* (The White House, 2002), at p. 15. See also the discussion over widening the scope of anticipatory self-defence in J. Bybee, “Authority of the President Under Domestic and International Law to Use Military Force Against Iraq – Memorandum Opinion for the Counsel to the President”, in 26 *Opinions of the Office of Legal Counsel* (2002), at pp. 194-195; A. Arend, “International

interpretation has received very limited support and has been replaced by further clarification of American policy, then reaffirming the requirement of an imminent attack³². There is still a debate among the supporters of the two original positions; there would seem to be increased support for the opinion that there is a right to self-defense in relation to manifestly imminent attacks³³. This position has received further confirmation in the reports of the UN Secretary-General, although there does not appear to be a clear majority for both sides of the debate.

According to Bush administration :

For centuries, international law recognized that nations need not suffer an attack before they can lawfully take action to defend themselves against forces that present an imminent danger of attack. Legal scholars and international jurists often conditioned the legitimacy of preemption on the existence of an imminent threat—most often a visible mobilization of armies, navies, and air forces preparing to attack. We must adapt the concept of imminent threat to the capabilities and objectives of today's adversaries. Rogue states

Law and the Preemptive Use of Military Force”, in 26 *Washington Quarterly* 89 (2003), at pp. 97-98.

³² *Report on the Legal and Policy Frameworks Guiding the United States' Use of Military Force and Related National Security Operations* (The White House: 2016), at p. 9

³³ The Chatham House Principles of International Law on the Use of Force by States in Self-Defence”, in 55 *International & Comparative Law Quarterly* 963 (2006), at p. 965; C. Greenwood, V. Lowe, P. Sands and M. Wood, all in E. Wilmshurst, *Principles of International Law on the Use of Force by States in Self-Defence* – working paper (The Royal Institute of International Affairs, 2005)

and terrorists do not seek to attack us using conventional means. They know such attacks would fail. Instead, they rely on acts of terror and, potentially, the use of weapons of mass destruction-weapons that can be easily concealed, delivered covertly, and used without warning. The United States has long maintained the option of preemptive actions to counter a sufficient threat to our national security. The greater the threat, the greater is the risk of inaction-and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy's attack. To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively.³⁴

Although the question about the Bush doctrine remains uncertain, there may be reason to accept that in the face of a specific ,imminent armed attack based on indicators that can be objectively verified, States can engage in measures to defend themselves in order to prevent the attack. S.uch measure obviously should comply with all the requirements of armed attack, necessity and proportionality, which will further limit

³⁴ THE NATIONAL SECURITY STRATEGY OF **THE UNITED STATES OF AMERICA 15** (2002), available at <http://www.whitehouse.gov/nsc/nss.pdf> [hereinafter **NATIONAL SECURITY STRATEGY**] (asserting that international law has recognized need for nations to defend themselves against states that present imminent danger and that United States maintains option of preemptive actions against serious dangers to national security); see also President George W. Bush, Commencement Address at the United States Military Academy in West Point, New York, 38 WEEKLY COMP. PREs.Doc. 944, 946 (June 10, 2002) ("[O]ur security will require all Americans to be forward-looking and resolute, to be ready for preemptive action when necessary to defend our liberty and to defend our lives.)

the preventive use of force, and the use of effective measures by the Security Council must be preferred. If a state falsely describes its forced measures as preventive self-defense when in fact there was no imminent armed attack to justify such action, its use of force will be examined in the light of the prohibitions of the use of force and aggression.

1.6 Attempts to Limit the Scope of the Prohibition of the Use of Force

Since the entry into force of the UN Charter, several attempts have been made to “*drive a horse or a couch*” through the provisions of Article 2, paragraph 4, and 51 of the UN Charter discussed above. Some writers refer to the concept of just war conceived in contemporary international law while other writers maintain that the United Nations Charter is a convention with a constitutional nature and political considerations should be taken into account in interpreting Article 2, paragraph 4 (Corten, 2012). These considerations served to justify the “preventive war”, “Preventive self-defense”, “unilateral intervention” and “democratic intervention”.

Brownlie reminds us that:

“[T] the doctrine [of humanitarian intervention] was inherently vague and is only open to abuse.

Powerful states could take such measures and when military operations were justified as “Humanitarian intervention”, this

was just one of the many features offered and circumstances often indicated the presence of selfish motives ”³⁵.

Writers, such as Brownlie and Chesterman, adopt the restrictive approach to the interpretation of Articles 2, paragraphs 4 and 51 of the UN Charter while US writers such as D’Amato, Reisman and Tesón adopts what is known as the extensive approach (D’Amato, 1996, Reisman, 1990 and Tesón, 1996). Supporters of the restrictive approach argue that even though the General Treaty for the renunciation of war as an instrument of national policy known as the Kellog-Briand pact of 1928 (from the name of the American secretary of State and the French Foreign Minister)signed in Paris prohibits the use of war, the war remained lawful anyway. So when the United Nations Charter was adopted in 1945, one of its goals was to remedy the shortcomings of the Pact of Kellog-Briand making Article 2, paragraph 4, what is the pivot of the current *ius ad bellum*. Article 2, paragraph 4, avoids using the term "war", its prohibition transcends war and covers forced measures of all kinds. They also argue that in the adoption of the United Nations Charter in 1945, the exercise of both forms of self-defense (individual and collective) is subjected to an essential double check: (i) self-defense must be reported to the Security Council as soon as possible and (ii) the exercise of the right ends with the adoption of the appropriate measures.

³⁵ Brownlie, I. (1963). *International Law and the Use of Force by States*. Oxford: Clarendon Press.
<http://dx.doi.org/10.1093/acprof:oso/9780198251583.001.0001>)

1.6.1 Use of Force in Protection of Nationals Abroad?

Proponents of the extensive approach adopt different devices to annul the provisions of Article 2, paragraph 4, and 51 of the United Nations Charter or to drive a horse and a coach through these provisions.

One of their arguments was the protection of nationals abroad.

While the principle of non-intervention left states a wide discretion in treating their citizens in the way they considered most appropriate, the same principle did not give nations the absolute right to abuse aliens within their borders³⁶. It should be emphasized that Judge Lauterpacht observed the paradox that "*the individual in his capacity as an alien enjoys greater protection from international law than his character as a citizen of his own State*"³⁷. When another state has violated the minimum level of treatment that must be granted to foreigners, International law has sanctioned the use of force so called "self-help" from the state of nationality to protect his life and property of citizens abroad³⁸.

³⁶ See Lillich, *Forcible Self-Help by States to Protect Human Rights*, 53 IOWA L. REV. 325, 326-27 (1967)

³⁷ H. LAUTERPACHT, *INTERNATIONAL LAW AND HUMAN RIGHTS* 121 (1950).

³⁸ Borchard, *supra* note 12, at 346-47; F. DUNN, *THE PROTECTION OF NATIONALS* 19 (1932); 2 C. HYDE, *INTERNATIONAL LAW* Section 202, at 647 (2d rev. ed. 1945);

D. BoWETr, *SELF-DEFENSE IN INTERNATIONAL LAW* 87 (1958); L. McNAIR, *THE*

Despite the prohibition of the Charter on the use of force, however, most jurists continue to assert the right of a state to use armed force for the protection of its citizens who suffer injuries in the territory of another state³⁹. In fact, with the exception of Brownlie and Ronzitti, most of the authors who affirm the absolute interpretation of article 2, paragraph 4, also support the legal validity of the doctrine that allows the rescue of citizens abroad through military coercion.

The so-called rescue doctrine finds broad support in the practice of states during the post Charter era . It is possible to give some examples in this sense: the need to protect the lives of citizens abroad has been invoked as justification by the United States in the intervention of Lebanon of 1958,¹⁴ the Dominican operation in 1965⁴⁰, the Mayaguez incident, the hostage rescue mission in Iran, 37th and invasion of Grenada, 38 of the United Kingdom in the intervention threatened in Iran in 1951 and in the Suez crisis in 1956; by Belgium in the Congo operations of 1960 and 1964; from Egypt in his raid Lamaca in 1978 'and in the rescue attempt in Malta in 1986; and finally by Israel in his raid on Entebbe in 1976⁴¹. While it is true that for a large

³⁹ D. BOWEN, **SELF-DEFENSE IN INTERNATIONAL LAW** 87 (1958); L. McNAIR, **THE LAW OF TREATIES** 209-10 (1961); VAN PANHYS, **THE ROLE OF NATIONALITY IN INTERNATIONAL LAW** 113-14 (1959); Lillich *supra* note 10, at 216; Nanda, *The United States Action in the 1965 Dominican Crisis: Impact on World Order -UN Part I*, 43 **DENVER L.J.** 439, 460 (1966).

⁴⁰ Behuniak, *The Seizure and Recovery of the S.S. Mayaguez: A Legal Analysis of the United States Claims*, 82 **MIL. L. REV.** 157 (1978); Friedlander, *The Mayaguez in Retrospect: Humanitarian Intervention or Showing the Flag?*, 22 **ST. Louis U. L.J.** 601 (1978); Paust, *The Seizure and Recovery of the Mayaguez*, 85 **YALE L.J.** 774 (1976).

⁴¹ Green, *Rescue at Entebbe-Legal Aspects*, 6 **ISRAEL Y.B. HUMAN RIGHTS** 312 (1976); Krift, *Self-Defense and Self-Help: The Israeli Raid on Entebbe*, 4 **BROOKLYN J.**

number of these intervention, criticisms were harshly harsh from a large number of countries, in reality this criticism was mainly aimed at the failure of the rescue mission in meeting the stringent requirements necessity and proportionality and not to the legality of the rescue.

An attempt was made to explicitly justify the rescue doctrine as a kind of self-defense authorized by Article 51 of the UN Charter, but in the end it was not necessary.

There are two main topics that are used to justify the protection of citizens abroad. The first argument claims that the protection of citizens abroad does not violate article 2, paragraph 4, of the Charter of the United Nations because "*such an emergency does not compromise the territorial integrity or political independence of a state, but simply saves citizens from danger that the territorial state cannot or does not want to prevent*" (Wingfield, 2000).

It is of particular importance that in the case of the Corfu Channel ⁴², the United Kingdom claimed that a dredging the operation in the Albanian territory has not threatened neither the territorial integrity nor the political independence of Albania and Albania have suffered neither territorial loss nor loss of any part of their independence. However in not accepting this argument, the International Court of Justice stated:

"The Court cannot accept this line of defense. The Court can only consider the alleged right of intervention as a force policy, as in the past, has given the right to serious abuses and the like

INT'L L. 43 (1977); Note, *Use of Force for the Protection of Nationals Abroad: The Entebbe Incident*, 9 **CASE W. RES. J. INT'L L.** 117 (1977).

⁴² Corfu Channel case (Merits) (United Kingdom v Albania) (1949) ICJ Rep 4-38.

he cannot, whatever the current defect in the international organization, find a place in international law “

Territorial integrity , argues Oppenheim, *"especially where coupled with political independence "is with territorial inviolability "(Oppenheim, 1952). For Brownlie, the terms" territorial integrity "and" political "*

independence "were included in article 2, paragraph 4 of the Charter of the United Nations in order to" provide specific guarantees to the little ones

he states, rather than having a restrictive effect”. This is now the dominant view . Higgins, however, while agreeing with Brownlie and Oppenheim, that *"the use of force, no matter how short, limited or transient the state"*⁴³

territorial integrity ", which the formula of Caroline or Webster, although suggested long ago, still has operational relevance and is an appropriate guide to conduct (Higgins, 1995).

The second argument instead considers the words *"intrinsic right of self-defense in the event of armed attack"* in the article 51 of the Charter. It is suggested that it is possible to argue that the defense of citizens is inside and outside

without the territorial jurisdiction of a state it is actually the defense of the state.

On the other hand, another argument that is used is that of advocates of democratic intervention who state that the term "political sovereignty" is anachronistic when applied to non-democratic governments and should instead be replaced by "popular sovereignty" attributed to individual citizens of a state (Reisman, 1990). The unilateral intervention to support or

⁴³ Higgins, R. (1995). Problems and Process: International Law and How to Use it (pp. 240-244). Oxford: Clarendon Press. <http://dx.doi.org/10.1093/law/9780198764106.001.0001>

restore democracy does not violate state sovereignty and, consequently, the UN charter.

Political sovereignty is the right to govern a delimited territory and the consequent population residing within it. The world order can be traced back to the peace of Westphalia when, after thirty years of bloody wars, in 1648 sovereignty was recognized to sovereign states and states that from that moment existed in a horizontal relationship of equality (Kissinger, 2015).

Democratic intervention leaders argue that democratic intervention is compatible with Article 2, paragraph 4 and article 51 of the UN Charter: this would mean that a unilateral intervention to support or restore democracy

it would not violate state sovereignty. So for example, the massacre of the Chinese government in Tiananmen Square to maintain an oligarchy against China's wishes was a violation of Chinese sovereignty (Reisman, 1990). But Reisman didn't realize it was that if the students had won on Tiananmen Square, they would have done it rejected by over 900 million Chinese peasants (O'Brien, 1989).

Apart from this political consideration, Kissinger in *On China* noted the unintended consequence of the attempt to modify the domestic structure of a country of China's greatness from the outside and recognized that "*Western concepts of human rights and individual freedoms may not be directly translatable, over a finite period of time oriented towards Western politics and news cycles, towards a civilization for millennia ordered around different concepts*" (Kissinger, 2011).

The two interventions mentioned by the representatives of the democratic intervention are Grenada (1983) and Panama (1989) - which remain highly doubtful (D'Amato, 1990, Reisman, 1990). Another doubt is

the democratic intervention and the intervention of Tanzania in Uganda (1979).

In April 1979, President Idi Amin's brutal rule ended , following his overthrow by Tanzanian troops. Humanitarian considerations have played an important role. Tanzania's intervention has been seen by some scholars as an act of liberation (Tesón, 1996) but rejected by others as a precedent in support of the legality of humanitarian intervention (Cassese, 2005). Cassese's rejection of the Tanzania-Uganda case as authoritative precedent for humanitarian intervention is supported by two arguments. The first is that Tanzania has never relied on it

for humanitarian reasons. President Julius Nyerere of Tanzania declared it as his responsibility to overthrow the Ugandan president, he had the "right" to overthrow Amin because Amin's government was a government of criminals. The second reason is that Tanzania was based on the concept of *"invasion of the territory of Tanzania in October 1978 and the annexation on November 1 of the territory of Tanzania north of The Kagera salient, which was equivalent to war"*.

Combined with considerations of self-defense Cassese argues that the United Nations Charter does not authorize individual states to use force against other states in order to stop atrocities, and that such use can only be done when the Security Council considers it exceptionally justified and authorizes it (Cassese, 2005)

1.7 The Lawful Uses Of Force Authorized By The UN Security Council

As mentioned previously in the chapter ,the UN Charter contains two exceptions to the general prohibition on the use of force in Article 2(4): Security Council authorization and self-defence . Consent of the territorial State is not considered as an exception, on the condition that where it is present, is not a use of force contrary to Article 2(4). The authorization of the use of force by the UN Security Council is the legal exception to the prohibition of the use of force in Article 2, paragraph 4. The legal source of such power of the Council to authorize the use of the force is contained in Chapter VII of the Charter, which concerns action with respect to threats to the peace, breaches of peace and acts of aggression⁴⁴ . However, the power that the Council has to authorize individual States or unions of States to the use of force in its name, is not explicit in Chapter VII (or elsewhere in the Charter). Initially it was envisaged that the forces made "available to the Security Council" by the Member States pursuant to Article 43 would take forced action, at the request of the Council ⁴⁵. However, no permanent force actually was created after the events that marked 1945 and the practice of the Council of Authorities to act according to Chapter VII evolved and changed over time⁴⁶ .

To be in line with Chapter VII, the Council must first provide to determine the existence of a "*threat to the peace, violation of*

⁴⁴ As opposed to Chapter VI, which deals with the pacific settlement of disputes.

⁴⁵ E. de Wet, *The Chapter VII Powers of the United Nations Security Council* (Oxford: Hart, 2004), at pp. 256-262.

⁴⁶ *Ibid.* This evolution of the power of the Council to authorise force is strengthened when one considers Articles 42 and 48 of the Charter together.

the peace or act of aggression" (Article 39). This determination is generally included in a resolution by which the Council exercises its powers under Chapter VII⁴⁷. On the basis of this determination, the Council can: "*undertake such actions by air, sea or land that may be necessary to maintain or restore international peace and security ...*" (Article 42). This, has been accepted and interpreted as having the power to authorize states, or in some cases international organizations, to use force. To reach a greater legal clarity, it is always preferable that resolutions ,authorizing the use of force refers to Chapter VII, or Article 42(as practice shows)but this is not essential. What is fundamental ,instead is that there is a formulation of the Council decision authorizing the use of force. This does not mean, however, that the Council should make explicit and make direct references to the use of force in its resolution, (which is not part of its tasks); on the contrary, it refers to the need that when the Council authorizes States to take "*all necessary means*" or "*all necessary measures*", such terms may , and usually do, refer to the use of force ⁴⁸. Clarity in this regard is essential.

The resolution will then describe the task to be performed by the authorized operation and will frequently request reports

⁴⁷ It is *not* the case that a reference to Chapter VII in a Security Council resolution necessarily indicates that the use of force has been authorized. The Council may make recommendations under Chapter VII, as well as take decisions. Furthermore, the Council may exercise Chapter VII powers short of the use of force: it can "call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable" (Article 40), or take measures not involving the use of armed force (Article 41).

⁴⁸ See N. Blokker, "Outsourcing the Use of Force: Towards More Security Council Control of Authorized Operations?", in M. Weller (ed.), *The Oxford Handbook of the Use of Force in International Law* (Oxford: Oxford University Press, 2015), at p. 213.

from the Council on how it should be conducted and continued⁴⁹ .

In the interpretation of a resolution, there are various circumstances that can be taken into consideration and can be used, inter alia, the statements made by Members of the Council at the time of adoption . It must be emphasized that, while the resolutions of the Council may be ambiguous and require careful interpretation, on the contrary, there is no "implicit authorization": either the force was authorized by the Council or it was not⁵⁰ .

The degree of the supervision of the Council must be analyzed under different profiles: first of all ,there is the need to analyze the extent of that authorization; then, the nature of any obligation to report to the Council; and finally, if a specific authorization encounters time restrictions⁵¹ .

The authorized use of force must respect both the necessity criterion and the proportionality criterion. The necessity must be understood in a double sense. First, the Council should authorize the use of force only if it is convinced that unforced measures "*would be inadequate or have proved to be inadequate*" (Article 42). Secondly, the strength of the authorized State (s) must be necessary to achieve the mandate actually provided by the Council. Likewise, even the authorized

⁴⁹ The Use of Force against Da'esh and the *Jus ad Bellum*", in 1 *Asian Yearbook of Human Rights and Humanitarian Law* 9 (2017).

⁵⁰ On the interpretation of Security Council resolutions, see *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, p. 403, at p. 442, para. 94.

⁵¹ Blokker., at pp. 202-226.

use of force must be proportional in a double sense. First, Article 42 allows the Council to take action that is "*necessary to maintain or restore international peace and security*", which suggests that it should only authorize an action that is proportional to the need to achieve this same purpose. Secondly, for the State(s) which use force, the action must be proportional to the objectives established by the authorization⁵².

But sometimes, the requirements and the scope of that authorizations of the Council have been interpreted and applied in a manner which have had implication for the efficiency of the collective security system enshrined in the Charter : one example should be the reluctance of some members of the Security Council to authorize the use of force in Syria in 2013. This could be derived in part from what they considered exaggerated interpretations of previous authorizations.

“The argument of revival” advanced by the United States and others in relation to the 2003 intervention in Iraq shows some of the difficulties encountered in the interpretation in relation to the authorization of the resolutions and has raised important questions with regard to the correctness of the authorization process of the Council⁵³. At this point, while resolution 1441 (2002) did not use the phrase "*all the necessary means / measures*" in this way, explicitly providing Iraq with "*a final opportunity to comply*" - The United States (and the allies)

⁵² J. Gardam, *Necessity, Proportionality and the Use of Force by States* (Cambridge: Cambridge University Press, 2004), at pp. 188-212.

⁵³ US position in W. Taft and T. Buchwald, “Preemption, Iraq, and International Law”, in *97 American Journal of International Law* 557 (2003).

argued that, together with resolutions 678 (1991) (which authorized the force in response to the invasion of Kuwait), and 687 (1991) (which revoked that authorization subjecting it to certain conditions), Resolution 1441 amounted to the reawakening of an authorization that had previously been granted. The main argument was that resolution 1441 found Iraq in violation of the conditions established in resolution 687, therefore, "*a revival*" of the original authorization of 678. It must be however underlined that this argument was nevertheless considered unconvincing by a large majority of academic commentators. The problem was addressed, for example, in the reports of the Netherlands (Davids) and the United Kingdom (Chilcot) in Iraq ⁵⁴. Although the Chilcot inquiry did not intend to reach the determinations of Law ⁵⁵, it was nevertheless far from presenting the legal arguments of the United Kingdom in a favorable light, concluding on the contrary that "*the actions of the United Kingdom have undermined the authority of the Security Council*". Another example in which the interpretation and application of an authorization resolution was very ambiguous and thorny was the resolution 1970 (2011) relating to Libya. It has sometimes been stated that the Security Council has proceeded to authorize the

⁵⁴ Rapport Commissie-Davids, Rijksoverheid (Dutch Government), 12 January 2010 (Davids Commission) (available at: <www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2010/01/12/rapport-commissie-davids/rapport-commissie-irak.pdf>); Report of the Iraq Inquiry (Report of a Committee of Privy Counsellors), 6 July 2016 (Chilcot Inquiry) (available at: <www.iraqinquiry.org.uk/the-report>

⁵⁵ Chilcot Inquiry, at paras. 99-100. See also C. Henderson, "Reading Between the Lines: The Iraq Inquiry, Doctrinal Debates, and the Legality of Military against Iraq in 2003", in 87 *British Yearbook of International Law* (2017, forthcoming).

use of the force retroactively, but if this has actually happened in practice it is still doubtful ⁵⁶. The fact that the Council takes action to restore situations aimed at maintaining peace and international security after an illegal (or questionable) use of force cannot in any way be seen as a confirmation of the original use of force, as was, for example, asserted by some after the intervention in Kosovo.

1.8 Humanitarian Intervention : a new possible exception to the use of force for preventing human right atrocities?

“If international law is, in some ways, at the vanishing point of law, the law of war is, perhaps even more conspicuously, at the vanishing point of international law.”⁵⁷

And it is precisely in international law that the term "humanitarian intervention", which will be addressed in the course of this paragraph, refers to the use of force across state borders by a state (or group of states acting together) for prevent or terminate a humanitarian catastrophe that affects people other than their own citizens, without the permission of

⁵⁶ resolutions passed in the immediate aftermath of 9/11 (UNSC res. 1368 (2001) and 1373 (2001)), and – more controversially – UNSC res. 2249 (2015) on Da’esh.

⁵⁷ (Lauterpacht, 1952)

the State in whose territory this force is directed⁵⁸. However, the concept of Humanitarian intervention is difficult to define with precision . Most authors, though, adhere to a traditional definition, defining humanitarian intervention as an action to “*prevent a state's denial of fundamental rights to, and persecution of, its own citizens in a way that shock[s] the conscience of mankind.*”

On the contrary, if authorized by the Security Council, in accordance with the procedures and requirements governing its use, humanitarian intervention will be lawful as a response to a "threat to peace", within the normal functioning of the Council Chapter VII powers. The starting point in considering the legality of any humanitarian intervention today is the observance of the principles of the United Nations Charter. The Charter in fact establishes the sovereign equality of States (Article 2, paragraph 1), the obligation to resolve disputes peacefully (Article 2, paragraph 3), the prohibition of the use of force (Article 2, paragraph 4) and the principle 124 of non intervention in the national jurisdiction of states (Article 2, point 7). These principles, were then developed in the Declaration on Principles of International Law and Law concerning Friendly Relationships and Cooperation between States in Compliance with the Charter of the United Nations (GAR 2625 (XXV) of 24 October 1970. In order to be considered legal, humanitarian intervention must be justified under international law and therefore be consistent with these principles or fall within an express and appropriate exception to

⁵⁸J. L. Holzgrefe, “The Humanitarian Intervention Debate”, in J. L. Holzgrefe and R. Keohane (eds.), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (Cambridge: Cambridge University Press, 2003), at p. 18.

their application. Since the use of force against a state, even for humanitarian reasons, violates the prohibition of the use of force in Article 2, paragraph 4, of the Charter of the United Nations, must in principle

to be shown that this use of force is not contrary to the provision, or that it may in some way fall under one of the two exceptions laid down in the prohibition, namely authorization by the Security Council pursuant to Chapter VII of the Charter or self-defense under Art. 51. If this is not the case, then the argument in support of the legality of the intervention must rest on a further demonstration than a further exception to the prohibition of the use of force has emerged as a matter of customary international law in a way that undermines the effect of the prohibition set out in Article 2, paragraph 4 of the Charter⁵⁹.

The legally debated issue, concerns the possibility of using force, in the absence of an authorization from the Security Council in cases where serious violations of fundamental human rights have already occurred (or will occur). The United Nations undertake to recognize the sovereignty of the state, and the Security Council preserves peace, security and human rights through collective security measures. The intention of the Charter-writers was to make illegal any use of military force except those contained in the same Charter. Following this principle, the use of force in unilateral humanitarian intervention should be considered illegal ;in fact the text of the UN Charter does not support the right to use force to prevent a humanitarian catastrophe. It has been argued by some scholars

⁵⁹ Lowe, Vaughan and Tzanakopoulos, Antonios, Humanitarian Intervention (October 15, 2010). MAX PLANCK ENCYCLOPEDIA OF INTERNATIONAL PUBLIC LAW, Rüdiger Wolfrum, ed., Oxford University Press, 2012. Available on SSRN: <https://ssrn.com/abstract=1701560>

that the wording "*against the territorial integrity or political independence of any state, or in any other way incompatible with the purposes of the United Nations*" in Article 2 (4) could open a small door of ambiguity in this sense, since a targeted humanitarian action cannot be grasped within this sentence and, therefore, it will not in any way violate the prohibition of using force ⁶⁰. On the contrary, however, the *travaux préparatoires* of the Charter unequivocally confirm that, apart the use of force in self-defense, the prohibition of article 2, paragraph 4, was intended to be all-encompassing with regard to all types of unilateral uses of force . The main concern of supporters of the illegality of humanitarian intervention is based on the fear of potential abuses by stronger states that seek political gain at the expense of weaker states: in fact, states that wish to engage in war, could invoke this too easily doctrine and use it as a pretext for illicit, selfish or political goals. At the same time, many of the weaker states would not be able to employ humanitarian interventions because of their inability to prevent human rights abuses ⁶¹.

⁶⁰ F. Tesón, *Humanitarian Intervention: An Inquiry into Law and Morality* (Irvington-On-Hudson: Transnational, 2nd ed., 1997) at p. 151; M. Reisman and M. McDougal, "Humanitarian Intervention to Protect the Ibos", in R. Lillich (ed.), *Humanitarian Intervention and the United Nations* (Charlottesville: University Press of Virginia, 1973) at p. 177. This argument was advanced by Belgium in relation to NATO action in Kosovo in 1999: *Legality of Use of Force (Serbia and Montenegro v Belgium)*, Oral Proceedings, Public Sitting (10 May 1999), at p. 12.

⁶¹ Jost Delbrilck, *A Fresh Look at Humanitarian Intervention Under the Authority of the United Nations*, 67 IND. L.J. 887, 891 (1992) ("[T]he door to purely arbitrary intervention, that is, acts of aggression in disguise, would be wide open."); *see also* Schachter, *supra* note 7, at 1629 ("The reluctance of governments to legitimize foreign invasion in the interest of humanitarianism is understandable in the light of past abuses by powerful states.").

1.9 The Dilemma of Intervention

In light of the analysis carried out in the previous paragraph, the only way in which humanitarian intervention (without the consent of the State in which the intervention takes place or the authorization of the Security Council) could be seen as a legal exception to the prohibition of the use of force, is if the state practice and *opinio juris* recognizes it establishing its status as a further exception in customary international law. These usual rules, called “state practice” derive from the actions of states⁶². Over time, the "practice of the state" becomes the norm, and therefore become legitimate.

There are a small number of examples of state practices since the end of the Cold War that could support the emergence of a customary practice of humanitarian intervention in favor of such thesis. The first of these was the use of force by the Economic Community of West African States in Liberia in 1990, to put an end to the massive atrocities that occurred during the civil war⁶³. The ECOWAS military intervention has

⁶² Shaw. "It is how states behave in practice that forms the basis of customary law" *Id.*

⁶³ Some commentators have suggested that there may be State practice during the Cold War that might support the emergence of a customary exception of humanitarian intervention, with the most commonly cited instances being India's intervention in East Pakistan (Bangladesh) in 1971; Vietnam's intervention in Cambodia in 1978; and Tanzania's intervention in Uganda in 1979. See T. Weiss, *Humanitarian Intervention* (Cambridge: Polity Press, 2nd ed., 2016), at p. 41 (“In retrospect, all three [of these examples] are frequently cited as evidence of an emerging norm of humanitarian intervention”). However, in all three of these situations, the use of force was primarily portrayed by the intervening State as an exercise of the right of self-defence. See UN Doc. S/PV.1606 (4 December 1971), at pp. 14, 17 (India); UN Doc. S/PV.2108 (11 January 1979), at pp. 12-13 (Vietnam); *Africa Contemporary Records* (1978-1979), at B395, B433 (Tanzania).

not been internationally condemned as a violation of the prohibition of the use of force. In fact, the President of the Security Council released two statements in which members of the Security Council "*praise the efforts made by heads of state and government of ECOWAS to promote peace and normality in Liberia*⁶⁴" and "*to bring the Liberian conflict towards a rapid conclusion* ⁶⁵".

Likewise, the United Kingdom has applied for humanitarian intervention in relation to the creation of the so called "safe havens" in northern Iraq during the Arab Spring of 1991⁶⁶.

For the United Kingdom this request represented "*the underlying justification of the No-Fly Zones*" in northern and southern Iraq. However, it is equally remarkable that the United States attempted to justify the same operation by referring to

Moreover, the international reaction to these instances was not such that it could have been interpreted, even implicitly, as embracing the idea of a new unwritten exception to the prohibition of the use of force when force is used to avert an impending humanitarian catastrophe. For the condemnation of these uses of force as violations of the prohibition of the use of force, see, for example, UN Doc. S/PV.1606 (4 December 1971), at pp. 18, 22 (in relation to India's action); UN Doc. S/PV.2108 (11 January 1979), at p. 10, and UN Doc. S/PV.2110 (13 January 1979), at p. 79 (in relation to Vietnam's action); and *Keesing's* 25 (1979) 29841 (in relation to Tanzania's action).

⁶⁴ UN Doc. S/22133 (22 January 1991).

⁶⁵ UN Doc. S/23886 (7 May 1992). See also UNSC res. 788 (1992) concerning Liberia; C. Walter, "Article 53", in B. Simma *et al.* (eds.), *The Charter of the United Nations: A Commentary*, Vol. II (Oxford: Oxford University Press, 3rd ed., 2012), goes so far as to interpret the latter resolution as a "subsequent and implicit" authorisation by the Security Council in accordance with Chapter VII and Article 53(1) of the UN Charter (at p. 1501, para. 66).

⁶⁶ G. Marston (ed.), "United Kingdom Materials on International Law 1992", in 63 *British Yearbook of International Law* 615 (1992), at pp. 827-828

Security Council Resolution 688 , rather than on a separate plot of humanitarian intervention ⁶⁷.

But the most significant example of the state's practice of the notion of humanitarian intervention is NATO's action in Kosovo in 1999, which is still regularly discussed ⁶⁸. The United Kingdom stated, that the NATO action was "*justified as an exceptional measure to prevent an overwhelming humanitarian catastrophe*"⁶⁹. Similarly, also Belgium argued that action in Kosovo was legally justified as a humanitarian intervention, based on the fact that the use of force was of such a nature that it did not violate the Article 2 (4) of the Charter of the United Nations. Other NATO member States, explicitly justified action in Kosovo based on humanitarian intervention. The notion of the right to use force to avert a humanitarian catastrophe has met with significant opposition from the state following the intervention. The attempt by the Russian Federation to persuade the Security Council to condemn the military intervention of NATO States in Kosovo as a violation of the ban on using the force of the UN Charter failed with 12 votes to 3. Shortly thereafter, the G77 "*rejected the so-called right of humanitarian intervention, which had no foundation in the UN Charter or in international law*".

⁶⁷ N. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000), at p. 166.

⁶⁸ S. Richmond, "Why is Humanitarian Intervention So Divisive? Revisiting the Debate over the 1999 Kosovo Intervention", in 3 *Journal on the Use of Force and International Law* 234 (2016).

⁶⁹ UN Doc. S/PV.3988 (24 March 1999), at p. 12.

The controversy over Kosovo's intervention led to the creation of the International Commission for State Intervention and Sovereignty (ICISS) and to its 2001 report. The concept of responsibility to protect is born ⁷⁰.

The 2004 report of the Secretary-General's High-level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, uses the 'responsibility to protect' concept developed by the ICISS, underlining

“the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign Governments have proved powerless or unwilling to prevent” .

The 2005 Secretary General's report, *In Larger Freedom*, also dwelt on and commented on the responsibility to protect.⁷¹ Just as, in 2005, heads of state and government clearly stated that in the event of "*genocide, crimes of war* ", *ethnic cleansing and crimes against humanity*" were

⁷⁰ *Report of the International Commission on State Sovereignty and Intervention: The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001) (available at: <<http://responsibilitytoprotect.org/ICISS%20Report.pdf>>). This was preceded by a report by the Danish Institute for International Affairs. See *Humanitarian Intervention: Legal and Political Aspects* (Copenhagen: Danish Institute of International Affairs, 1999)

⁷¹ *In Larger Freedom: Towards Development, Security and Human Rights for All*,

“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 are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity”.

1.10 Beyond the Right of Humanitarian Intervention : some critical reflections

While the High Level-panel report of the 2004 , the 2005 Secretary General's report and the results of the 2005 World Summit all supported the doctrine of responsibility to protect, none of these documents entirely had any reference to a unilateral right of humanitarian intervention . In fact, emerged the need for any forced action ,to be authorized by the Security Council. The long debates in the General Assembly of April 2005, on the occasion of the presentation of the report In Larger Freedom, did not work in any way in favor of this right: the States that found themselves facing the question of humanitarian interventions held that was a matter that the Security Council had to decide, excluding that unilateral action was permitted in any case ⁷².

⁷² UN Doc. A/59/PV.86 (6 April 2005); UN Doc. A/59/PV.87 (7 April 2005); UN Doc. A/59/PV.88 (7 April 2005); UN Doc. A/59/PV.89 (8 April 2005); and UN Doc. A/59/PV.90 (8 April 2005).

Therefore, emerges that the General Assembly (that is, the membership of the United Nations as a whole) has opted for a solution that envisaged that the law enforcement action to protect people from the humanitarian catastrophe fell within the competence of the Security Council and not in individual States.

However, this does not mean that the idea of a customary law of unilateral humanitarian intervention has disappeared from the international scene. For example, in August 2013, in connection with the alleged use of chemical weapons by the Syrian government, the United Kingdom stated that "*a legal basis [to use force was] ... available, under the doctrine of intervention humanitarian [under certain conditions] ...*"⁷³. Likewise In 2013, Denmark issued a legal opinion which was in principle along the same line . Despite various considerations, the right to humanitarian intervention remains controversial among writers. The great majority is of the opinion that the practice of the State since 1945 is insufficient to sustain that humanitarian intervention, without the consent or authorization of the Security Council, is legitimate⁷⁴. Beyond the consolidated

⁷³ Prime Minister's Office, "Chemical Weapon use by Syrian Regime: UK Government Legal Position", policy paper (29 August 2013)

⁷⁴ C. Henderson, "The UK Government's Legal Opinion on Forcible Measures in Response to the Use of Chemical Weapons by the Syrian Government", in 64 *International & Comparative Law Quarterly* 179 (2015), at p. 194; Rodley, *supra* n. 164, at pp. 793-794; Corten, *supra* n. 8, at pp. 873-874; S. Murphy, *Humanitarian Intervention: the United Nations in an Evolving World Order* (Philadelphia: University of Pennsylvania Press, 1996); Randelzhofer and Dörr, *supra* n. 12, at pp. 224-225; Dinstein, *supra* n. 8, at pp. 73-75; A. Sarvarian, "Humanitarian Intervention after Syria", in 36 *Legal Studies* 20 (2015); M. Byers and S. Chesterman, "Changing the Rules about Rules? Unilateral Humanitarian Intervention and the Future of International Law", in J. L. Holzgrefe and R. Keohane, *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (Cambridge: Cambridge University Press, 2003), at pp. 177, 202-203; P. Hilpold, "Humanitarian Intervention: Is There a Need for a Legal Reappraisal?", in 12 *European Journal of International Law* 437 (2001).

position of the United Kingdom - which, from the Cold War, was one of the main supporters of an exceptional justification and strictly limited to the use of force by States to avert a crushing humanitarian catastrophe⁷⁵ - there remains only a limited amount of state practice and *opinio juris* that could potentially be seen as legal basis for unilateral humanitarian intervention.

A minority of writers believe that the use of force to avert a humanitarian catastrophe is lawful,⁷⁶ while others point out that the use of force to avert a humanitarian catastrophe will be transformed, under strict conditions, into a “*legal gray area*”⁷⁷. It must be acknowledged, however, that the existence of such minority positions, at least suggests that it is difficult to argue that a right to humanitarian intervention is undoubtedly illegitimate, a point that could be relevant with respect to the question of whether a humanitarian intervention is equivalent to an “*act of aggression, which due to its character (...) constitutes a blatant violation of the Charter of the United*

⁷⁵ C. Greenwood, “Humanitarian Intervention: The Case of Kosovo”, in 10 *Finnish Yearbook of International Law* 141 (1999); S. Chesterman, *Just War or Just Peace: Humanitarian Intervention and International Law* (Oxford: Oxford University Press, 2001).

⁷⁶ Fonteyne, “The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity under the UN Charter”, in 4 *California Western International Law Journal* 203 (1974), at p. 269; R. B. Lillich, “Humanitarian Intervention: A Reply to Ian Brownlie and a Plea for Constructive Alternatives”, in J. N. Moore (ed.), *Law and Civil War in the Modern World* (Clark: Johns Hopkins University Press, 1974), at p. 229; M. Weller, “Introduction: International Law and the Problem of War”, in M. Weller (ed.), *The Oxford Handbook of the Use of Force in International Law* (Oxford: Oxford University Press, 2015), at pp. 3, 31 (at least leaning in the same direction)

⁷⁷ A. Roberts, “The So-Called Right of Humanitarian Intervention”, in 3 *Yearbook of International Humanitarian Law* 3 (2000); R. Kolb, *Ius contra Bellum: Le Droit International Relatif au Maintien de la Paix* (Basel/Bruxelles: Helbing Lichtenhahn/Bruylant, 2nd ed., 2009), at p. 315; T

Nations". The supporters of the minority position are those who strongly maintain that "*no person can remain injured in the midst of the government-sponsored massacre*". The defensive wars to protect human rights are considered the only ones morally justifiable wars .

Furthermore, these authors recognize that, in practice, the collective security measures of the United Nations usually fail to prevent the most serious cases of human rights violations. There are numerous examples of the obvious failures of the UN collective security measures to provide international security for which they were designed. Such examples include the recent cases of former Yugoslavia, Somalia, or Sudan. Furthermore, the fact of not ending or at least responding to extreme violations of human rights can lead dictators to believe that they can commit enormous human rights remaining unpunished. It was claimed that in the era of the UN, collective security measures of Security Council may not be able to prevent serious tragedies and their destructive flows, and that an individual state could maintain the right to unilateral action.

Finally, it should be noted that "*the conclusion with lex lata majority of the illegality does not prejudice the debatable lex ferenda desirability of a legitimate humanitarian intervention , or the significant moral tensions that exist in relation to the need to balance the protection of human rights with the notion of state sovereignty*"⁷⁸.

⁷⁸ B. Simma, "NATO, the UN and the Use of Force: Legal Aspects", in 10 *European Journal of International Law* 1 (1999) (examining the Kosovo intervention from a moral perspective, but not arguing that conclusions as to the intervention's moral desirability meant that it was lawful). It should be noted that some writers have gone further and incorporated, in one form or another, what they see as the 'moral case for lawfulness' in their legal analysis of humanitarian intervention.

1.11 Final Considerations on the Use of Force and the Applications of Art 2(4)

The law consists of a system of authorized coercion in which force is used to maintain public order and in which coercion is not strictly prohibited unless expressly authorized. Thus, on the contrary of what is generally believed, law and coercion are not dialectical absolutes. On the contrary, formal legal provisions are not necessary when there is spontaneous social uniformity; therefore recourse to the law is not necessary. The law is made when there is disagreement: the powerful members of the group called “society” imposed their vision in the name of common interest through the instrument of law with its various range of sanctions. The international legal order diverges from the general national legal systems only with regard to the organization and centralization of the use of coercion. In national systems, coercion is organized, relatively centralized and monopolized by the state apparatus. In the international system however, it is not.⁷⁹ These jurisprudential principles must be taken into consideration in a rational examination of Article 2, paragraph 4, of the Charter of the United Nations. His extensive prohibition of the threat or use of force on the international scene, however, did not represent an autonomous ethical assertion of this prohibition any more than previous

⁷⁹ W. M. Reisman, *Criteria for the Lawful Use of Force in International Law*, 10 *Yale J. Int'l L.* (1985). Available at: <http://digitalcommons.law.yale.edu/yjil/vol10/iss2/5>

attempts to moderate its scope at an international level were. Article 2, paragraph 4, has been included in a complex security system, established and specified in the United Nations Charter.⁸⁰ If the project had worked, it would have avoided the unilateral use of force. But this initial intention has not been fully realized.

However, the Charter recognized the inherent limitations of its organizational structure at international level, reserving the right to self-defense for States.

The UN security system was based on a consensus among the permanent members of the Security Council. However, this consensus , dissolved almost at the beginning of the organization's history. From that moment , the Security Council could not operate as originally planned. Part of the systemic justification for the theory of Article 2, paragraph 4 has disappeared. At the same time, the Soviet Union announced, the refusal to accept Article 2(4): "Wars of national liberation," an open-textured conception basically meaning that wars the Soviets supported, were not, in the Soviet conception, violations of Article 2(4). Arkady N. Shevehenko testified:

"[T]he refusal to abandon support for national liberation movements as a weapon against the Western Powers, and persistent efforts by the Kremlin to penetrate the nations of the Third World for the purpose of luring them into its orbit, imply a willingness to project Soviet military power over the globe and risk, if necessary, conventional wars. Here again, the Soviets are guided by Lenin's formulas, which state that "socialists cannot be opposed to all wars,"

80

particularly "revolutionary wars" or national wars by colonial peoples for liberation" or civil wars. Consequently, the Soviet leadership favors and instigates some local conventional wars. In explaining the Soviet military doctrine in 1981, Defense Minister Dmitri Ustinov called attempts to attribute to the U.S.S.R. a willingness to launch the "first nuclear strike" unfounded nonsense, but he said nothing regarding conventional war."⁸¹

Therefore, the U.S.S.R. may continue to neglect Article 2 (4), ignoring it in practice whenever it considers it appropriate to do so.

However, the international political system has adapted to the need for coercion within a legal system, on the one hand, and to the progressive deterioration of the Charter system, on the other, developing a code with blurred lines for assessing the lawfulness of individuals unilateral uses of force. In a sense, the complexity of the code can be understood by examining, in a single period of time, the 1979, the unilateral use of force without the prior authorization of the United Nations.

In 1979, Tanzanian forces invaded Uganda, expelled the government of Idi Amin and finally revived the government of Milton Obote. In the same year, the French forces, in a rapid and bloodless coup, expelled the government of Jean-Bedel Bokassa from the Central African Republic and installed a different president. In the same year, Vietnam's government forces entered Cambodia and tried to oust the Pol Pot government and replace it with a Vietnam-backed government led by Heng Samrin. In the same year, Soviet forces entered

⁸¹ 1. A. SHEVCHENKO, *BREAKING WITH Moscow* 288 (1985).

Afghanistan for the support of a government that perhaps would not have survived had it not been for the timely intervention and continued presence and foreign military forces. "This annus, to paraphrase Auden, was not mirabilis".

The deterioration of the security regime of the Charter has stimulated a partial recovery of a type of unilateral ad bellum justification. But in stark contrast to the nineteenth-century conception, which was neutral from the point of view of values and extremely based on power, contemporary doctrine refers only to the clarification of the rights recognized by the international community but has shown, in general or in a case particular, an inability to secure or guarantee. Thus, the assessments of a coercive state can no longer simply condemn them by invoking Article 2 (4), but must test the lawfulness or legitimacy by referring to the number of factors, including the contingency for which coercion is applied.

It appears that nine fundamental categories have emerged in which variable support for unilateral uses of force is found. These are: self-defense, which has been interpreted quite broadly; self-determination and decolonization; humanitarian intervention; intervention by the military instrument to place an elite in another state; uses of the military instrument in spheres of influence and critical defense zones; interventions sanctioned by treaties in the territory of another state; use of the military instrument for gathering evidence in international proceedings; use of the military instrument to enforce international sentences; and countermeasures such as reprisals. The inclusion of an individual use of force within a particular category does not mean, however, that it can be considered lawful.

According to the author Reisman, in the determination of any action, a constant factor (above all a *conditio sine qua non*) is

the need to maintain minimum order in a precarious international system. Will a particular use of force, whatever its justification, improve or undermine the world order?

Once an answer to this requirement is provided, attention can be directed to the fundamental principle of political legitimacy in the contemporary international scene. It is with key decisions such as those concerning Namibia⁸² and Western Sahara⁸³, the progress of the right of peoples to determine their political destinies: Article 2 (4) is the means. The basic policy of contemporary international law has been to maintain the political independence of territorial communities so that they can continue to develop their desire for political organizations in an appropriate form for them. Article 2 (4), as in the Charter and in contemporary international politics, supports and must be interpreted in terms of this key postulate. Every application of Article 2, paragraph 4, must improve the opportunities for self-determination in progress. All the interventions are convincing, the fact is that some may need, in terms of aggregate consequences, to increase the “likelihood of free choice of peoples regarding their government and their political structure”. Others have the objective and consequence of the manifestation of doing exactly the opposite. There is therefore no need or justification for treating in a practically identical way the Tanzanian intervention in Uganda to overthrow the despotism Amin, on the one hand, and the Soviet intervention in Hungary or Czechoslovakia to overthrow the popular

⁸² 1971 I.C.J. 16.

⁸³ 1975 I.C.J. 4.

governments and impose an unwanted regime on a forced population on the other.⁸⁴ The author writes :

“In communities without established or durably institutionalized procedures for the transfer of power, a group of military officers, without a base of popular support, seizes the government. In an equally familiar variation of this scenario, the putsch itself is externally inspired, encouraged and/or financed. As their control is precarious, the officers immediately seek the support of an outside Superpower; it responds by providing military and administrative assistance within the country and material help and support in external political arenas. Because of this foreign reinforcement, what would probably have been an evanescent violation of the popular will persists. Ironically, most of the sequences of this scenario are compatible with traditional international law and Article 2(4) as it has been mechanically applied. The usurpers of power are entitled to recognition as a government if they appear to have effective control, a doctrine established clearly since Chief Justice Taft's holding in Tinoco. As such, the new "government" is entitled to request assistance from abroad. Other governments responding to it are not deemed to be "intervening," yet another foreign force, entering the country, putting the mutinous military back in the barracks and rein-

⁸⁴ W. M. Reisman, *Criteria for the Lawful Use of Force in International Law*, 10 *Yale J. Int'l L.* (1985). Available at: <http://digitalcommons.law.yale.edu/yjil/vol10/iss2/5>

4. Reisman, *Coercion and Self-Determination: Construing Charter Article 2(4)*, 78 *AM. J. INT'L L.* 642, 644-45 (1984).

stalling the ousted government and the former constitutional procedures would violate the terms of Article 2(4).”⁸⁵

What Reisman wanted to underline in his work, is the fact that the effect of an automatic interpretation of Article 2, paragraph 4, could involve far-reaching social and economic changes and serious deprivation of human rights by numbers and civilian population. This takes place in a century whose politics is marked by a greatest mobilization of mass, with a frequent and radical intervention by the state apparatus.

The scenarios proposed by the author are destructive of the political independence of the community concerned, as would also be a massive invasion by the armed forces of another state. Qualifying the second form of intervention as inadmissible or illicit and the former as admissible or licit or at least not accepted by international law would mean violating the basic policy that international law seeks to achieve. The promulgation of a rule such as Article 2, paragraph 4, despite its difficulties and ineffectiveness, is an important result. But it turns out to be naive to insist that coercion is never used, as coercion is a ubiquitous feature of social life in its greatness and an indispensable characterizing component of the law. The most important issue in a decentralized international security system is not about whether coercion was applied but whether it was applied in support of or against the order of the international community and basic policies, and whether it was applied in ways in which the consequences include the achievement of the goals pursued by the community. Given the vastness of the

⁸⁵ W. M. Reisman, *Criteria for the Lawful Use of Force in International Law*, 10 *Yale J. Int'l L.* (1985).

destructive and disastrous power of the weapons in question and the violence and wickedness that human beings have proved capable of, such a decentralized security system has often proved inadequate. But it is a fact. However, the possibility of making UN security functions effective in the near future is slight. The effort to improve the organization is always important and justified. But in the meantime, rational and responsible decisions will have to be taken in the many cases that continue to appear on the international scene.

An important part of the control over unacceptable coercion will be a fundamental re-reading of the legitimate objectives for which coercion can be used: respect for the fundamental and lasting values of the contemporary world public order and above all of human dignity.

Conclusion

The use of force is "channeled and disciplined by the notions that the members of a society share when the force is legitimate. In part, these notions are captured by rules of international law because, over time, the war was perceived not as a Positive undertaking accomplished by the States, but as a necessary evil, to be avoided except in the cases expressly provided for and by laws, for extreme issues and now limited by legal and multilateral frameworks, guarantor of order and international salvation. However, the UN Security Council as guarantor of international balance and stability has not always succeeded in its initial intentions: many debates are still open and the

international scene is still divided into two categories: those who support a rigid interpretation and strictly literal of the United Nations Charter, on the one hand, and those who prefer a more comfortable and broader interpretation on the other. Among these , we can certainly attribute those that support humanitarian intervention as a further exception to the prohibition on the use of force. This has been and still is, one of the most controversial and debated issues in international law, which together with its peculiarities and fundamental characteristics, will be treated in the next chapter.

CHAPTER TWO

2 *The doctrine of humanitarian intervention*

Introduction

The purpose of this chapter is to show how the framework of human rights law and the consequent change in international law regarding humanitarian intervention, has evolved. The origins of the doctrine can be traced back to the beginning of the modern period and to find its support in the writings of classical theorists such as Grotius and Vattel. But it is in the post-war atmosphere that the growing global consciousness of human rights violations has caught the attention of the international community like never before, and the question of intervention for human protection has turned into a serious question of disputes and debates. As a result, humanitarian intervention has undergone a transformation. The doctrine of Responsibility to Protect (R2P) is the result of several years of diplomatic negotiations on how, when and under what circumstances the international community has the right or the power to intervene in another state to protect citizens. The key to the debate on humanitarian intervention concerns the intersection between the moral and legal aspects of the intervention. From a legal point of view, humanitarian intervention can be seen as a violation of one of the fundamental principles enshrined in international law: the political and territorial independence of the state. On the other hand, it is difficult to oppose moral justice to intervene in order

to protect people in another country from serious violations of their human rights. Critics and commentators are still divided on this point. The main topic of the chapter is the analysis of the responsibility to protect, its implications, its controversies and application of these principles to two significant cases: the genocide in Rwanda and the case of Lybia. To this end, the role of the R2P principle will be explored in relation to the difficulties presented by these two cases. Did it really work or was it used only as a pretext? Importantly, the invocation of R2P in Libya has had adverse implications by reacting to the bloodshed in Syria and this will affect the future of R2P.

2.1 The Concept of Humanitarian Intervention: the Origins and its Definition in International Law

“People begin to feel that not only is every nation entitled to a free and independent life, but also that there are bonds of international duty binding all the nations of this earth together. Hence, the conviction is gaining ground that if on any spot of the world, even within the limits of an independent nation, some glaring wrong should be done ... then other nations are not absolved from all concern in the matter simply because of large distance between them and the scene of the wrong”⁸⁶

What should the international community do when a government does not respect humanitarian norms and violates the human rights of its citizens? If there is a responsibility for

⁸⁶ Giuseppe Mazzini, ‘On Nonintervention (1851)’ in Stefano Recchia and Nadia Urbinati (eds.), *A Cosmopolitanism of Nations: Giuseppe Mazzini’s Writings on Democracy, Nation Building, and International Relations* (Princeton University Press, 2009), 217–18.

protecting people from serious human rights violations, which international player should be responsible for countering these crimes? Is it permissible to interfere from the outside in the internal affairs of a sovereign state to prevent mass atrocities and stop crimes against humanity? These questions are related to the issue of humanitarian intervention and reveal the current conflict between two crucial pillars in international relations: respect for state sovereignty and the defense of humanity. This intervention dilemma is not just a recent issue; has a long history ⁸⁷.

The humanitarian and also moral question linked to contexts of war and violation of human rights began to arise at the end of the nineteenth century, in the past century. Humanitarian intervention as a legal justification for the use of force can be traced back to Grotius and his thesis that war can be undertaken as a punishment for the "wicked" (*as long as the punisher's hands are clean*), as well as on behalf of the oppressed. Alberico Gentili had already discussed similar topics previously, although his focus was more on morale than legal duties (Chesterman at 14). Later, Emmerich de Vattel accepted an exceptional right to intervene in support of the oppressed when they themselves rebelled against an overly oppressive government, although it rejected any right of intervention or interference in the internal affairs of another state in other circumstances. In the era of the pre-UN Charter, there was no established state practice of relying on a right to humanitarian intervention to justify the use of force, although then, as now, academic commentators wrote in support of the concept. The interventions of the Great Powers in the Ottoman Empire in the

⁸⁷ S Murphy *Humanitarian Intervention—The United Nations in an Evolving World Order* (University of Pennsylvania Press Philadelphia PA 1996)

19th century for the protection of the Christian and Jewish populations of that Empire have often been claimed by jurists as examples of humanitarian intervention. However, even in those cases where armed force was actually used, as in the naval battle of Navarino in 1827 in support of the Greek rebellion or the French occupation of Lebanon and Syria (at that time parts of the Ottoman Empire) in 1860-1, the legal justifications invoked by the States, when offered, were related to the obligations of the Ottoman Empire treaty, to allow intervention and the protection of commercial interests, the prevention of piracy and so on. Even the American intervention in Cuba during the latter's war with Spain in 1898, sometimes described as a real humanitarian intervention, was justified by the United States on the basis of the protection of the citizens and property of the United States in Cuba, of the protection of the commercial interests of the United States and even self-defense, along with a superficial reference in President McKinley's message of war to "the great dictates of humanity". In the pre-Charter period, there are strong connections between any kind of force intervention with a (proclaimed) humanitarian purpose and, on the other hand, the colonial enterprise ⁸⁸. The American intervention in 1898, for example, led Cuba to become an American protectorate. In all cases of forced intervention in this period, humanitarian considerations were, when and if present, mixed with numerous other considerations and were never invoked exclusively or explicitly as sufficient legal justifications. The same concept of humanitarian access could be understood, as we will see in the course of the chapter, as a direct consequence of a path begun in the past century, aimed at leading states to take note of the need, especially in wartime

⁸⁸ N Krisch (2002) 13 EJIL 323 to 330-1

contexts, to preserve rights and above all to intervene in favour of those considered weak. Historically, an important point of reference should be the conclusion of the Vienna Congress and the battle against the slave trade. In this context, the behaviour of Great Britain is significant. Britain, in Vienna, was strongly committed not only to the establishment of a ban on the slave trade, but began numerous diplomatic negotiations in favour of a concrete international mechanism for imposing this ban. To strengthen its credibility in relation to the new foreign policy paradigm of a general abolition, London changed the old foreign policy⁸⁹. Overall, the policy of British government suffered from an enormous influence on the part of civil society. As mentioned at the beginning of this work, the humanitarian issue and therefore also the humanitarian intervention is historically posed both from a point of view that we can define as legal, both as a need of the community itself. Winners and losers converge, under this approach, in affirming a humanitarian principle that sees respect for the prerogatives typical of the human person as the fundamental point.

The group of abolitionists was successful, through the successful mobilization of public opinion with strong pressure, an active policy of intervention against the slave trade. In this way, a remarkable intertwining of civil society and international politics at the beginning of the nineteenth century came to light. The new concept of intervention, consisting of an innovative combination of military and legal means, finally established itself through individual or bilateral agreements. Through this international regime of prohibition of the slave trade that was being established, the new practice of the States to collectively

⁸⁹ KLOSE F., Il Congresso di Vienna e le origini dell'intervento umanitario, *Annali dell'Istituto storico italo-germanico in Trento*, 2015,I, 39 e ss.

intervene in defense of humanitarian norms was consolidated. Principle that would have had to wait half a century to find a first "officialization". In fact, the doctrine⁹⁰ identified as the birth of modern international humanitarian law , the movement of codification of the uses and customs of war that developed in the second half of the nineteenth and the beginning of the twentieth century whose promoters were Henry Dunant and Francis Lieber.

2.2 Overview of International Humanitarian Law

The successive and most significant stages of the development of international humanitarian law are marked by the adoption of the St. Petersburg Declaration of 1868. A declaration that retains its interest even today, not so much for the concrete subject it covers, as for the statement contained in its preamble that the only legitimate aim that states must pursue during the war, is the weakening of the enemy's military forces, since the adoption of the Fourth Hague Convention of 1907 concerning the laws and customs of land war and the Regulations annexed to it⁹¹ . After the catastrophe of the Second World War there was a major revision of international humanitarian law, with the adoption, on 12 August 1949, by the representatives of 48 States summoned to Geneva by the Swiss Confederation (in its capacity as State depositary of the Conventions of Geneva), of

⁹⁰ PICTET J, *Le droit humanitaire et la protection des victimes de la guerre*, Institut Henry Dunant, Leiden, Sijthoff, 1973, pp. 30-32

⁹¹ WEISS T.G., COLLINS C, *Humanitarian Challenges & Intervention*, Boulder, Colo., Westview Press, 2000, p. 14 e ss.

four new conventions concerning the protection of war victims based on projects developed by the ICRC⁹². Further developments in international humanitarian law date back to the 1970s with the Diplomatic Conference on Reaffirming and Developing International Humanitarian Law applicable in Armed Conflict, held in Geneva from 1974 to 1977, which led to its adoption, on 8 June 1977, of two additional Protocols to the Geneva Conventions, concerning, respectively, international armed conflicts and non-international armed conflicts. The conventional activity in the field of humanitarian law is largely due to the impetus given by the international Red Cross movement, which certainly went beyond the patterns of the law of war relating to the protection of victims of armed conflicts: in particular, reference is made to the rules contained in the 1951 Geneva Convention on the status of refugees and the provisions that abolish slavery and the trafficking of women and children⁹³. Considering the extension of the term "humanitarian", the law examined so far would include, above all, the norms set up to guarantee the rights of the human person, in fact the Geneva Conventions of 1949 and Protocol I, enunciating many provisions for the protection of the human person in the international armed conflicts, specifically create a

⁹² The International Red Cross Movement is an international non-governmental organization that was institutionalized in 1928 by the XIII International Conference of The Hague, in which the Movement was given the task of coordinating worldwide other non-governmental international organizations that became its members: the International Committee of the Red Cross, the International Federation of National Red Cross and Red Crescent Societies and National Societies, including the Italian Red Cross and National Red Cross Societies of EU member states. The Movement operates in the field of humanitarian aid on the basis of seven common fundamental principles (Humanity, Impartiality, Neutrality, Independence, Voluntary Character, Unity and Universality) adopted by the XX International Red Cross Conference held in Vienna in 1965.

⁹³ BONDOLFI A., *La guerra giusta in Francisco de Vitoria: un aggiornamento della dottrina medievale o un cambiamento di paradigma?* Conferenza tenuta presso il Dipartimento di Lettere e Filosofia dell'Università di Trento il 26 febbraio 2015, p. 147 e ss.

twofold regulatory order: a first class of rules concerning, in general, the protection of human rights of civilians and a second class comprising the protection of human rights in relation to the application of both the Convention of Geneva that of the International Conventions of Human Rights⁹⁴. From these conventions originated Humanitarian Law to be understood as a set of conventional and customary rules designed to prevent and limit in conflict situations, both internal and international, the human suffering of people who do not take part (or no longer take part) in hostilities , making the behaviors of the parties involved more human and placing limits on the use of means and methods of war. However, it is necessary to specify which are the two regulatory systems established by the international community to deal with the "war" phenomenon: 1) jus contra bellum (law against war): it is the one pursued by the United Nations Charter and its general prohibition of the use of force; in fact, the UN condemns the right to resort to force, except in the case of legitimate defense to be exercised until the Security Council implements the measures provided for in the Charter; 2) jus in bellum (laws of war): it is an attempt to "regulate" the armed conflict.

The importance of this second line of action is evident: the UN system, despite having managed to avert other conflicts, has failed to prevent numerous conflicts, but unfortunately increasingly frequent and increasingly frequent tragic for the peoples involved. The set of these legal instruments together

⁹⁴ It should be clarified that not all the mandatory rights based on the International Covenant on Civil and Political Rights of 1966 find, however, protection in the Geneva Conventions, although the protection of the civilian population remains always and in any case guaranteed in the event of an employment regime, even if these are residents of enemy territory. Cfr.

with various other regulations that we will also be examined in the course of this thesis make it clear that the law that applies in the event of armed conflicts has a dual function: it governs the conduct of war and protects the victims of armed conflicts. However, it does not respond to question on the lawfulness of a armed force (*ius ad bellum*) which is regulated by the Charter of the United Nations (UN). International humanitarian law applies to any armed conflict, regardless of its legitimacy, for all parties to the conflict. The notion of humanitarian access is instrumental in making these concepts empirical. In the event that civil protection is not sufficiently provided with supply goods and foodstuffs, international humanitarian law provides for impartial and non-discriminatory humanitarian relief actions if the parties involved agree. It also obliges the States to approve and facilitate the rapid and efficient transport of relief goods. Civilians have the right to contact any organization who can send them the help. In the case of armed conflicts, humanitarian organizations often cannot access civilians in need of protection, for example because the conflicting parties do not allow such access, due to geographical or logistical difficulties, bureaucratic obstacles or security considerations⁹⁵.

Humanitarian access to be practiced in time of armed conflict (an expression that has replaced the first term in the contemporary legal lexicon). Today this construction seems

⁹⁵ CALORE A (a cura di) , «Guerra giusta»? Le metamorfosi di un concetto antico, *Seminari di Storia e di Diritto*, III, Giuffrè, Milano 2003, p. 123 e ss.

simplistic even if after the end of the Second World War, it has clearly expressed the separation between the two systems.

Human rights, as far as they are intended to be implemented in peacetime, remain, in principle, applicable during an armed conflict limited to their essential norms. Indeed, the conventions on human rights provide for the possibility for States to suspend the exercise of certain rights in emergency situations, with the exception of fundamental rights⁹⁶.

2.3 Evolution and Practice of Humanitarianism

The decisive moment, in which humanitarian law and human rights began to approach was in May 1968 during the "International Conference on Human Rights" of the UN, meeting in Teherán. For the first time the United Nations mentioned human rights in relation to armed conflicts, adopting two resolutions concerning respect for human rights in armed conflicts. The first, resolution I, entitled "*Respect and application of human rights in the occupied territories*", asked the Israeli government to "*respect and apply in the occupied territories the Universal Declaration of Human Rights and the*

⁹⁶ COLOMBO A., I nodi politici dell'ingerenza umanitaria, «Quaderni di Relazioni Internazionali», 15 (2011, p. 163 e ss.)

Geneva Conventions of 12 August 1949 ". The second, Resolution XXIII, entitled "*Human rights in armed conflicts*", stated that the violence and brutality so widespread in our age, in particular the massacres, summary executions, torture, inhuman treatment inflicted on the prisoners, the deaths of civilians during armed conflicts and the use of chemical and biological weapons, including napalm bombs, undermine human rights and generate new brutalities. Furthermore, this resolution called on all states to adhere to the Geneva Conventions. The two resolutions of this conference, which will be taken up and developed by the UN General Assembly, constitute the starting point of the problem of "*respect for human rights in times of armed conflict*", a title which now appears in all resolutions of the General Assembly concerning the protection of the human person in times of armed conflict. At the same time, they represent a principle of elaboration and change of the concept of humanitarian intervention and humanitarian law.

The principles of humanitarianism have always been, along the lines of the values advocated by the Red Cross, such as humanity, impartiality and neutrality, as well as others less shared or considered less absolute (independence, universality, voluntary service, unity). Absolute was the consideration that all victims had equal dignity, that towards them there was an obligation of assistance and that the basis of their action was the

consideration of the need of others⁹⁷. The duty of humanitarian intervention is necessarily manifested , only after the actions of governments and supranational bodies have proved incapable of protecting fundamental rights (starting from survival) of groups of people and of the population; and always starts from the awareness that something is being done to alleviate the symptoms of the disaster, not to cure its causes. In the past, the duty and responsibility before and immediately after the Second World War, focused exclusively on alleviating short-term suffering, in times of emergency; now, more and more often, humanitarian agencies are facing the problem of the context in which they operate and do not hide the objective of confronting or even helping to resolve the conflicts in which they find themselves acting. This is a fundamental change in the very nature of humanitarianism, as the most drastic or pessimistic critics seem to argue, or it is a new response to a new historical situation that has emerged with progressive clarity during the 1990s and has modified above all, before some tragic failures ,first political and then humanitarian of the international community. The expansion of the concept of humanitarianism does not respond to an ideological choice of aid agencies, but to the growing attention that, starting from the end of the Cold War, we have set ourselves (due to the urgency of the facts and to greater awareness, even if only superficial or interested). In

⁹⁷ TERRY F, *Condemned to Repeat? The Paradox of Humanitarian Action*, Ithaca, N.Y., Cornell University Press, 2002, p. 269 e ss.

particular, the problem develops between the need to give solutions to the conflicts in progress and at the same time try to intervene on the context that has favoured them.

The novelty would consist according to authoritative studies⁹⁸ in a politicization of humanitarianism (both in the sense of wanting to make politics in the first person and as an increasingly close bond with governments and supranational bodies) that would have slowly but inexorably undermined the original inspiration . In his pamphlet critic Rieff⁹⁹ recalls that humanitarian action has never been the most appropriate response to the endless suffering suffered by poor countries and that there are no humanitarian solutions to humanitarian problems. From this point of view, humanitarianism appears from the beginning as a sort of collision or surrogate for political failures. But the latter, despite the claims of independence and the neutralism professions of humanitarian agencies, has always been present on the scene, influencing in any case the choices and the behaviour of the aid organizations (the most evident example is that of the International Committee of Red Cross and its silence on the Nazi death

⁹⁸ CHANDLER D, *From Kosovo to Kabul. Human Rights and International Intervention*, London, Pluto Press, 2002, p. 365 e ss.

⁹⁹ RIEFF D, *Un giaciglio per la notte. Il paradosso umanitario*, trad. it. Roma, Carocci, 2003, p. 286 e ss.

camps in exchange for the possibility of continuing to operate in the war zones where the German army was present)¹⁰⁰.

It should also be pointed out that in international affairs in recent years there is a recurrent action by states and governments, which claim to defend human rights and humanitarian interference as one of the pillars of the new international post-cold war system¹⁰¹.

In this perspective, various studies¹⁰² declare that current humanitarianism is very different, in practice and in principles, from that of the founders of the nineteenth century humanitarian movement. Humanitarianism has become central, from a marginal point of view, in international politics. This process is due to a new interpretation (or ideology) of humanitarian politics and to its growing integration with the theme of human rights. And it is on this basis that humanitarianism, now transformed to legitimize international policies, is often condemned.

The various analyzes point out that humanitarian workers are more interested in long-term human rights outcomes than in short-term humanitarian emergency needs.

¹⁰⁰ PICCIAREDDA S, *Diplomazia umanitaria. La Croce Rossa nella seconda guerra mondiale*, Bologna, Il Mulino, 2003, p. 214 e ss.

¹⁰¹ COLOMBO A., I nodi politici dell'ingerenza umanitaria, «Quaderni di Relazioni Internazionali», 15 (2011, p. 163 e ss.)

¹⁰² MARCON G, *Le ambiguità degli aiuti umanitari. Indagine critica sul Terzo settore*, Milano, Feltrinelli, 2002, p. 32 e ss.

The case of Biafra is emblematic. The refusal of a neutralism that prevented not only to take a position - political and moral - on the reasons of the parties in conflict, but that accepted complicity in the lack of information on the conflicts themselves and on the abuses, violence, privations that accompanied them. It was the recognition of a politicization of humanitarian crises which has now become evident, of a clear political use of those crises by the states and in particular of the governments of the two superpowers of the cold war, of a growing awareness of public opinion on the problems related to genocide, massacres, international justice¹⁰³.

Many of the contradictions of humanitarianism have been exacerbated by the particular conditions of the present era. We prefer to call it now globalization or the post-cold war era. The most relevant and tragic - not only for the effects it has on the victims but also for the dilemmas that lead to helpers - is that humanitarian action can prolong the suffering it intends to alleviate¹⁰⁴.

The most resounding case of the last decade is that represented by Rwanda, where aid to the victims-refugees in the refugee camps has strengthened the power of the groups responsible for the genocide. The only possible option for humanitarian

¹⁰³ WHEELER N.J, *Saving Strangers. Humanitarian Intervention in International Society*, Oxford, Oxford University Press, 2002, p. 74 e ss.

¹⁰⁴ FLORES M., *Tra carità e investimento: paradossi e problemi dell'azione umanitaria*, Il Mulino, Bologna, 2003, p. 214 e ss.

agencies was to refuse or participate. For example, the choice of *Médecins sans Frontières* to leave the field arose from the refusal to endorse the negative consequences of aid based on the best intentions. This was a choice that was not shared by other agencies that remained in Rwanda to honor the ethical goal of helping anyone in need¹⁰⁵.

The help in some cases can become part of the mechanisms of oppression and violence that have been at the origin of the humanitarian crisis. This occurred not only in the case of Rwanda was not true only in the case of Rwanda or Cambodia. This phenomenon has been realized in a direct or indirect way to favour the war economy, the creation of illegal trafficking, enrichment, strengthening of power by groups involved in conflicts as happened in the former Yugoslavia and in Somalia, in Liberia or in Congo , in Sudan or Sierra Leone¹⁰⁶.

We cannot get out of these dilemmas and problems with ideological options or principles (both ethical and political) that should always be valid and that are repeated identical even in different situations. This is perhaps the most macroscopic limit of pacifist movements, to which thousands of humanitarian

¹⁰⁵ It is on the occasion of the Nigerian crisis for Biafra that Bernard Kouchner, Patrick Aeberhard, Max Recamier and other doctors recruited by the Red Cross take their distance from the neutralist politics of this organization and hypothesize the creation of a new humanitarian organization that will be founded in 1971: Médecins sans frontières

¹⁰⁶ BECKER D, You Better Be Good. Review of David Rieff, «Trn-Newsletter 2», Hamburg Institute for Social research, May 2003, URL TraumaResearch.net/fr_beck.htm.

activists belong, who are instead forced to think about these dilemmas. It is therefore necessary to frame humanitarianism in a context of criticism in the political and propagandistic use of human rights by Western governments and states and supranational organizations in which the Western powers play a hegemonic role. Moreover, many humanitarian agencies have either become or are becoming pawns for current war games or are increasingly dependent on the needs of the image and the choices of their main donors and sponsors¹⁰⁷.

2.3 *The Responsibility to Protect*

The R2P principle could be interpreted as another name for humanitarian intervention. In fact, the R2P doctrine is different to humanitarian intervention¹⁰⁸. As Evans (2008) points out: *“The biggest misunderstanding about R2P was the belief that R2P is just another name for humanitarian intervention*¹⁰⁹: *undoubtedly, one can claim that*

¹⁰⁷ COLOMBO A., I nodi politici dell'ingerenza umanitaria, «Quaderni di Relazioni Internazionali», 15 (2011, p. 163 e ss.)

¹⁰⁸ Dayvid Chandle, *Unraveling the Paradox of the Responsibility to Protect* (Irish Studies in International Affairs, Department of Politics and International Relations, University of Westminster, London 2011).

¹⁰⁹ Gareth Evans, *Responsibility to protect: ending mass atrocity crimes once for all* (Washington DC, Brookings Institution 2008) 56

humanitarian intervention paved the way for the emergence of the R2P doctrine. While humanitarian intervention is about military response, “responsibility to protect is much more nuanced, much more multi-dimensional.”

The concept of "responsibility to protect" (RdP) stems from the tragedies in Rwanda and the Balkans in the 1990s following which the international community began to debate how to react effectively when the human rights of citizens of a state are systematically violated¹¹⁰.

Former Australian Minister of Foreign Affairs, Evans put it as follows:

“The first thing about R2P is that it involves a presentational shift from the language of the right to intervene to the language of responsibility to protect, so you no longer talk about the right of the big guys or anyone else to throw their weight around but the responsibility of everyone to prevent these atrocities occurring, you talk not in terms of intervention as the key idea but protection, so you shift the paradigm, the way of looking at this away from the interveners to the victims, those who suffer death, rape, displacement, violence,

¹¹⁰ FLORES M., Tra carità e investimento: paradossi e problemi dell'azione umanitaria, Il Mulino, Bologna, 2003, p. 214 e ss.

horror in these situations. ¹¹¹” Two important commissions were established which repeated the need to cover a clear legal position on the question of humanitarian intervention. The Kosovo Commission, led by Richard Goldstone, concluded somewhat confusedly (from an international legal perspective), stating that NATO's intervention in Kosovo was "*an illegal but legitimate commission*¹¹²".

The International Commission on Interventions and State Sovereignty (ICISS), chaired by Gareth Evans and Mohamed Sahnoun stated that, due to a "political reality" issue, it would be impossible to find consensus on any series of military intervention proposals that recognize the validity of interventions not authorized by the Security Council or the General Assembly:

“But that may still leave circumstances when the Security Council fails to discharge what this Commission would regard as its responsibility to protect, in a conscience-shocking situation crying out for action. It is a real question in these circumstances where lies the most harm: in the damage to international order if the Security Council is bypassed or in the damage to that order if

¹¹¹ Gareth Evans, *Responsibility to protect: ending mass atrocity crimes once for all* (Washington DC, Brookings Institution 2008) 56

¹¹² Independent International Commission on Kosovo, *The Kosovo Report* (OUP 2000) 4

human beings are slaughtered while the Security Council stands by 113.” The report of the International Commission on Intervention and State Sovereignty (ICISS) of December 2001 represents the most comprehensive and complete attempt to regulate in a scientific manner what has just been described on the responsibility of States to guarantee the safety of their citizens. In fact, the starting point is the identification of a series of remedies, including military intervention, to avoid human rights violations within contexts especially of war where state authorities are critically ineffective. The report was created to find a positive solution - legally acceptable and compatible with state sovereignty¹¹⁴ - to the traditional problem of humanitarian intervention. Key elements of the ICISS report, The Responsibility to Protect, were adopted by the United Nations at a summit on the 2005 General Assembly resolution, which acknowledged that a state that shows reluctance or inability to protect its population from genocide, crimes of war, ethnic groups purification or crimes against humanity can give rise to an international responsibility to protect'. However, this was limited to peaceful means, except in extreme circumstances where

¹¹³ International Commission on Intervention and State Sovereignty (n 2) 54-55

¹¹⁴ We are referring more precisely to the question posed by the then UN Secretary-General Kofi Annan, who asked ‘if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity. FOCARELLI C., The Responsibility to Protect Doctrine and Humanitarian Intervention: Too Many Ambiguities for a Working Doctrine, *Journal of Conflict & Security Law* C Oxford University Press 2008, p. 191 e ss.

the Security Council could invoke the provisions of Chapter VII of the Charter of the United Nations. The ICISS determined three situations in which the external responsibility of the states comes into play:

- “When a particular state is clearly either unwilling or unable to fulfill its responsibility to protect” ;
- “When a particular state... is itself the actual perpetrator of crimes or atrocities” or
- “Where people living outside a particular state are directly threatened by actions taking place there ¹¹⁵.”

Members agree to act:

Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity .

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

¹¹⁵ Report of the International Commission on Intervention and State Sovereignty’ (2001) International Development Research Centre Ottawa 10

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 to 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 are manifestly failing 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*¹¹⁶.

The essential content of the Report was incorporated in the final document of the World Summit in October 2005, approved with Resolution 60/1 of the UN General Assembly and the same principles were then taken up by the Resolutions of the Security Council 1674 and 1706 of the 2006. The Report and the UN resolution remained silent on what happens if the Council disagrees. Subsequently the proponents of the doctrine did everything to emphasize that the use of force is only one aspect of R2P¹¹⁷. In the final document, R2P incorporates the responsibility to prevent, react and rebuild. The language that is usually invoked is based on pillars: protection by the state (first pillar), assistance in prevention by the international community (Pillar 2) and intervention by the Security Council (Pillar 3)¹¹⁸. Given the role attributed to the Council from the final document of the world summit, the extent to which that body itself embraced the language of R2P was generally considered fundamental to measure

¹¹⁶ 2005 World Summit Outcome Document, UN Doc A/RES/60/1 (2005), paras. 138-139.

¹¹⁷ Luke Glanville, 'The Responsibility to Protect Beyond Borders in the Law of Nature and Nations' (2018) 28 European J Int'l L 1069.

¹¹⁸ Report of the Secretary-General, 'Implementing the Responsibility to Protect' (2009) UN Doc A/63/677

its impact ¹¹⁹.The commission put forward the following precautionary principles to address the legality of intervention:

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

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

Proportional means: The scale, duration and intensity of the 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.”

2.4 How Does the Principle of R2P Work?

Initial progress has been slow. After mentioning R2P in the passage in Resolution 1653 (2006) on the Great Lakes Region, ¹²⁰ the text of the World Summit was explicitly reiterated by Security Council in Resolution 1674 (2006) on the protection of civilians in armed conflicts: this was a further diplomatic agreement on the theory of R2P rather

¹¹⁹ Andreas S Kolb, *The UN Security Council Members' Responsibility to Protect: A Legal Analysis* (Springer 2018)

¹²⁰ UNSC Res 1653 (27 January 2006) UN Doc S/RES/1653, para 10 (the Council ‘Underscores that the governments in the region have a primary responsibility to protect their populations’).

than its application in practice. The subsequent approval by the Council for the next five years was limited to the preamble to the R2P in the resolutions concerning Darfur in 2006¹²¹ and then a series of resolutions in 2011 on Côte d'Ivoire ¹²², South Sudan ¹²³, Yemen¹²⁴, and Libya ¹²⁵. It was in Libya that R2P actually moved from the preamble to operational sections, when the Council "*underlines the responsibility of the Libyan authorities for the protection of its population*", including foreign citizens and African migrants ¹²⁶. It was probably in Libya, that the invocation of R2P actually moved from theory to practice. In Libya, as mentioned above, R2P was included in the Council resolutions both in the preamble and in operational actions. The willingness of the Council to act was driven in part ,by the clear way in which the government of Muammar Gaddafi threatened a large number of civilians and the unanimity of the international "*opprobrium*" it attracted, especially including the Arab League, African Union and Organization of the Islamic Conference, condemnation by which it was cited in each of the key resolutions. Resolution 1973 (2011) in particular , authorized Member States to use all necessary means - for example, to use

¹²¹ UNSC Res 1706 (31 August 2006) UN Doc S/RES/1706.

¹²² UNSC Res 1975 (30 March 2011) UN Doc S/RES/1975

¹²³ UNSC Res 1996 (8 July 2011) UN Doc S/RES/1996

¹²⁴ UNSC Res 2014 (21 October 2011) UN Doc S/RES/2014

¹²⁵ UNSC Res 1970 (26 February 2011) UN Doc S/RES/1970; UNSC Res 1973 (17 March 2011) UN Doc S/RES/1973.

¹²⁶ UNSC Res 2016 (27 October 2011) UN Doc S/RES/2016

force - "*to protect civilians and civil populated areas*".¹²⁷A similar dynamic was evident in Côte d'Ivoire . Discussed in Council less than two weeks after the Libyan authorization, the resolution of 1975 (2011) unanimously reiterated that it was the responsibility of the Côte d'Ivoire for the protection of civilians, but also recalled its authorization for the United Nations operation in Côte d'Ivoire (UNOCI) "*to use all the means necessary to fulfill his mandate ,protect civilians under the imminent threat of physical violence, according to their abilities and their own deployment areas*" ¹²⁸.

Alex Bellamy concludes that these resolutions, adopted with some abstentions but without negative or contrary votes, have clearly demonstrated the Council's determination to act under its responsibility to protect the populations, even through the use of force when necessary and possible. They have marked a new phase in the history of the Council from which there could be no return ¹²⁹. The general secretary stated in his assessment :

"In 2011, history took a turn for the better. The responsibility to protect came of age; the principle was

¹²⁷ UNSC Res 1973 (17 March 2011) UN Doc S/RES/1973, para 4.

¹²⁸ UNSC Res 1975 (30 March 2011) UN Doc S/RES/1975, para 6 (echoing language in UNSC Res 1528 (27 February 2004) UN Doc S/RES/1528, para 6(i).

¹²⁹ Alex J Bellamy, *The Responsibility to Protect: Towards a "Living Reality"* (London: United Nations Association-UK, 2013) available at <<http://www.una.org.uk/sites/default/files/The%20Responsibility%20to%20Protect%20Towards%20a%20Living%20Reality%20-%20Professor%20Alex%20Bellamy.pdf>>, 19.

*tested as never before. The results were uneven, but at the end of the day, tens of thousands of lives were saved. We gave hope to people long oppressed. In Libya, Côte d'Ivoire, South Sudan, Yemen and Syria, by our words and actions, we demonstrated that human protection is a defining purpose of the United Nations in the twenty-first century"*¹³⁰

However a closer reading offers a more skeptical interpretation. In both resolutions and statements of representatives, the emphasis is clearly on the responsibility of the state in question to protect its population. No reference is made, in particular, to the residual responsibility of the international community when the state fails, for whatever reason to act. Resolution 1970 (2011) pointed out that it was the "*responsibility of the Libyan authorities*" to protect its population "; Resolution 1973 (2011) reaffirmed this responsibility and reaffirmed that "*The parties in armed conflict have the primary responsibility to take all possible measures to guarantee the protection of civilians*". Similarly, the resolution 1975 (2011) on the Ivory Coast – though reiterated the limited mandate to protect civilians - it simply reaffirmed *the "primary" responsibility of each*

¹³⁰ Ban Ki-moon, United Nations Secretary General, address to the Stanley Foundation Conference on the Responsibility to Protect, New York (18 January 2012).

state to protect civilians ". In the language of the pillars, the emphasis was clearly on the first pillar (protection) and perhaps second pillar (prevention), with the third pillar (intervention) silent in the background ¹³¹. Some, thought that Libya had gone far beyond the simple protection of civilians. Libya, therefore, seems to be the example and therefore illustrate that R2P can provide a support language when a state or a group of states, is willing to take action against a common enemy. Normally, there is nothing new here: Council authorizations in the case of Libya have followed models developed and already seen during the 1990s. Indeed, Michael Doyle has argued that R2P should legitimize both such actions and de-legitimize those of exploitation or selfishness, acting as a "*license for and on a leash against forced intervention*¹³²". A better test is whether R2P encouraged action even when the well of political will was dry. Here, the example of Syria offers a depressing counterpoint . Since then , the theory of responsibility to protect has been discussed in theory and practice¹³³, with positions ranging from acceptance to rejection or relative indifference as a political catchword .

¹³¹ Gareth Evans, 'The Evolution of the Responsibility to Protect: From Concept and Principle to Actionable Norm' in Ramesh Thakur and William Maley (eds), *Theorising the Responsibility to Protect* (CUP 2015) 32-34 (describing this period as R2P's 'mid-life crisis'). On the history of UN commitments to protect civilians, including in more traditional peacekeeping operations, see Mats Berdal, 'United Nations Peacekeeping and the Responsibility to Protect' in Ramesh Thakur and William Maley (eds), *Theorising the Responsibility to Protect* (CUP 2015).

¹³² Michael W Doyle, *The Question of Intervention: John Stuart Mill and the Responsibility to Protect* (Yale University Press 2015) 110.

¹³³ SAECHAO, Natural Disasters and the Responsibility to Protect: From Chaos to Clarity, in *Brooklyn Journal of Int. Law*, 2007, pp. 663-707

The contrast between defenders and critics is attenuated in the idea that the responsibility to protect is the subject of an "*emerging norm*" of international law. In this case we speak of a norm that is placed in a limbo halfway between existence and non-existence. The theory of the responsibility to protect was born precisely to try to give an "external" impulse, justified by humanitarian reasons, to the "natural" reluctance of states to see their sovereignty limited. To this, is added the difficulty in allowing military interventions by other States within their territory, on the basis of assessments that can easily mask, behind humanitarian reasons, ideological, if not imperialist, motivations. Expecting therefore a consensus from the States to a limitation of their sovereignty, while meanwhile the massacres take place without being able to intervene, appears morally not tolerable¹³⁴. What emerges from the analysis of the report is a new concept of sovereignty. Sovereignty must be considered as a concept capable of giving way to a further principle, that of sovereignty. The last one is a form of responsibility, both external and internal (towards the citizens) and arises from the contrast

¹³⁴ Klein, *The Duty to Protect and to Ensure Human Rights*, Berlin, 2000; Gross, *Thwarting Terrorist Acts by Attacking the Perpetrators or Their Commanders as an Act of Self-Defense: Human Rights Versus the State's Duty to Protect its Citizen*, in *Temple Int. and Comp. Law Journal*, 2001, II, p. 198 e ss.

that exists between the increasing impact of international human rights standards and the concept of human safety¹³⁵.

The same Kofi Annan highlights, in the aforementioned report, the tension between two fundamental principles of international law: the protection of human rights and the principle of sovereignty related to the rule of non-interference in internal affairs. On the one hand, therefore, the rights of individuals and on the other the right to preserve their territorial jurisdiction from external interference. The two norms are in conflict, so Kofi Annan asks himself which of the two should prevail in extreme situations where serious crimes against humanity are committed. From a strictly juridical and even rational point of view the "responsibility to protect", an "emerging norm" impregnated in the culture of human rights, clashes with a "consolidated norm" found in the same Charter of the United Nations, according to which "*none provision of this Statute authorizes the United Nations to intervene in matters that essentially belong to the internal competence of a State*".

The 2001 report addresses the question of possible remedies suitable for avoiding massacres resulting from civil wars, insurrections, acts of state repression and the collapse of state institutions by changing the nominal label

¹³⁵ FOCARELLI C., The Responsibility to Protect Doctrine and Humanitarian Intervention: Too Many Ambiguities for a Working Doctrine, *Journal of Conflict & Security Law* Oxford University Press 2008, p. 191 e ss.

of the problem. All this, poses the problem in terms of "responsibility to protect" rather than a humanitarian "right to intervene". According to the Commission, in fact, "*the language of past debates arguing for or against*" right to intervene by one state on the territory of another state is outdated and unhelpful. The central idea of the report is that in today's globalized world sovereignty understood as "control" typical of the c.d. "Westphalian system" - must give way to sovereignty understood as "responsibility" internally and externally and that is not only towards other States but also towards its own citizens¹³⁶. The contrast between "*control*" and "*responsibility*", to be honest, is not entirely clear, nor does it appear coherent within the relationship. It could in fact be objected that it is thanks to the "control" that a State manages to be "responsible". Moreover, the multi-point report underlines how sovereignty (precisely as control) is still necessary and is, among other things, precisely to respect and enforce human rights¹³⁷. The new concept of sovereignty, understood more as a responsibility than a control, gives rise to three individual duties of States and of the

¹³⁶ FOCARELLI C., *The Responsibility to Protect Doctrine and Humanitarian Intervention: Too Many Ambiguities for a Working Doctrine*, Journal of Conflict & Security Law C Oxford University Press 2008, p. 191 e ss.

¹³⁷ For example, the Commission points out that "sovereignty does still matter" as "effective and legitimate states remain the best way" and that "sovereignty does still matter" to ensure that the benefits of internationalization of trade, investment, technology and communication will be equitably shared "and" to cohesive and peaceful international system is more likely to be achieved through cooperation of effective states, in an environment of fragile, collapsed, fragmented or generally chaotic state entities ".

International Community: the duty to prevent (responsibility to prevent), the duty to react (responsibility to react) and the duty to rebuild (responsibility to rebuild)¹³⁸. This broader definition regarding the problem of humanitarian intervention justifies, among other things, in the Commission's opinion, the terminological shift from the traditional "*right of intervention*" to the new "*responsibility to protect*". The duty of prevention should primarily fall to the State on whose territory human rights violations occur. Only when the State is not able to carry out the duty of prevention would there be a duty to react of the international community that could take (indeed preferably should) peaceful forms, from the early warning mechanisms to development aid up to sanctions, but it can materialize also in the military intervention. Finally, at the end of the conflict, the international community would have the duty to rebuild a lasting peace and the political-institutional structures - with regard to security, justice and reconciliation, development - of the State or territory in which the intervention had place¹³⁹. In this direction, the high-level panel for high-risk threats, challenges and change, set up by the Secretary General Kofi Annan, was adopted, approving in 2004 the emerging standard of

¹³⁸ FLORES M., Tra carità e investimento: paradossi e problemi dell'azione umanitaria, Il Mulino, Bologna, 2003, p. 214 e ss.

¹³⁹ CHANDLER D, From Kosovo to Kabul. Human Rights and International Intervention, London, Pluto Press, 2002, p. 36 e ss.

responsibility to protect (RdP). The Panel believes that there is a collective international responsibility, exercisable by the Security Council, which would lead to authorize military intervention, understood as a last resort, in the event that genocide, ethnic cleansing and serious violations of human rights are committed. In September 2005 - on the occasion of the United Nations world summit - all representatives of the Member States formally endorse the concept that each country should be held responsible for protecting its citizens from genocide, ethnic cleansing and war crimes. Based on the final document of the 2005 Summit, Secretary General Ban Ki-moon, in a report and recommendation to the General Assembly drawn up in 2009¹⁴⁰, determined that each state is given the primary responsibility for protecting its population from genocide, crimes of war, crimes against humanity and ethnic cleansing, as well as incitement to these crimes and the international community must assist states in this function. The international community is then given the opportunity to go and use appropriate humanitarian and other diplomatic means to protect people from these crimes. If a state fails "manifestly" in the duty to protect its citizens because "it cannot or does not want to", the international community must be willing to take collective action to

¹⁴⁰ BAN KI-MOON, Implementing Responsibility to Protect. Report of the Secretary General, 12 January 2009.

protect them, in accordance with the provisions contained in Chapter VII and VIII of the UN Charter.

2.5 The Road to R2P in Practice

History has witnessed a succession of brutal conflicts. Over time, the international community has become increasingly aware of the serious violations of human rights and the concern that plagues the world scene. Since the mid-19th century, various phenomena , such as the first Geneva Convention of 1864, the founding of the Red Cross in 1863 and the creation of the League of Nations have made the international community aware of the need for a "*sort of collective consciousness about atrocities*"¹⁴¹. During the Cold War, there were numerous humanitarian interventions, even if driven by economic and strategic motivations; for example the interventions of Belgium in Congo in 1960, of the United States in the Dominican Republic and of Granada and Panama in 1965, 1983 and 1989 . The end of the cold war represented a turning point and created an opportunity for humanitarian interventions: the 1990s saw a series of

¹⁴¹ Taylor B. Seybolt, *Humanitarian Military Intervention: The Conditions for Success and failure* (Oxford University Press 2007).

man-made disasters around the world and there was a noticeable increase in the number of humanitarian interventions authorized by the UN Security Council. The United Nations Security Council has begun to consider internal conflicts and serious human rights violations as threats to international peace and security under Article 39¹⁴². The United Nations collective security system has attempted to provide a adequate answer. During the 1990s, numerous military operations were launched and the UN Security Council provided humanitarian justifications to each of them¹⁴³. Evans (2008) divides these interventions into four categories: “*these were clearly contrary to the wishes of the government concerned as northern Iraq, Bosnia and Rwanda, were in a situation where the consent had no bearing on the intervention such as Somalia, were a contentious issue like Haiti, Liberia and Sierra Leone or were confusing such as Timor-Leste*”. The interventions, which followed one another during the 1990s, were often unfinished and self-defeating. For example, in Somalia, the international

¹⁴² Paul D. Williams and Meghan Stewart, ‘Humanitarian Interventions: An idea whose times has come and gone’, in W. Van Genugten, M.Scharf and S. Radhin, (ed) Criminal jurisdiction 100 years after the 1907 (2009) Hague Peace Conference, The Hague T.M.C. Asser Press, 227.

¹⁴³ Patrick F.White, ‘Normative Considerations bearing on the Responsibility to protect- Prospects and Implica- tions in a Fracturing International System’ (2008) Canadian Military Journal, 16

community organized a military operation after numerous civilians had already been killed ¹⁴⁴. In the Balkans, the international community has lost the possibility of avoiding several mass murders, and despite UN peacekeepers in Bosnia in 1992, thousands of Bosnians were killed. In Rwanda, UN peacekeepers withdrew while the genocide had already begun. Another catastrophe, which proved to be a challenge to the R2P principle, was the conflict in Darfur in 2003. The conflict caused the death of about 200,000 civilians and the international community failed miserably in facing this challenge¹⁴⁵.

2.6 The Rwanda Genocide, 1994 :Challenges and Implications of Responsibility to Protect

One of the most emblematic and discussed cases is that of the genocide in Rwanda. The population of Rwanda is divided into three ethnic groups: Hutu (about 85%), Tutsi (14%) and

¹⁴⁴ Alan J. Kuperman, 'Rethinking the Responsibility to Protect' (2009) *The Whitehead Journal of Diplomacy and International Relations*, 20. available at <http://blogs.shu.edu/diplomacy/files/archives/Kuperman%20-%20Rethinking%20the%20Responsibility%20to%20Protect.pdf> accessed on 15 May 2004.

¹⁴⁵ Gareth Evans, 'From humanitarian intervention to the responsibility to protect' (2006) 24 *Wisconsin International Law Journal*, No. 3, 705-706

Twa (1%). Historically, the Tutsis occupied the upper strata and the Hutus the lower strata. The hostility between these two ethnic groups increased under the German and then Belgian colonial rule, culminating with the overthrow of the Tutsi domination by the Hutus. A new wave of tension and ethnic conflicts continues after Rwanda's independence in 1962¹⁴⁶. To regain the previous positions, Tutsi refugees in neighboring countries have begun to launch attacks on the Hutu government: this has caused the death of a significant number of Tutsi and caused a large influx of refugees. The Patriotic Front of Rwanda (RPF), composed mainly of Tutsi exiles in Uganda, organized an attack on Rwanda causing the outbreak of a civil war. The war lasted for about three years during which "*an aggressive and exclusive Hutu solidarity was knowingly forged in opposition to these despised Tutsi outsiders?*"¹⁴⁷ Through the attempts of some countries in the region and the Organization for African Unity, the Arusha Peace Agreement was signed by the RPF and the Hutu government in August 1993. In October 1993, the Security Council established the mission of UN assistance to Rwanda (UNAMIR) "*which was a force of 2,500 people to monitor the*

¹⁴⁶ Lukin Robinson, 'The Tragedy of Rwanda' (December 2003) 55 Monthly Review Foundation, Issue 07, 52-54

¹⁴⁷ Organization of African Union, 'Rwanda: The Preventable Genocide, African Union' available at: www.refworld.org/docid/4d1da8752 accessed on: 12 March, 2014

*ceasefire and contribute to the security of the capital, Kigali.*¹⁴⁸ The deaths of the presidents of Rwanda and Burundi in an air disaster on 6 April 1994 resulted in several weeks of massacres. The Rwandan Hutu army, paramilitary groups and militia carried out a brutal mass murder with the aim of eliminating all Tutsis and opposition members. Within 100 days it is estimated that 1 million men, women and children have lost their lives. In addition, another 1.5 million inhabitants of Rwanda had been displaced. Verwimp (2004) writes about the death toll: *"In just 3 months, over 10% of the general population and about 75% of the Tutsi minority population have been killed."*¹⁴⁹ *Despite the international community's awareness*¹⁵⁰ *on the murder in Rwanda, "the weeks have been wasted in determining whether the murder has fully met the rigorous legal definition of genocide."* The international community and the United Nations have postponed a long time reaction to ethnic cleansing, due to the

¹⁴⁸ Holly burkhalter, 'A preventable horror?' (1994) Africa Report, 39.6, 17.

¹⁴⁹ Philip Verwimp, 'Death and survival during the 1994 Genocide Rwanda' (2004) 2 population Studies 58, 233

¹⁵⁰ The 1948 Convention on the Prevention and Punishment of the Crime of Genocide obliges "all states to pre-vent or punish acts of genocide."

opposition of some P5s, in particular the United States ¹⁵¹. Inexplicably, UNAMIR, which was in Kigali during the mass murder, was forbidden to intervene. Numerous countries like Canada, Argentina, Spain and New Zealand have requested a peacekeeping operation with a much stronger mandate and "*new rules of engagement to protect innocent civilians*", which was rejected by Boutros Ghali, then secretary general of the United Nations ¹⁵². In April, with resolution 912, the UN Security Council voted to reduce the number of UNAMIR peacekeepers to 270 members. On 7 April Belgium withdrew its 440 troops from UNAMIR ¹⁵³. It must not be forgotten that the victims of some countries in Somalia like the United States have had a significant impact on the lack of will of the international community and of the United Nations system to intervene in Rwanda. With the progressive worsening of the situation, on 17 May the United Nations Security Council adopted Resolution 918 which authorized the strengthening of UNAMIR and approved a military intervention with French

¹⁵¹ Douglas G. Anglin, 'Rwanda: the preventable genocide, The Report of the International Panel of Eminent Personalities to Investigate the 1994 Genocide in Rwanda and the Surrounding Events' (2001) 56 *International Journal* 149.

¹⁵² Milton Leitenberg, Rwanda, 1994: International incompetence produces genocide (*Peacekeeping and inter- national Relations* 23 1994) 6

¹⁵³ Samantha Power, *A Problem From Hell, America and the Age of Genocide* (Basic Books 2013)343.

leadership known as Operation Turquoise, which would set up neutral protection zones ¹⁵⁴ . The genocide ended on 18 July 1994 when the Rwandan rebel army (RPA) violated the ceasefire agreement and eventually defeated the Rwandan army. Over one million Hutu refugees have fled to Zaire and Tanzania¹⁵⁵. The international community has now begun to play an important role in the effort to recover aid in Rwanda through the implementation of a socio-economic program. The new Rwandan government received aid worth 4 billion dollars between 1994 and 2000. The "*lack of strategic and national interests of the P5*", the "*slowness of the bureaucratic performance of the United Nations*" and the "*lack of political will*" were addressed by the international community and by the United Nations on the intervention. The apologies of Presidents Sarkozy, Bill Clinton and Kofi Annan to Rwanda for their inactions are a testament to their mistakes¹⁵⁶ . Kofi Annan, UN Secretary-General, gave a speech to the Human Rights Commission during a special meeting to celebrate the

¹⁵⁴ Turquoise res 929 22 jun 1994, See: A. Wallis, *Silent Accomplice: "The Untold Story of France's Role in the Rwanda Genocide"*, London: I.B. Tauris, 128 (2006).

¹⁵⁵ Taylor.B. Seybolt, *Humanitarian Military intervention, The Condition for success and failure* (Oxford University Press 2008) 72

¹⁵⁶ Linda Melvern, *A people Betrayed: The role of the West in Rwanda's Genocide* (London, Zed Books 2009).

international day of reflection on genocide in Rwanda of 1994 on behalf of the United Nations in Geneva as follows:

"First of all, we must all acknowledge our responsibility for not having done more to prevent or stop the genocide. Neither the United Nations Secretariat, nor the Security Council, nor the Member States in general, nor the international media, paid sufficient attention to the signs of disaster that were collecting. Even less we have taken timely action 157"

Subsequently numerous scholars acknowledged that "a timely intervention could have stopped the genocide". Among these, Matloff and Dorn concluded as follows:

"The genocide in Rwanda could certainly have been predicted and perhaps could have been prevented. At the very least, it could have been strongly mitigated by the United Nations. This conclusion takes into account the information and resources available to the United Nations, its mandate and its potential capacity and previously demonstrated to adapt to the difficult situation. The UN peacekeeping mission would undoubtedly have expanded its activities and efforts (diplomatic, humanitarian and military) at an early stage, given the clear warnings available to it. What was missing was the political will, in the Secretariat and in the Security

¹⁵⁷ www.un.org/events/Rwanda

Council, to make courageous decisions and to develop the means to create new information and preventive measures. The lesson of Rwanda is clear: we must build the international political will, as well as a strengthened capacity of the United Nations, for prevention ... 158"

The United Nations and the international community have so to speak "turned a blind eye" on the bloody genocide in Rwanda, and their failure later admitted. The function and application of humanitarian intervention have been shown to have serious shortcomings in the case of Rwanda. The genocide in Rwanda has broken the growing hopes that the doctrine of humanitarian intervention can effectively stop the grave violation of human rights. In 2014, in celebration of the 20th anniversary of the genocide, a New York Times editorial greeted the country as "*an island of order and relative prosperity in a poor and politically unstable region*". But, listing a series of restrictions on civil and political rights, including detentions and torture, disappearances and killings, the article then concluded: "*Tackling the poisonous legacies of the genocide in Rwanda is the only way to avoid the future tragedy and it's the best way to honor Rwanda who died.*"

¹⁵⁸ Walter Dorn and Jonathan Matloff, 'Preventive the Bloodbath: Could the UN have predicted and prevented the Rwanda genocide?' (2000) 1 *Journal of Conflict Studies* 20.

2.7 The Responsibility to Protect in the Libyan Intervention: Ultimate Success or International Failure?

The protests of the Arab spring that occurred in Tunisia and Egypt, broke out in Libya on February 15, 2011. The uprising began in a peaceful manner and later turned into a violent one due to the brutal response of the Gaddafi regime. Many officers joined the opposition and the "provisional transitional national council" was established. In a very short time the revolt turned into a real civil war with the aim of ousting the Gaddafi regime. Bellamy and Williams (2011) on the human rights threats made by Gaddafi against the opposition:

"In words that brought direct echoes of the genocide in Rwanda in 1994, Gaddafi told the world that" the officers have been deployed in all the tribes and regions so that they can purify all decisions from these cockroaches and that the Libyans who arm themselves against Libya will be executed "
159.

In response to the very rapid disintegration of the Libyan landscape, various regional and sub-regional organizations together with the United Nations condemned the serious violations of human rights in Libya and began to lay the

¹⁵⁹ Alex J. Bellamy and Paul Williams, 'The new politics of protection-Cote d'Ivoire, Libya and the Responsibility to Protect' (2011) *International Affairs* 87 (4), 829-831.

foundations for future interventions¹⁶⁰. For example, on February 22, 2011, the UN High Commission on Human Rights "*urged the authorities to stop using violence against protesters, which could amount to crimes against humanity*"¹⁶¹. On 22 February, UN officials announced that the situation in Libya was an imminent and concrete case of R2P. Ban Ki-Moon special adviser on genocide prevention said:

"The regime's behavior could amount to crimes against humanity and insisted on respecting the 2005 commitment to R2P ¹⁶²." Similarly, the EU also condemned human rights violations in Libya through the words of Catherine Ashton¹⁶³. Furthermore, the League of Arab States (LAS), the Organization of Islamic Countries (OIC) and the African Union Peace and Security Council (AU) strongly condemned the brutal repression of the opposition. The media played an important role, spreading convincing evidence of serious

¹⁶⁰ Spence Zifcak, 'The Responsibility to Protect after Libya and Syria' (2012) 13 Melbourne Journal of International Law.

¹⁶¹ Reuters, 'Libya attacks may be crimes against humanity: UN', (22 February 2011)

¹⁶² UN Press Release, "Statement by the UN Secretary General Special Adviser on the Prevention of Genocide" (New York, 22 Feb 2011).

¹⁶³ Declaration by the High Representative, Cathrine Ashton, on behalf of the European Union on events in Lib-ya, Council of the European Union, 20 Feb 2011, EU Doc 6795/1/11-PRESSE 3

human rights violations: in response to atrocities, the global community accused the Gaddafi regime of crimes against humanity. On February 25, 1964, the United Nations Security Council adopted resolution S-15/1 and called on the Libyan regime to "*take responsibility for protecting its population and immediately end all human rights violations*". The Human Rights Council opened a special session on the "human rights situation in the Libyan Arab Jamahiriya" and approved a resolution calling on Libyan officials to stop the further bloodshed course¹⁶⁴. With the increase in violence and brutality committed, the supervisory committee unanimously approved the 1970 resolution and expressed deep concern about the situation in Libya and believes that "*widespread and systematic attacks ... against the civilian population can equate to crimes against humanity* " ¹⁶⁵. The resolution established the responsibility of the Libyan official to protect his population, as well as the imposition of an arms embargo on Libya and sanctions aimed at the Libyan administration and the Gaddafi family ¹⁶⁶. The supervisory committee also

¹⁶⁴ 65. OHCHR, Press Release, Geneva, (18 Feb 2011).

¹⁶⁵ UN Security Council, Security Council resolution 1970 (2011), 26 February 2011, S/RES/1970 (2011)

¹⁶⁶ The Resolution was welcomed by the SC members, although Russia, China and Brazil did not provide backup in practice. See: Alex Bellamy and Paul Williams, 'The new Politics of Protection? Côte d'Ivoire, Libya and the responsibility to protect' (2011) *International Affairs* 87:4, 838-841

showed the situation in Libya to the ICC to send a clear and strong message to Gaddafi ¹⁶⁷.

As a result, the International Criminal Court initiated a proceeding according to which the Gaddafi regime was guilty of crimes. However, all the responses and diplomatic efforts by the global community have not allayed Gaddafi's behavior. Gaddafi's forces continued to bomb the rebels and the humanitarian crisis was worsening ¹⁶⁸. On 12 March 2011, in an unprecedented move, the Gulf Cooperation Council invited the Supervisory Committee to "*take all necessary measures to protect civilians, including the application of a non-flying area on Libya*" ¹⁶⁹. In the end, the attempts of the global community began to bear fruit and the United Nations

¹⁶⁷ his power was used to refer the situation in Darfur to the ICC by the SC for the first time. On 27 June 2011 ICC issued an arrest warrants for Libya leader Gaddafi, his son and head of intelligence for alleged crimes against humanity, available at: <http://www.icc-cpi.int/iccdocs/doc/doc1099329.pdf>. See also: Amnesty International, 'ICC Issues Arrest Warrant for Al-Gaddafi' (27 June 2011) available at: <http://www.refworld.org/docid/4e09b8512.html>, Radio Free Europe/Radio Liberty, 'ICC issues arrest warrant for Qaddafi on war crimes charges', Tripoli rejects accusations, (27 June 2011) available at: <http://www.refworld.org/docid/4e0b2e4321.html>.

¹⁶⁸ Matthias Dembinski and Theresa Reinold, 'Libya and the Future of the Responsibility to Protect – African and European Perspectives' (2012) Peace Research Institute Frankfurt (PRIF), Germany, 12-14 available at: http://www.hsfk.de/Newsdetail.25.0.html?tx_ttnews%5Btt_news%5D=985&tx_ttnews%5BbackPid%5D=5&cHash=777fb174b0&L=1 accessed on 12 May 2014.

¹⁶⁹ Resolution 7360 of the Council of the Arab League meeting at the Ministerial level, (12 March 2011).

Security Council followed up on Resolution 1973¹⁷⁰. Thus, on March 17, Gaddafi declared that he would organize an attack in Benghazi and threatened the rebels that "*his troops would not have shown pity and pity*"¹⁷¹.

Thus Gaddafi's speech proved to be a stimulus for the decision of the United Kingdom, Lebanon, France and the United States to put the draft resolution to a vote. Resolution 1973 was adopted with 10 votes in favor and five abstentions from China, Brazil, Germany, Russia and India¹⁷². The supervisory committee considered that the situation in Libya "*continues to pose a threat to international peace and security*". Therefore, according to Chapter VII of the Charter of the United Nations, the supervisory committee has approved several measures including the use of military force. In addition to this, the 1973 resolution also contains: the protection of civilians, the creation of a non-flight zone, the freezing of assets, the application of the arms embargo and the ban on flights. But the most important part of the resolution is that it allows UN

¹⁷⁰ UN Security Council, Security Council resolution 1973 (2011) [on the situation in the Libyan Arab Jamahiri-ya], 17 March 2011, S/RES/1973(2011).

¹⁷¹ Maria Golovina and Patrick Worship, 'UN Okays military action on Libya' Reuters, (17 March 2011)

¹⁷² The UK, Lebanon, France, Bosnia and Herzegovina, Colombia, Gabon, Nigeria, Portugal, South Africa and the U.S. voted in favour.

member states to *"take all necessary measures ... to protect civilians and civilian areas"* of Libya. Initially, the air strike campaign began on March 19 conducted by a coalition of Western states supported by Qatar and the United Arab Emirates. On March 24, "Operation Unified Protector" was launched under the aegis of NATO. NATO declared that the operation was limited to the application of Resolution 1973 and would end as soon as in Libya - a government had satisfied the following requests: *"a) Put an end to attacks against populated civilian areas. b) Withdraw to the bases of all military forces. c) Allow unlimited humanitarian access.*
173"

2.8 To What Extent Was the NATO Intervention in Libya a Humanitarian Intervention?

Despite these premises, there began to be the general impression that NATO was not an impartial player. In fact, the main NATO members have clarified their intention to oust the Gaddafi regime. In an extraordinary jointly signed declaration, Barak Obama, David Cameron and Nicolas Sarkozy reaffirmed their commitments with Resolution 1973; however,

¹⁷³ NATO Statement on Libya, following the working lunch of NATO Ministers of Foreign Affairs with non- NATO contributors to Operation Unified Protector, (14 April 2011) http://www.nato.int/cps/en/natolive/official_texts_72544.htm accessed on 20 June 2014.

he continued to argue that *"it is possible to imagine a future for Libya with Gaddafi in power"* ¹⁷⁴. Now, authorization to use military force to protect Libyan citizens from atrocities has been accepted by several Member States with open arms. This agreement provides an indication of their acceptance of the R2P doctrine. Numerous scholars consider the 1973 resolution a great success for the R2P principle. Secretary-General Ban Ki-moon said: *"Resolution 1973 clearly states the international community's determination to fulfil its responsibility to protect civilians from violence perpetrated upon them by their own government."* ¹⁷⁵

Former R2P Commissioner at the United Nations, Thakur considered that Resolution 1973 is a concrete example of military implementation of R2P and that the intervention in Libya has played a fundamental role in the future of the R2P doctrine. He also noted that *"Resolution 1973 marks the first military implementation of the doctrine of responsibility to protect R2P is approaching solidification as a feasible*

¹⁷⁴ BBC NEWS, 'Libya: Obama, Cameron and Sarkozy vow Gaddafi must go' (15 April 2011) available at: <http://www.bbc.co.uk/news/world-africa-13089758>.

¹⁷⁵ Statement by the Secretary-General on Libya, Department of Public Information, News and Media Division (New York 17 March 2011), available at: <http://www.un.org/sg/statements/?nid=5145> accessed on 05 November 2013.

norm"¹⁷⁶. Indeed, those in favor of military intervention considered the intervention in Libya as a concrete case of the policy of Responsibility for protection adopted by the United Nations at the 2005 world summit. According to the former Australian Foreign Minister and the co-president of the ICISS, Evans, "*The international military intervention (SMH) in Libya does not concern the bombing for democracy or the head of Muammar Gaddafi. Legally, morally, politically and militarily it has only one justification: to protect the people of the country*"¹⁷⁷". However, the case of Libya as an example of obvious R2P success and implementation of resolution 1973 has been impeached by many Member States. For example, Brazil stated that: "*The use of force in Libya has made it more difficult to reach a political solution*"¹⁷⁸. Furthermore, resolution 1973 refers to R2P, but exclusively to its first pillar, which is the responsibility of the State to protect its citizens,

¹⁷⁶ Ramesh Thakur, 'The Responsibility to Protect: Norms, Laws and the Use of Force in International Politics' (2011) Routledge, 173.

¹⁷⁷ Gareth Evans, 'UN targets Libya with pinpoint accuracy', The Sydney Morning Herald (24 March 2011) available at: <http://www.smh.com.au/federalpolitics/political-opinion/un-targets-libya-withpinpointaccuracy-20110323-1c6pc.html> accessed on 13 January 2014.

¹⁷⁸ Kevin Boreham, 'Libya and the Responsibility to Protect doctrine' (28 August 2011) Online Opinion, Australia's e-journal of social and political debate, available at: <http://www.onlineopinion.com.au/view.asp?article=12522&page=0> accessed on 25 May 2014.

in its preamble¹⁷⁹. Thus the expansion of the 1973 resolution in the regime change has caused serious criticism. Critics believe that the protection of civilians is the stated goal of R2P, and that the removal of dictators is not. Therefore, regime change in the case of Libya could have negative effects on future attempts to invoke the R2P doctrine. As underlined during the chapter, the ICISS, based on the "just war theory", issued criteria that must be met before the intervention. First of all there must be a just cause and there should be "*a large-scale loss of life ... which is the product of deliberate state action, state abandonment or inability to act, or a state situation failed*". It is quite clear that this was the case in Libya, mainly due to the heavy losses¹⁸⁰. According to a report by the International Commission of Inquiry of the UN Human Rights Council, "*international crimes, in particular crimes against humanity and war crimes, were committed by Gaddafi forces*"¹⁸¹. Secondly, there must be a right intention and the

¹⁷⁹ In the Preamble to Resolution 1973 the following determination was added: "Reiterating the responsibility of the Libyan authorities to protect the Libyan population and reaffirming that parties to armed conflicts bear the primary responsibility to take all feasible steps to ensure the protection of civilians."

¹⁸⁰ International Criminal Court chief prosecutor, Luis Gabriel Moreno Ocampo estimated that 500–700 people were killed by security forces in February 2011, See: ICRtoP, (2012) available at: <http://www.responsibilitytoprotect.org/>.

¹⁸¹ Report of the International Commission of Inquiry on Libya, UN Human Rights Council, A/HRC/19/68, (2 March 2012).

main intention of the intervention must be "*to stop or avoid human suffering*"¹⁸². Thakur (2012) stressed the following: "*If the real goal was to stop the killing, NATO states would support a ceasefire and a negotiated agreement rather than repeatedly vetoing both.*" There are three parameters that concern the Libyan intervention that can guarantee that the right criterion of intention is respected. First of all, it is essential that the intervention be carried out collectively: the military intervention in Libya was a multilateral operation. Secondly, the intervention must be supported by the population of that country. The population of Libya has requested an intervention to stop the serious violations of human rights by the Gaddafi regime. The third element is the support of other states in the region. In the case of Libya, the GCC and LAS called on the international community for a no-fly zone and appeared utterly supportive. Therefore, the three distinguishing benchmarks for a right intention for the intervention in Libya were fulfilled¹⁸³. The use of military intervention in Libya can be labelled somehow as a last resort. Prior to the intervention, several diplomatic efforts had been

¹⁸² Ramesh Thakur, *Libya and the responsibility to protect. Between opportunistic humanitarianism and value-free pragmatism* (Institute for Security Studies 6 March 2012) 3.

¹⁸³ Europe's World: "The Responsibility to Protect (R2P) and Libya", (02-07-2011) available at: http://www.europesworld.org/NewEnglish/Home_old/PartnerPosts/tabid/671/PostID/2621/language/en-US/Default.aspx accessed on 01 July 2014.

made and arm embargo and targeted sanctions were imposed. Critics claim that the case of Libya can't be described as a last resort because peaceful measures were not fully exhausted. There were no attempts to apply peaceful methods to protect civilians, and the speed of the intervention by NATO has become also the target of criticism¹⁸⁴. As Simmon (2011) noted:

“It seems as though the UNSC was unwilling to pursue other options, and thus appears to have failed to take into account one of the primary precautionary principles enshrined by R2P¹⁸⁵.”

The fourth benchmark set forth by the R2P doctrine is that the intervention must be proportional. The coalition chiefly used the enforcement of a no-fly zone, and it was rather effective. Thus, one can argue that the coalition applied proportional force. As Meyer (2011) noted that *“there are no indications that the scale, duration or intensity were out of proportion to*

¹⁸⁴ E-international Relations, 'Why Intervention in Libya was Justified' (25-01.2012) available at: <http://www.e-ir.info/2012/01/25/why-intervention-in-libya-was-justified/> accessed on 21 November 2013.

¹⁸⁵ Simmon, 'Comment on Libya and the Responsibility to Protect' (2011) available at: <http://blog.simmonli.com/2011/03/comment-on-libya-and-the-responsibility-to-protect/> accessed on 10 February 2014.

*the Libyan military intervention*¹⁸⁶.” However, the Libyan case has been questioned by some critics because of the arming of the rebels by NATO, which violates the principles of the R2P doctrine¹⁸⁷.

The fifth point is a reasonable perspective. Evans asked the following question to verify this criterion: "*Will those at risk be overall better or worse off ?*"¹⁸⁸ In the case of Libya, it is rather difficult to answer this question. Many believe that the NATO operation has saved tens of thousands of citizens in Libya .

However, others, including those members of the UN Security Council who abstained from voting on resolution 1973, firmly believe that NATO has over-abused the mandate of the UN Security Council ¹⁸⁹. The NATO intervention was attacked because a considerable number of unarmed civilians were

¹⁸⁶ Jason D. Meyer, 'From Paralysis in Rwanda to Boldness in Libya: Has the International Community Taken 'Responsibility to Protect' from Abstract Principle to Concrete Norm Under International Law?' Social Science Research Network (2011) available at: <http://dx.doi.org/10.2139/ssrn.2035083> accessed on 14 June 2014.

¹⁸⁷ Dayvid Hillstrom, 'The Libyan No Fly Zone: Responsibility to Protect and International Law' (2011) Foreign Policy Journal.

¹⁸⁸ Gareth Evans, *The Reasonability to Protect: Ending Mass Atrocity Crimes Once and for All* (Washington DC: Brookings Institution Press 2008) 256.

¹⁸⁹ Dayvid Rieff, R2P, RIP, *The New York Times*, 6 (7 November 2011).

killed ¹⁹⁰. As noted above, critics have also firmly condemned NATO for siding with the rebels and failing to observe the neutrality of civil protection and pursuing regime change¹⁹¹. As Hall Findlay (2011) notes:

"R2P stands for the prevention of the slaughter of innocent civilians and no for the support of Libyan rebels" ¹⁹².

In the end, it can be said that the criterion of correct authority was met in the case of Libya, since the R2P doctrine states that *"There is no better body than the UN Security Council to authorize authoritarian intervention for the purpose of human protection "*. *The R2P the report is also formulated as follows: "The best intention is better ensured with multilateral operations, clearly supported by regional opinion"*

The intervention was multilateral and received the support of regional organizations . Despite considerable criticism, the

¹⁹⁰ According to Human Rights Watch: eight NATO air strikes at least left 72 civilians dead, including 20 women and 24 children, See: NATO: Investigate Civilian Deaths in Libya(14 May 2012) Human Rights Watch, available at: <http://www.hrw.org/news/2012/05/14/nato-investigate-civilian-deaths-libya> accessed on 25 November 2013.

¹⁹¹ Liam Fox, then Secretary of State for Defense when asked whether self-determination for the people of Libya and regime change was a goal he stated: "it is clear that regime change would be a major policy initiative and one that is not signed up to in the Resolution" See: House of Commence Defence Committee, 'Operations in Libya' (2012) Volume I: Report, London, 25, available at: <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmdfence/950/950.pdf> accessed on 05 April 2014.

¹⁹² Martha Hall Findlay, Can R2P survive Libya and Syria? (Canadian Defence & Foreign Affairs Institute 2011)

case of Libya has been hailed as a successful "*first real test*" of R2P.

2.9 The Difficult Choice to Intervene: Final Reflections on the Dilemma Concerning the Management and Efficiency of Humanitarian Aid

According to many British and American authors¹⁹³, a military attack against a State whose political authorities have been guilty of serious human rights violations would undoubtedly coincide, with rare exceptions, with the triumph of the universal values of the international community and not with the particular interests of the State engaged in war action. It could be argued, as US jurist Michael Glennon wrote, that in this case - as happened in 1999 in the Nato war for the Kosovo issue - the use of force would be nothing but the tool to realize the "*great ideal of justice*". Unanimously¹⁹⁴ approved by the doctrine, is then the recognition that the United Nations Charter has raised the States from the exclusive pertinence on human rights by the state constitutions. The theory of human rights has pervaded the international order in depth, to the point of

¹⁹³ MARCON G, *Le ambiguità degli aiuti umanitari. Indagine critica sul Terzo settore*, Milano, Feltrinelli, 2002, p. 258 e ss.

¹⁹⁴ BETTATI M., KOUCHNER B, *Le Devoir d'ingérence*, Paris, Denöel, 1985, p. 36 e ss.

becoming an integral part of it. Since the establishment of the United Nations, human rights will therefore no longer be considered the same as "a private affair" of each nation, nor would States be allowed to take refuge within their own borders¹⁹⁵.

How much Kant and Kelsen had historically supported has gradually come true with the recognition of the supremacy of international law. The institutions of judicial pacifism have become established and individuals are now considered, fully, subjects of international law. Then, the definitive eclipse of state sovereignty must be reduced to the institution of the UN. Even the UN is, as is known, legally permeated by the principle of state sovereignty. This can be deduced, in particular, from the art. 2 of the Charter which, once the principle of "sovereign equality" has been affirmed among all nations, prohibits (in paragraph 7) any form of interference in the internal affairs of individual States. In this regard, it was highlighted that, ultimately, the UN Charter is based on three universal legal principles: peace, fundamental rights and the equality of men and peoples¹⁹⁶.

Three principles which, far from integrating idyllically (as theorized, in recent years, by some neo-Kantian philosophical currents) increasingly tend to place themselves in an open and

¹⁹⁵ FLORES M., Tra carità e investimento: paradossi e problemi dell'azione umanitaria, Il Mulino, Bologna, 2003, p. 214 e ss.

¹⁹⁶ MARCON G, Le ambiguità degli aiuti umanitari. Indagine critica sul Terzo settore, Milano, Feltrinelli, 2002, p. 258 e ss.

striking conflict with the realistic and statistic conception of the UN and with the principle of non-interference in the internal affairs of States. The relationship between the juridical theory of inviolable rights and the presumed recognition of the sovereignty of states thus confronts us with a paralyzing contradiction that neither the norms of the UN Charter nor the historical evolution of international law have been able to to date, to solve. And the reasons for this contradiction are particularly evident today: the main violations of human rights are committed by "sovereign" states, but for sovereign states that violate human rights adequate sanctions are not envisaged. The humanitarian intervention is therefore characterized by application problems that pose questions of sovereignty in the first place, and then also of recognition of the subjects to help, except for the civilians who enjoy protection in a way that we can define as objective. In some cases, humanitarian law is faced with an important dilemma linked to the decision to intervene or not. In many of these cases the conflict (of interpretation and intervention) has placed the organizations for the defense of human rights against humanitarian aid agencies, showing however to both of them the dramatic and difficult solution of a dilemma such as that emerged in Rwanda. In fact, Rwanda had to decide for an intervention¹⁹⁷. It was not possible to understand if it was preferable to accept the death of

¹⁹⁷ IGNATIEFF M, *Mission Possible?*, «The New York Review of Books», vol. XLIX, n. 20, December 19, 2002, p. 36 e ss.

hundreds of thousands of refugees, among whom were certainly numerous those responsible for the genocide, or to help them risking that they could regroup to resume and complete the genocide¹⁹⁸. Aid and humanitarian assistance are always an instrument of struggle for power, because they arrive in regions without primary goods and essential resources. Goods that in many cases are exploited first by those who are stronger militarily and politically organized. It is not always easy or possible to divide between combatants and non-combatants, between legitimate and illegitimate situations. Any humanitarian intervention or humanitarian assistance is placed in a scenario to the advantage of someone and to the disadvantage of someone else. The priority objective is certainly to go to reduce the negative effects of aid. The impossibility of offering protection to the same people to whom humanitarian aid is brought by bringing water and vaccines without seeing the context within which refugees live and reproduce, can at the same time prolong the conflict, contribute substantially to the war economy, legitimize control on the population of refugee camps by military groups responsible for the primary or secondary role of the humanitarian catastrophe that is sought to alleviate. If the risk exists that a necessary but difficult aid may become useless or counterproductive, political

¹⁹⁸ BECKER D, You Better Be Good. Review of David Rieff, «Trn-Newsletter 2», Hamburg Institute for Social research, May 2003, URL TraumaResearch.net/fr_beck.htm.

science, for example, suggests to humanitarian agencies to find the neutral and apolitical roots. In this, humanitarian assistance helps those who need it most. Political issues come later and certainly focus on human rights. It should also be pointed out that political issues are not on the agenda, because this is the "new" will of humanitarian agencies¹⁹⁹. Humanitarian aid is an integral and unavoidable part of ongoing conflicts, of old as well as of new wars. Between 1983 and 1985, humanitarian aid to alleviate famine in Ethiopia was an important tool in the population control action by the Mengistu government. The offensive of this government against insurgents against opponents had been the basis of the famine itself, aggravating the situation prior to sending aid in many areas and for some population groups. An analogous dilemma was that of Bosnia: assisting populations who wanted to resist ethnic cleansing could mean putting their physical safety at risk, helping them escape could mean an endorsement of the ethnic cleansing policy undertaken. The drama of Srebrenica, which also united all the contradictions, errors, foolishness and bad faith of the United Nations and the West, was also born of this dilemma and the idea of being able to solve it simplistically. There are choices related to the possibility of intervening or not intervening and will continue to recur and that cannot be resolved with impossible and anachronistic technicalities or

¹⁹⁹ FLORES M., *Tra carità e investimento: paradossi e problemi dell'azione umanitaria*, Il Mulino, Bologna, 2003, p. 214 e ss.

neutralisms. Humanitarian principles must be opposed against other principles to determine which course of action can produce the best good. In this perspective, the transformation of humanitarianism towards a universalism based on human rights testifies precisely to the existence of this choice²⁰⁰.

Kofi Annan was among the major architects of this transformation and he repeatedly took it for granted that in the current historical situation, humanitarian assistance and human rights are part of the same battle for a more just, peaceful and balanced world; and it is no coincidence that he came to the leadership of the UN after the worst failures in its history. What is certain is that the conflicts of the last fifteen years are perhaps more complex than the previous ones in the justifications that accompanied them and in the ways of understanding²⁰¹. However, they are similar to the past if we look at the level of barbarism manifested (just think of Indochina or Central and South America during the Cold War). It is therefore not the level of violence that has increased humanitarian intervention, which is an effect of conflicts extended to regions where previously no help could be sent, of an absolute extension and relatively of international aid, of the end of patronage of the superpowers that facilitates new forms of local war economies. This aid is considered as a primary need by disintegrated states,

²⁰⁰ MARCON G, *Le ambiguità degli aiuti umanitari. Indagine critica sul Terzo settore*, Milano, Feltrinelli, 2002, p. 258 e ss.

²⁰¹ FLORES M., *Tra carità e investimento: paradossi e problemi dell'azione umanitaria*, Il Mulino, Bologna, 2003, p. 214 e ss.

weak governments and factions that tend to exploit and market public goods and services, the emergence of a "right to intervention" that has multiplied the presence of humanitarian agencies²⁰².

In this context and also returning to the issue of duty to intervene, it appears obvious that the rationale for the responsibility to protect is the respect of human dignity as a supreme value, so high that it even justifies military interventions that would otherwise be not only illicit, but also among the most serious wrongdoing that states can commit. The practice developed over the years suggests that the need to intervene is also of a global order and security, that is of a political-strategic nature, rather than, or only, moral.

Even the attribution of the authority to decide to the Security Council tends to frame the issue in terms of global security if it is considered that the Council can act if it finds a "threat to peace", which certainly can materialize even in situations of very serious violations of human rights, but on the basis of assessments in which it is difficult to separate the humanitarian part from the political-strategic part. If this were the case, the critics' thesis would be of a certain weight according to which the humanitarian intervention in implementation of the responsibility to protect is actually much more motivated by

²⁰² PICCIAREDDA S, *Diplomazia umanitaria. La Croce Rossa nella seconda guerra mondiale*, Bologna, Il Mulino, 200, p. 236 e ss.

political-strategic reasons of the States that intervene (or that support it in the Security Council), as a rule the stronger states. Moreover, even in the affirmation of the principles of responsibility to protect the oppositions of the States there have been numerous. Among the states that have opposed the humanitarian intervention implementing the responsibility to protect, a certain number have emphasized how the concept of responsibility to protect is vague and requires greater definition and further discussion, if only to clarify what really stands out from traditional humanitarian intervention. According to Algeria, for example, the responsibility to protect "is extremely difficult to distinguish from the idea of humanitarian intervention and the countries formally rejected in 1999", while according to Egypt "the legal underpinnings of the theory remain unclear"²⁰³.

Humanitarian intervention, therefore, is not only feared, as imperialist, by several weak states, but it does not meet an unconditional acceptance even among the strongest states, which have no intention of seeing themselves obliged. Moreover, the cost of the military operation is added to the cost, both economic and logistic, of the re-establishment of an acceptable level of social life on the spot and of post-war institutional structures, with very little certainty about the outcome and timing. The governments of the democratic states are also reluctant to intervene, considering that, as experience

²⁰³ UN Doc. A/59/PV.86, p. 9

confirms, military interventions, although sometimes requested by public opinion, do not attract votes when the intervention is successful while making them lose when it fails. Significant in this regard is the "moral" position, contrary to any obligation of the Security Council and assumed by the United States. It is equally significant that the non-aligned states themselves, strongly opposed to humanitarian intervention, are substantially in favor of the veto rights of the five permanent members as a guarantee against the abuses of the great powers. In short, a certain consensus on the principle exists, but the disagreement is marked on the specific point of a legal regime that allows humanitarian intervention in general terms²⁰⁴. We are referring to the States belonging to the Non-Aligned Movement (NAM) who severely criticized the responsibility to protect the doctrine of intervention. The same States both by excluding that this is an emerging rule (and even less already existing) and by believing that the significant aspect among the three suggested by ICISS (i.e. prevent, react and rebuild) is the military aspect. In such a vision the responsibility to protect is a mere expedient of the great powers to protect the desire for interference within the different scenarios of war. States in favour of intervention impose their interests and values on the weakest states. The same Non-Aligned states underline the contradiction of the responsibility to protect the doctrine of intervention by

²⁰⁴ FOCARELLI C., La dottrina della responsabilità di proteggere e l'intervento umanitario, Riv. dir. internaz., fasc.2, 2008, pag. 317

demonstrating how it aims to reduce sovereignty in the name of universal humanitarian considerations²⁰⁵. The Russian Federation, for example, has strongly denied that the responsibility to protect is to be regarded as implicit in international law and that there is in fact no sort of international agreement on these concepts.

Conclusion

The responsibility to protect could have been a necessary condition resulting from the lack of UN authority to intervene in cases of mass atrocities, systematic violations of human rights inactivity and the international community's reluctance to be involved in situations such as genocide in Rwanda. The chapter shows how in the case of Libya the invocation of the R2P doctrine by the international community has led to the authorization of "all necessary measures" to protect civilians in Libya; stressing the inability of the international community to act in time in Rwanda, despite the same or even more serious violations of human rights. The recognition of the legality, as well as of morality, of the right to such intervention is, therefore, essential for the preservation and progress of the world legal order. The controversial intervention in Libya and

²⁰⁵ The Russian Federation, for example, has strongly denied that the responsibility to protect is to be regarded as implicit in international law and that there is in fact no sort of international agreement on these concepts. FOCARELLI C., La dottrina della responsabilità di proteggere e l'intervento umanitario, Riv. dir. internaz., fasc.2, 2008, pag. 317idem, p. 192 e ss.

the impasse in Syria, which will be analyzed in the next chapter, have seriously worried the future of the R2P principle in an increasingly complex system, and many international scholars and commentators believe that the failure to act in Syria undermines the credibility of the UN Security Council and "will transform the R2P doctrine from an admirable goal into a hypocritical and exploited political instrument". (Thomas G. Weiss, 2003) .The most obvious lesson that emerges is that the implementation of the R2P doctrine is selective and a "pick and choose policy" is a problem that must be addressed. Many scholars believe that the use of the R2P doctrine is becoming increasingly case based case.

CHAPTER THREE

3 The Syrian crisis and its evolution

Introduction

The Syrian geopolitical centrality is given by its strategic geographical position, which leads it to be the intersection point of the Palestinian, Lebanese and Iraqi issues.

Modern Syria is the result of a political compromise sanctioned during the Great War by the Sykes-Picot agreements between the United Kingdom and France. But it is after the invasion of Iraq by Saddam Hussein that Syria has accentuated its role as central country of the Levant: the strongest of the states on the border with Israel, occult director of the last 35 years of Lebanese history, interlocutor of the Saudi Arabia, an ally of

the Islamic Republic of Iran came across. Of all the countries involved in the "Great Arab Revolt of 2011", Syria exerts a regional influence second only to that of Egypt. The wave of protests that have shook Arab societies, triggered a series of chain reactions that led to the to the end of the power of Ben Ali in Tunisia, Mubarak in Egypt and Gaddafi in Libya. Clashes and protests have spread to other countries, such as Bahrain, as a civil war in Syria and Yemen. : but will be precisely the fear of the extension of Iranian power throughout Syria, both political and military, a determining factor in inducing the United States, France and Great Britain to intervene and keep up the tension.

3.1 Syria's profile

The Syrian geopolitical centrality is given by its geographical position that brings it to be the point of intersection of the Palestinian, Lebanese and Iraqi issues historically, the role played by the Syrian Arab Republic is that of a revolutionary, socialist and national vector, which promoted the pan-Arabist vision common to the Arab nationalist movement of the Second World War and subsequently encouraged and resumed by the Egyptian Nasser revolution. Modern Syria is the result of a

political compromise enshrined during the Great War from the Sykes-Picot agreements between the United Kingdom and France. In order to gain the support of the Arab populations against the Ottomans, the two powers promised the creation of a single Arab state, abiding by the dream of those peoples, but in fact by agreeing to share their territories. After the defeat of the Ottoman Empire, in fact, it was divided among the winners: in 1920 France obtained the current Syria and Lebanon, while the Kingdom of United went the current Palestine, Israel, Jordan and Iraq²⁰⁶. These new states were created without taking into account the complex ethnic-religious local mosaic: the balance that the Ottoman Empire had managed to achieve between the provinces, discouraging the emergence of confessionally connoted political entities, was broken by this remapping of the Middle East, whose administration was organized precisely on the basis of ethnic-religious parameters²⁰⁷. Under mandate French authorities were granted those rights long denied, including access to the and military service, so much so that they ended up with a being the majority ethnic component of the mandatory army. In addition, they were able to benefit from economic subsidies and tax reductions not applied to other and ultimately came out of social isolation. Soon the military became the most cohesive force in Syrian society. It increased the monopoly of economic power. Tensions exacerbated by

²⁰⁶ GILL T. D., *Classifying the Conflict in Syria*, Stockton Center for the Study of

International Law, 92 INT'L L. STUD., 2016, pp. 352-380.

²⁰⁷ DAWLATY, *Transitional Justice in Syria*, Heinrich Boll Stiftung, 2013, pp. 87

the abolition of community privileges of Alawites and Druze, from banning religious leaders of the minorities to meet in public, by the law that established that the President of the Republic should be Muslim and which reduced the representation of the minorities in Parliament. Things got worse with the Arab-Israeli war of 1948-49: the Syrian army was defeated and humiliated and blamed on the government, reacting with a coup d'état: in March 1949 the Kurdish colonel Husni Za'im deposed President Quwwatli, establishing the first of a long series of coups that destabilized Syria for years. In 1958 Syria joined Egypt in the United Arab Republic (RAU), seen as the reunification of the Arab world in the name of redemption and resistance to Israel. The RAU, however, was in fact an annexation of the Syria to Egypt, based on the police state and the repression of civilian life, and politics. In 1961 the umpteenth military coup in Syria sanctioned the end of the RAU and the the new independence of Damascus. In 1963, however, another coup followed decreed the bankruptcy of the Republic and finally brought the Baath to power. In 1966 another coup followed, which ousted the Nasserists and the old Baath's guard, including his two founders, and sanctioned a "new" Baath, of whom Hafez al Assad was Minister of Defence and head of the Air Force. Feuds and the party's internal purges and the disastrous Six-Day War with Israel in 1967, when Syria lost the Golan Heights with its precious resources water, prompted Hafez al Assad to implement another internal coup in

the party's 1970 that made him the absolute leader of Syria. Hafez al Assad worked to build a power and to create a system that would prevent coups d'état against it.

Especially after Saddam Hussein's invasion of Iraq, Syria has accentuated its role as the central country of the Levant: the strongest of the states bordering Israel, occult director of the last 35 years of Lebanese history, interlocutor of Saudi Arabia, ally of the Islamic Republic of Iran. Of all the countries involved in the 'Great Arab Uprising of 2011', Syria exerts a regional influence second only to that of Egypt.

The consequences of a possible overthrow of the regime of Bashar al Assad has important effects on the internal instability of Syria, dramatically elevating the risks of the rekindling of the Arab-Israeli conflict and the start of yet another civil war in Lebanon. Syria is not new to sensational attempts to shake off the yoke baathista and the Assad family, which has held power firmly since 1971²⁰⁸.

In 1982, on the occasion of a gigantic revolt sponsored by the Muslim Brotherhood in the city of Hama, Hafiz al Assad, father of the current president, bombed the city causing about 20,000 deaths. Also in the 2010 edition of his report, Freedom House placed Syria among the countries where freedom and human dignity were most widely and violently trampled on. Despite

²⁰⁸ AL-HAJ SALIH Y., *The Syrian Shabiha and Their State - Statehood & Participation*, Heinrich-Boll-Stiftung, 2014, pp. 9

this gigantic repressive apparatus and the ability of the Assad to skilfully play the card of "resistance against the Zionist entity", on March 15, 2011 the revolt against the regime began in the southern city of Deraa, then spread throughout the country, with a new symbolic epicenter in the north, in the 'martyr city' of Jisr ash Shugur (near the Turkish border). Since that March 15, every Friday, after the prayer, hundreds of thousands of Syrians have defied the most brutal violence of the security forces since Damascus itself, triggering an escalation of protests-opposition (more than 1300 deaths ascertained in the first three months) reminiscent of that of the Iranian revolution of 1978-79, even if in the absence of a charismatic leader like Khomeini. The street demonstrations that started in February 2011 were expression of a discontent that has its roots in a History, as seen, farther than 2011. The gap between powerful oligarchy and the rest of society is been exacerbated by the absence of political reforms and by the wrong reforms that Bashar started in 2004. He privatised the insurance sector, which was one of the most important in the world profitable, excluding industry from modernisation. Bashar did not accompany the economic liberalization with adequate state support; it dismantled many agricultural cooperatives without providing social security benefits, or compensation, hitting the lower sections of society hard. The sector agricultural sector was the most affected, also because of an unprecedented drought that had begun in 2006.

3.2 *Syria's civil war explained from the beginning*

The wave of protests that have shook Arab societies, starting with the self-immolation of the young Tunisian Muhammad Bouazizi in December of 2010, triggered a series of chain reactions that led to the to the end of the power of Ben Ali in Tunisia, Mubarak in Egypt and Gaddafi in Libya. Clashes and protests have spread to other countries, such as Bahrain, as a civil war in Syria and Yemen. Towards the end of 2011, the various groups opposed to the regime of President Bashar al-Assad have rebelled. These have been joined by the Free Syrian Army, the Kurdish militias and the Islamist groups. They rebelled against the government in office and so began a bloody civil war that is still going on. Interference from many foreign countries has immediately influenced the fate of the of the war, affecting not only its continuation, but also increasing its size and violence. The United States, France, the United Kingdom, Saudi Arabia, Qatar and Turkey have all deployed in support of the opposition forces. Russia, China, Iran, the movement Lebanese Shiite Hezbollah and Venezuela, however, in support of the regime of al-Assad²⁰⁹. The This situation is further aggravated by the fact that the civil war was the occasion for the for the unleashing of the violent tendencies of extremist

²⁰⁹ ARIMATSU L., CHOUDHURY M., *The Legal Classification of the Armed Conflicts in Syria, Yemen and Libya*, International Law PP 2014/01, Chatham House, 2014, pp. 43

religious groups, already present in the country and region²¹⁰. The protests spread rapidly from city to city - Homs, Damascus, Idlib etc.. - swallowing in the flames what is still today, at least nominally, the Syrian Arab Republic. The underlying dynamics that drove the Arab uprisings are simple. A rapidly growing young population on the one hand and a rigid repressive regime incapable of change on the other. The protest, moreover, has been repeated in a similar way in various countries, but the consequences have been different, and nowhere have they been as ferocious as in Syria. Here the first hopes that Assad could end up like other dictators have crumbled into the ruins of his ancient cities and the destroyed lives of his people. In July 2011, after months of blood and community inaction international, peaceful protests were accompanied by armed opposition made up mainly of deserters from the regular army. Soon, many civilians joined the ESL took up arms to defend homes and families from force raids

of the government. The militarization of the revolt marked an irreversible evolution because it actually supported the regime's strategy, which it could finally fight on its own grounds of violence by legitimizing the repression of "the groups armed." To avoid falling into the spiral of revenge and to regulate conduct of its combatants, ESL adopted a Code of Conduct in accordance with the law which not only prohibited gratuitous

²¹⁰ LY M., RENZI D., Dall'Egitto alla Siria, il principio di una rivoluzione umana ed i suoi antefatti, Prospettiva Edizioni, Firenze 2014, pp. 379

violence, the mistreatment of people with disabilities, but also the prisoners, torture and summary executions, but also foresaw that the weapons would be handed over to the transitional authority that would take power after the fall of the Assads.

The Syrian conflict has gone through several phases, but at least until 2012 the classification is rather linear. The Independent International Commission of Inquiry on Syria, both in the first report, which covers the period between March and November 2011 in both the second and the third reports covers the period between November 2011 and February 2012 initially excluded the application of International Humanitarian Law. This exclusion was not capable of establishing the existence of the two criteria that determine a non-international armed conflict. Things have changed in August 2012 with the third report, covering the period from February to July 2012, in which the Commission established the existence of an armed conflict. In fact, there are many elements that until 2012 meet the first criterion that defines an internal armed conflict. Determinants to the intensity of the hostilities, the type of weapons used against demonstrators, the fact that the government has deployed the armed forces to contain the situation and adopt genuine military operations against the demonstrators. On the same territory, there may be situations of conflict of different nature, as in the Syrian case, and classify the armed conflict entirely as international or domestic is inappropriate. In Syria this has happened many times over by more Third States. The first case

is that of Iran, which has sent its own troops and bodies of the Syrian elite alongside government troops²¹¹. The case of Russia is emblematic because after sending military advisers, land forces and armaments also deployed aviation and warships in support of the government front. Also the case of the intervention of the international anti-ISIS Coalition represents a further example that sees a coalition of third States militarily engaged in Syrian territory against ISIS. In this perspective the Syrian conflict is a "mixed" conflict and therefore determine the existence of (at least) a conflict international alongside (at least) one internal. According to some authors would fall within the internal conflict classification, in addition to that between government and between the International Coalition and ISIS and between Turkey and the Kurdish militias of the YPG²¹².

In this chaos, two external actors, not linked to the regional context but even of global importance, have entered the game more decisively: Russia, in defence of Assad, and the United States, in eminently anti-IS function. Washington, starting from the areas of influence on the border with Jordan in the south and Turkey in the north, has contributed to the creation of the FDS (Syrian Democratic Forces, Kurdish-Arab units dominated by the Kurdish YPG (People's Protection Unit), the People's

²¹¹ ARIMATSU L., CHOUDHURY M., *The Legal Classification of the Armed Conflicts in*

Syria, Yemen and Libya, International Law PP 2014/01, Chatham House, 2014, pp. 43

²¹² LY M., RENZI D., *Dall'Egitto alla Siria, il principio di una rivoluzione umana ed i suoi antefatti*, Prospettiva Edizioni, Firenze 2014, pp. 379

Protection Militias linked to the PYD, the Democratic Union Party). These formations have become protagonists of a strenuous resistance against the Islamic State, as in the case of the historic battle of Kobane, which inaugurated the slow process of conquest of the territories controlled by Daesh. The culmination of this path came with the fall of Raqqa in October 2017, thanks to the support of the U.S. Air Force, while the Russians have pursued a dual strategy, on the one hand attacking the Islamic State with air raids from the coastal bases of Tartus and Latakia, and on the other supporting with conviction the regime during its initiatives to regain the areas controlled by the anti-Assad rebels.

With the regional and global powers in these ranks, the history of the conflict remains fairly constant from 2015 onwards. With the support of Iranian militias, Hezbollah and Russian contractors, as well as the Moscow Air Force, the Assad regime has managed to regain control of almost the entire Syrian territory, passing from the fundamental take of Aleppo in December 2016 to arrive until today. Moreover, until now Damascus has been able to count on the help of a precious ally: the Shiite Iran of the "Ayatollahs". Tehran immediately sent its own militias to Syria, at the same time favouring the inclusion in the conflict of the Hezbollah who have fought in all these years alongside the loyalist armed forces.

Tehran has thus extended its hegemony over Syria, which is worrying not only for the Saudis, but also for the main ally of the whole West: Israel. The fear of the extension of Iranian power throughout Syria, both political and military, is at this time a determining factor in inducing the US, France and Britain to keep up the tension.

3.3 The Role Played by the UN in Syria: the Actions Implemented and their Effectiveness

Serious human rights violations grew exponentially with torture systematic, even on soldiers discussing orders and even on children. These acts gave rise to harsh condemnations by the UN Security Council, the Secretary General Ban Ki-moon and the sanctions of the USA and many European countries. In May 2011, army tanks entered Deraa, Baniyas, Homs, Ar Rastan and the suburbs of Damascus in an attempt to crush the protests. I access points were closed to prevent the arrival of food and medicines, while the and summary executions. In August, the European Union and other Western States adopted restrictive measures against the Syrian government, including the oil boycott, the freezing of government assets, the introduction of import duties on Syrian goods and a travel ban on senior officials. On 22 August 2011, the UN Human Rights Council established by resolution S-17/1 The Independent International

Commission of Inquiry on Syria with its mandate to investigate all alleged violations of international law and of the law of the human rights since March 2011 and to identify those responsible²¹³. Syria is today a complicated chessboard in which regional and global powers are fighting for their own interests, both with direct military involvement and indirect. Authoritative commentators have spoken of war by proxy. A war in which two (or more) powers do not face each other directly in the field, but through third parties that they support militarily. In the Syrian case the two sides in the field, Syrian government and rebels, were supported from the beginning by two opposing fronts of actors: Russia, Iran, Lebanese Hezbollah on the one hand; Turkey, Saudi Arabia, Qatar, USA, France, United Kingdom of the other part. Without going into the merits of the geopolitical dynamics, it is of interests has made the most of this complex network of interests the various positions are irreconcilable and attempts at peace are in vain, not least because many of the powers involved sit on the Security Council and have the power to veto, which has in fact paralysed over the years any action regarding Syria. Despite this, the UN has tried several times to mediate negotiations between governments and opposition.

The situation in the country has been the subject of observation by the Nations since 2011, when the United Nations Human

²¹³ ARIMATSU L., CHOUDHURY M., *The Legal Classification of the Armed Conflicts in Syria, Yemen and Libya*, International Law PP 2014/01, Chatham House, 2014, pp. 43

Rights Council has been the International Independent Commission of Inquiry for Syria was established in order to to investigate human rights violations during the civil conflict. The various reports drawn up by the Committee of Inquiry have shown a picture of complex and alarming²¹⁴.

In fact, the 2014 report already showed that, on the one hand, government forces were carrying out repeated attacks against the civilian population, committing systematically murder, torture, rape and enforced disappearance. We're talking about conduct that, taken as a whole, constitute crimes against humanity. Further pipelines, including murder, torture and sexual violence, always carried out by the same forces governmental, constitute war crimes instead. Finally, the report pointed out that the appeal indiscriminate to the bombing and use of illegal weapons themselves causing massacres of and spreading terror among the population. On the other hand, the Commission Inquiry pointed out that the same war crimes and crimes against humanity were also committed by armed non-governmental groups and, with particular cruelty, by ISIS. The reports of the Investigation Committee show that all the fighting

²¹⁴ BUFALINI A, “Sul fondamento giuridico delle misure adottate dal Consiglio di sicurezza con la risoluzione 2118 (2013) sulla situazione in Siria”, in *Rivista di diritto internazionale* 2014, p. 206 ss.

parties have committed and continue to commit atrocious acts, including crimes international²¹⁵.

The first Geneva Conference in June 2012 produced the first Geneva Communiqué, a six-point peace plan which provided for an end to the violence, access for humanitarian agencies in Syria, the release of detainees, free access to the Country of international media. In particular, they tried to initiate an inclusive dialogue and a political transition. The points of the plan were never implemented. The second Geneva Conference, January-February 2014, was another failure, inevitable also for the intransigence of the parties: the regime does not want a government of transition because it would imply surrendering power, while the opposition posits as a precondition the resignation of Assad and the full implementation of the statement of Geneva I. On August 21, 2013 one of the most violent attacks on the population takes place in Ghuta Syrian civil society, conducted through the use of chemical weapons. Rebels and regular army are and international polarisation is accentuated²¹⁶. The United States and United Kingdom call for emergency measures for possible military action while Russia, China and Iran warn against any attack on Syria. In in the mean time, the Security Council is convened in an extraordinary

²¹⁵ ANNONI A, L'occupazione "ostile" nel diritto internazionale contemporaneo, Torino, 2012, p. 59

²¹⁶ CHARNEY C., QUIRK C., He who did wrong should be accountable" Syrian Perspectives on Transitional Justice, Syria Justice and Accountability Centre, Transitional justice research series, n° 1, Gennaio 2014, pp. 86

session in New York. of the United Nations, but once again the five permanent members prove incapable of giving birth to decisive but above all shared decisions, and yet another resolution is blocked by Russian and Chinese vetoes²¹⁷. On 27 September 2013, following the successful conclusion of bilateral negotiations conducted in Geneva between the US and Russian Foreign Ministers, the Council of Security unanimously adopted Resolution 2118 (2013) on the elimination of Syrian chemical weapons. For the first time since the beginning of the civil war, the five permanent members of the Security Council have agreed on a shared text on Syria. In fact, the Geneva Accord and Resolution 2118 (2013) have been celebrated as a success of diplomacy and the multilateralism on unilateralism. Resolution 2118 (2013) led to considerable progress on at least two fronts. unilateral attack by the United States on the model of Kosovo, by leading the issue into the mainstream of collective security; and secondly, it has strengthened the international regime for the control of chemical armaments. The most innovative aspect of this resolution is the following that the use of chemical weapons everywhere (anywhere) has been considered a threat to international peace and security within the meaning of Article 39 of the Charter. Therefore, any chemical attack, conducted by

²¹⁷ BUFALINI A, “Sul fondamento giuridico delle misure adottate dal Consiglio di sicurezza con la risoluzione 2118 (2013) sulla situazione in Siria”, in *Rivista di diritto internazionale* 2014, p. 206 ss.

each state (or non-state actor), wherever committed, will be regarded as an automatic threat to peace and security. international security. Since the resolution is binding for all the Member States of the UN, it consolidates the universal ban on the use of and extended it to the few countries not yet party to the CWC. This terminology is not common in Council practice of Security, the only precedent is in fact represented by the resolution 1368 (2001) ("any act of international terrorism is a threat to international peace and security).

The important resolutions proposed with regard to intervention against of the Syrian crisis had in fact been subject to veto by Russia and China. Such vetoes also, although motivated in a different way by the two powers, are essentially direct as a consequence of the important political and strategic ties between the three nations, but are above all supported by the inviolability assigned to the principle of state sovereignty of the two powers that have affixed them. This principle clearly clashes with the doctrines of responsibility to protect and humanitarian intervention, placing the the Council is constantly in a situation of impasse when it finds itself having to intervene for the resolution of a conflict, although fortunately the other bodies The Commission believes that the United Nations should play a role of constant pressure for action²¹⁸.

²¹⁸ PAVONE R I., *La siria e le armi chimiche: la risoluzione del Consigli di Sicurezza*, *La com. Internazionale*, 2013, IV, 715 e ss.

Of particular importance is also paragraph 19 of the resolution, in which the Council "demands" that non-state actors do not develop, acquire, manufacture, come into possession of, transfer, or use weapons of mass destruction (nuclear weapons, chemical weapons, and their means of launching; it also requires all parties to be given the opportunity to Member States, and in particular the neighbouring States of Syria, to inform the Commission the Council immediately of any activity conducted in violation of that paragraph. Despite the innovations introduced by the resolution, it also contains significant elements of legal and substantive weakness. With reference to the legal aspects, it should be stressed that the Commission does not draw its own conclusions from this Chapter VII of the UN Charter and therefore not to be used as a basis for provides for no automatic action in the adoption of sanctions in the event of non-compliance (as proposed by the US, UK and France). Paragraph 21 of the resolution limits itself to threatening, in the event of failure on the part of the Syrian Government to cooperate in the performance of its duties obligations, the adoption of 'measures' in accordance with Chapter VII of the Charter of the United Nations. In particular in this crisis, the General Assembly, the Human Rights Council, the Secretary General and the High Commissioner for Human Rights as well as the Envoy Special for the United Nations in

Syria have regularly informed and urged the entire international community to act to make bloodshed in Syria²¹⁹.

Certainly diplomatic attempts have been put in place, including the six-point plan of Kofi Annan and the recalled Peace Conferences held in Geneva, but unfortunately, the success of such initiatives depends and will continue to depend only and exclusively by the will of the States concerned. The history of the conflict has shown that not only Russia and the USA are the only powers that have determined the current difficult situation and that have conditioned the evolution of the conflict. Turkey played a decisive role in the outbreak of the Syrian uprising. Since the first months after the beginning of the war, it had hosted on its soil the command of the "Syrian Free Army", initially headed by General Riyad al-Asad. The militia was initially composed of deserters of the national army and members of the Turkmen ethnic group, and then was expanded by the accession of other brigades of various inspirations (including Islamists)²²⁰. Over time, Turkey, a country adhering to the Atlantic Pact, has done everything to get rid of the regime of Assad, a perennial adversary, allowing even from its borders the passage of numerous "foreign fighters". Erdogan then felt

²¹⁹ BUFALINI A, "Sul fondamento giuridico delle misure adottate dal Consiglio di sicurezza con la risoluzione 2118 (2013) sulla situazione in Siria", in *Rivista di diritto internazionale* 2014, p. 206 ss.

²²⁰ CHARNEY C., QUIRK C., "He who did wrong should be accountable" Syrian Perspectives on Transitional Justice, Syria Justice and Accountability Centre, Transitional justice research series, n° 1, Gennaio 2014, pp. 86

cheated by NATO, from which he expected direct military intervention. For this reason he did not disdain to make deals with Putin, temporarily changing his tactical position on Syria²²¹.

However, the conflicts with Assad have recently been exacerbated, given the continuous clash on the Kurdish issue (the loyalists have recently intervened in the city of Afrin to defend the Kurdish minority from Turkish attacks). For this reason, in order to fully recover the relationship with a strategically important ally like Ankara (and also to ease its pressures), Washington, Paris and London have decided to intervene.

3.4 Syria Today

The repression of the revolts by the regime and the parallel armed turning point of the rebel groups have created two blocks quite distinct. On the one hand, the government of Assad and the Syrian Arab Army loyal to him, on the other a rebel galaxy divided between supporters of nonviolent civil disobedience and armed groups from the Free Syrian Army (FSA). This

²²¹ SASSOLI M, “Le droit international humanitaire mis à mal en Syrie”, in *Plaidoyer* 2/2017, p. 24 ss.

group, founded in July 2011, was composed primarily of deserters of the regular army, who refused to suppress in blood the demonstrations against the regime. However, this distinction remains merely illustrative, because the picture would soon have been complicated by both a dramatic escalation of the conflict and the entry - or rather the further rooting - in the Syrian conflict dynamics of regional foreign actors, each bearer of its own agenda and interests²²². On 20 September 2016 during the 71st session of the General Assembly of the United Nations, the then Secretary-General of the UN Ban Ki-Moon declared in the his speech: "Many groups have killed so many innocents, but none so many as the government of Syria, which continues to throw barrel bombs on the areas and to systematically torture thousands of prisoners²²³. A harsh accusation public to the Syrian government for its responsibilities in the death of the greatest part of the civilian victims of the conflict, which is reflected in the numbers and the documentation collected from 2011 to 2016 on the victims of the conflict²²⁴. Although The Commission's proposal for a directive is difficult to implement, there are many bodies, NGOs and Syrian committees dealing with this, although on 7

²²² SASSOLI M, "Le droit international humanitaire mis à mal en Syrie", in *Plaidoyer* 2/2017, p. 24 ss.

²²³ CHARNEY C., QUIRK C., "He who did wrong should be accountable" Syrian Perspectives on Transitional Justice, Syria Justice and Accountability Centre, Transitional justice research series, n° 1, Gennaio 2014, pp. 86

²²⁴ EGAN B "International Law, Legal Diplomacy, and the Counter-ISIL Campaign: Some Observations", in *International Law Studies*, vol. 91, 2016, p. 242.

January 2014 the Office of the UN High Commissioner for Human Rights announced that it would stop counting the victims of the conflict because of the lack of access in the Country and inability to verify sources. The last official report before This decision was made in June 2013 and had 92,901 victims on 30 April. 2013. The figures relating specifically to civilian victims are worrying: the vast majority (95%) were killed by government forces. Among the most accurate and comprehensive Syrian organisations involved in documenting and collecting data there is the Syrian Network for Human Rights, which analyzed the data (latest estimates). Data are public and can be consulted on an ad hoc website which, with the help of the clear infographics shows the percentages of civilian victims killed classified as so Syrian government, rebels, Nusra, ISIS, Russian forces, YPG Kurdish forces and the International Anti-Isis Coalition. The fact that there have been war crimes and human rights violations in Syria is a fact that has been well known since 2012, when the commission set up by the United Nations put a precise figure in black and white: both the regime and the rebel groups had been guilty of heavy misdeeds against civilians. On the ground, the new multipolarity that characterizes the Syrian conflict risks translating into a decisional paralysis that will last for a long time. In the rest of the world, this translates into obvious and unprecedented difficulties for the international media to narrate this conflict and arouse the interest of public opinion, especially

at this stage. The reference points of the unipolar era have fallen: bloodthirsty dictators and religious extremists, the two categories that have become the main targets in the Western media universe in the last twenty years, appear to be opposed to each other today, making it difficult for the public to take a definitive position²²⁵.

In 2011, a revolt against a tyranny that has been gripping the entire nation for over 40 years began. This revolt has been exploited and interfered with by external interests, making it one of the worst civil wars of the last century²²⁶. Those who claimed, however, that after the defeat of Isis (which had managed to conquer much of the territory) everything would return to normal was quite disappointed. The international accounts on Syria's future are still too strong, and the massacre of the civilian population, unfortunately, can only continue for a long time. In this game of mirrors and different overlapping strategies that you get to the center of the matter, Damascus. Assad has consolidated his power²²⁷. On the one hand, it promises not to arrest the deserters who fled to Lebanon and Jordan and want to return, on the other hand, it has enacted a controversial law with the aim of confiscating land and property

²²⁵ DAWLATY, *Transitional Justice in Syria*, Heinrich Boll Stiftung, 2013, pp. 87

²²⁶ FERRARO T, "Determining the Beginning and End of an Occupation under International Humanitarian Law", in *International Review of the Red Cross* 2012, p. 138 e ss.

²²⁷ EGAN B "International Law, Legal Diplomacy, and the Counter-ISIL Campaign: Some Observations", in *International Law Studies*, vol. 91, 2016, p. 242.

from those who have abounded in the country. In the meantime, it continues to massacre its opponents, as shown by the satellite images of the mass graves in Sednaya. A large part of the country is now out of control and the violence does not stop. Assad remains in power because now at stake are the economic interests linked to the reconstruction of a country destroyed by years of war and sanctions. From this point of view, we should read the recent reopening of the Emirates embassy in Damascus, a move unthinkable until a few months ago but which is explained by the desire of Riyadh and the Emirates not to leave too much free hand in Tehran in the region. Waiting to understand what the role of the European Union will be in the complicated game of reconstruction, the longer-term questions remain. First of all, the return of refugees from Lebanon and Jordan, whose future seems uncertain, given the regime's inability to find a form of coexistence with the Sunni majority of the country²²⁸.

Conclusion

Serious human rights violations have grown exponentially with systematic torture, even on soldiers and even on children. These acts elicited harsh condemnations from the UN Security Council, Secretary General Ban Ki-moon and the sanctions of

²²⁸ SASSOLI M, “Le droit international humanitaire mis à mal en Syrie”, in *Plaidoyer* 2/2017, p.24 ss.

the United States and many European countries. On 22 August 2011, the UN Human Rights Council established by resolution S-17/1 The Independent International Commission of Inquiry on Syria with its mandate to investigate all alleged violations of international law and the law on rights human rights since March 2011 and to identify the main perpetrators. Syria is today a complicated chessboard in which regional and global powers are fighting for their own interests, both with direct and indirect military involvement, whose balances are precarious and whose end is still uncertain.

CHAPTER FOUR

4 The doctrine of Humanitarian Intervention and Responsibility to Protect Applied to the Syrian Case

Introduction

The worsening of the crisis in the Syrian Arab Republic ("Syria") has quickly become the center of international attention: from this moment, Syria has gone through a serious humanitarian crisis, which still continues. The international community has not only failed to prevent mass atrocities in Syria, but at the same time did not even take timely and effective measures to react promptly. Given the policy that has characterized the Syrian crisis to date, the likelihood of effective international cooperation on the reconstruction of Syria is also devoid of concrete expectations.

But the main point that will be addressed during the chapter is that the Syrian crisis involves multiple and serious problems that undermine the importance of the principle of Responsibility to be protected (R2P) in international relations and international law. This crisis has highlighted the fact that a state can use force for humanitarian purposes without the authorization of the Security Council, an international legal issue that has always been debated, but which has not emerged in the crisis in Darfur, Libya or the Costa d ' Ivory.

4.1 Application of the R2P Principle in International Responses to the Syrian Crisis

While the crisis in Syria was underway, the Security Council discussed it for the first time during a meeting on the Israel-

Palestine negotiations on April 21, 2011, immediately after the actions of the Security Council on R2P in Libya and Ivory Coast in March 2011²²⁹ of March 2011, Syrian government forces fired on protesters in Damascus and the southern city of Deraa who had requested the release of political prisoners. These actions have sparked days of violence and bloody revolts that have spread more and more intensely at national level in the following months. The United States, the United Kingdom and France have expressed serious concern about the terrible human rights situation in Syria, however on this occasion the Russian delegation declared that it did not want to interfere in the internal affairs of any sovereign state²³⁰. Faced with the harsh retaliation by the Syrian government against protests that have increased throughout the country, on 27 April 2011 the Security Council held its first session on Syria, in which most of the delegates expressed their firm condemnation of the grave human rights violations in Syria ²³¹: the need to help Syria to prevent further violence and civil suffering has been emphasized. While China and India have expressed concern

²²⁹ U.N. SCOR, 66th Sess., 6520th mtg., U.N. Doc. S/PV.6520 (Apr. 21, 2011)

²³⁰ *The Crisis in Syria*, INT'L COALITION FOR RESP. TO PROTECT, <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-syria> (last visited Mar. 27, 2016).

²³¹ U.N. SCOR, 66th Sess., 6524th mtg., U.N. Doc. S/PV.6524 (Apr. 27, 2011)

about the incidents that occur in Syria, Russia has declared that the current situation in Syria has in no way been a threat to international peace and security. The declaration, which stressed the responsibility of the Syrian government to prevent violence against its own people could not be issued because there was no agreement between the Member States. In particular, Russia and Lebanon have objected, stating that such a press statement would be an undue interference in Syria's internal affairs. In response to the growing international deterioration of the human rights situation in Syria, the Human Rights Council held a special session on April 29, 2011 and adopted Resolution 16 / 1 ²³². The resolution condemned the Syrian government's attacks on the civilian population and expressed grave concerns over alleged deliberate murders, arrests and torture of peaceful protesters by Syrian authorities. The resolution asked the UN High Commissioner for Human Rights to urgently send a fact-finding mission to investigate such suspected human rights violations in Syria. Although resolution 16/1 was adopted by a majority of the votes of the Human Rights Council, some Member States raised considerable opposition. China, Russia, Pakistan and Malaysia expressed their votes against the resolution, while the delegations of Nigeria and Saudi Arabia abstained. Pursuant to

²³² Human Rights Council Res. S-16/1, U.N. Doc. A/HRC/RES/S-16/1 (Apr. 29, 2011).

Human Rights Council Resolution 16/1, “*the High Commissioner for Human Rights established a [fact-finding mission] to investigate all alleged violations of international human rights law in Syria [. . .] to establish the facts and circumstances of such violations and of the crimes perpetrated, with a view to avoiding impunity and ensuring full accountability.*”²³³. Although no explicit and direct reference was made to R2P, the same purpose of the fact finding was to ensure the responsibility of the international community to prevent further atrocities in Syria. In May 2011 the fact-finding mission began and the High Commissioner for Human Rights made a formal request for collaboration with the Syrian government ²³⁴. However, the Syrian government only increased its repression of the opposition, the Council for human rights and some UN member states have put more pressure on the regime in Syria. In the months that followed, the United Kingdom, the United States, France, Germany and Portugal made efforts to approve a Security Council resolution condemning the atrocities of the Syrian government, which, however, proved to be unsuccessful in the face of the resistance

²³³ *Fact Finding Mission on Syria: Call for Submissions (A/HRC/RES/S-16/1)*, OFF. UNITED NATIONS HIGH COMMISSIONER FOR HUM. RTS. (May 24, 2011), <http://www.ohchr.org/EN/Countries/MENARegion/Pages/SyriaFactFindingMission.aspx>.

²³⁴ *OHCHR Fact-Finding Mission to Syria Terms of Reference*, OFF. UNITED NATIONS HIGH COMMISSIONER FOR HUM. RTS. 1–2 (May 24, 2011), http://www.ohchr.org/Documents/Countries/SY/TORs_FFM_Syria.pdf.

of Russia, China, Brazil, South Africa and India ²³⁵. Although some Member States considered the Syrian crisis an internal issue, the violence in Syria started to creep across the borders of Turkey. Furthermore, by the end of 2011 Syrian refugees had become an international concern: More than 2.5 million Syrians had fled their homes at the end of 2011, taking refuge in neighboring countries or within Syria itself. ²³⁶ Welcoming the massive influx of refugees was a great effort but also a great challenge for Syria's neighbors, with serious consequences for the stability and balance of the whole region. Given the escalation of violence and other humanitarian problems in Syria, Francis Deng, Special Advisor to the Secretary General for the Prevention of Genocide, and Edward Luck, Special Advisor to the Secretary General for R2P, issued an important declaration on Syria on 21 July 2011 ²³⁷. Stressing once again that the atrocities in Syria amounted to crimes against humanity, the Special Councilors urged the Syrian government

²³⁵ Dan Bilefsky, *New Move to Condemn Syria in U.N.*, N.Y. TIMES (June 8, 2011), http://www.nytimes.com/2011/06/09/world/middleeast/09nations.html?_r=0; *UN Deadlocked Over Draft Syria Resolution, as Crackdown Continues*, Radio Free Eur. Radio Liberty (June 14, 2011 11:13 AM GMT).

²³⁶ See *Syrian Refugees: A Snapshot of the Crisis—In the Middle East and Europe*, MIGRATION POL'Y CTR., <http://syrianrefugees.eu/> (last updated Oct. 2014).

²³⁷ Press Release, Francis Deng & Edward Luck, Special Advisers of the United Nations Secretary-General, U.N. Press Release (July 21, 2011)

to fulfill its fundamental responsibility to protect its civilian populations .In August 2011, after much discussion, the Security Council adopted a presidential statement expressing grave concern over the deterioration of the humanitarian situation in Syria and calls for access without any kind of obstacle for humanitarian workers²³⁸. While reiterating its strong commitment to the sovereignty, independence and territorial integrity of Syria, the Security Council also stressed the importance of a political solution to the conflict. Given the escalation of violence and unrest in Syria, the League of Arab States (LAS) issued its first declaration of condemnation on Syria on August 7, 2011 and called on the Syrian government to immediately end the violence ²³⁹. However, the statement made no explicit reference to R2P. From the initial violence and the events that took place in March 2011 until August 2011, the LAS did not respond to the crisis in Syria: the reason for this initial silence of the LAS on the crisis situation in Syria was linked to other regional crises that occurred. in the wake of the Arab spring, including political instability in Egypt after the overthrow of Hosni Mubarak and the NATO Libyan operation, which kept the LAS's focus away from the Syrian crisis.

²³⁸ See U.N. SCOR, 66th Sess., 6598th mtg. at 2, U.N. Doc. S/PV.6598 (Aug. 3, 2011).

²³⁹ Isabel Coles & Yasmine Saleh, *Arab League Expresses Growing Concern About Syria*, REUTERS (Aug 7, 2011, 11:13 AM), <http://www.reuters.com/article/2011/08/07/us-syria-league-idUSTRE7761H720110807>.

Equally, the Persian Gulf countries were busy with unrest in Bahrain, Yemen and Saudi Arabia at the time and were unwilling to take any steps towards Syria. The Independent International Commission of Inquiry on Syria was established on 22 August 2011 with Resolution 17 / 1 of the Human Rights Council. The Commission had the specific task of investigating all alleged violations of international human rights law in Syria since March 2011. In October 2011, the United Kingdom, France, Germany and Portugal presented a project to the Security Council, proposing an embargo on weapons and setting up a new sanctions committee . The preamble of the resolution stressed the primary responsibility of the Syrian government to protect its population as a primary duty. Russia added that the situation in Syria cannot be taken into consideration by the Council security separately and differently from the Libyan experience and that a similar interpretation of the Security Council resolutions on Libya should not be a model for future NATO actions in the implementation of R2P. Russia suspected that excessive force would also be used in Syria, as NATO did in Libya. Russia also stressed the importance of knowing how this particular resolution would be implemented. They underlined that *“a significant number of Syrians do not agree with the demand for regime change and would rather see gradual changes, believing that they have to be implemented while maintaining civil peace and harmony in the country.”* Rice further stated that, in failing to adopt the

draft resolution, “*the Council [had] squandered an opportunity to shoulder its responsibilities to the Syrian people,*” and “[t]he crisis in Syria [would] stay before the Security Council, and [the United States] [would] not rest until the Council [rose] to meet its responsibilities.”

4.2. A Conflict Without Truce : the Fate of Syria in the Indecision of the United Nations Members

The LAS, in an extraordinary session in Cairo on 16 October 2011, adopted a resolution "*calling for the complete and immediate cessation of acts of violence and murder and the end of armed actions*" to face the crisis with a further attempt to put end and prevent further casualties in Syria ²⁴⁰. On 30 October 2011, the SV urged Syria to "*stop the bloodshed*" in a plan accepted and signed by Syria on 2 November 2011²⁴¹. The action plan urged the Syrian authorities to: terminate all forms of violence, free political prisoners, withdraw all military elements from cities and residential neighborhoods and provide

²⁴⁰ League of Arab States Res. 7435, ¶ 1 (Oct. 16, 2011).

²⁴¹ *Timeline of International Response to the Situation in Syria*, GLOBAL CTR. FOR RESP. TO PROTECT 9, <http://www.globalr2p.org/media/files/timeline-of-international-response-to-syria-27.pdf> (last visited Mar. 28, 2016).

free access to LAS agencies and international media to report on developments and monitor the situation . However, the Syrian regime was not ready and did not immediately accept the proposals made by the LAS. This deliberate inaction by the Assad regime has in turn caused problems and sparked debates on the need for measures against Syria. Meanwhile, the Commission of Inquiry, established by the Human Rights Council under Resolution S-17/1, has completed its task and prepared its first report on November 23, 2011. The report concluded that the armed forces and Syrian security had committed human rights violations since the protests began in March 2011. The report also stated that crimes against humanity had been committed in various places in Syria during this period.

The Security Council again discussed the Syrian situation on 12 December 2011. During this meeting, Navi Pillay, United Nations High Commissioner for Human Rights, reported a disastrous budget, declaring that around 5,000 people had been killed in Syria since March 2011 and that many other civilians had been arrested and detained without any trial ²⁴².He continued, noting that some 12,000 refugees fled from Syria

²⁴² Press Release, United Nations High Comm’r for Human Rights, Syria: Pillay Calls for Urgent Action to Halt Violence (Dec. 12, 2011), <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11705&LangID=E> [https://web.archive.org/web/20150404170310/http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11705&LangID=E].

and many others were internally displaced. He stressed that the Syrian government failed to support its responsibility to protect Syrian civilian populations and that it would then be the task of the international community to intervene and take effective measures to protect the civilian population in Syria. At the end of January 2012, the LAS recognized its failure in the peace efforts in Syria and declared that the Syrian regime failed to cooperate with the LAS ²⁴³. Given the continuing violence in Syria, the LAS reported this situation to the United Nations and presented a peace plan that invited Assad to renounce and hand over power to his deputy ²⁴⁴. With the exception of Lebanon, this plan was supported by several other Arab countries . However, while all these negotiation attempts were in cors, the violence in Syria did not stop, rather it continued and, again, the UN member states made another attempt at the end of January 2012 to address the crisis. Syrian. During a discussion by the Security Council on the LAS peace plan, Morocco introduced a draft resolution under which the Security Council would fully

²⁴³ Peter Cave, *Saudi Arabia Says Arab League Observers Have Failed in Syria*, ABC News (Jan. 23, 2012, 8:15 AM), <http://www.abc.net.au/am/content/2012/s3413174.htm>.

²⁴⁴ Yasmine Saleh & Lin Noueihed, *Arab League Proposes New Plan for Syrian Transition*, REUTERS (Jan. 22, 2012, 6:16 PM EST), <http://www.reuters.com/article/2012/01/22/us-syria-idUSTRE8041A820120122>.

support the LAS proposal ²⁴⁵. The draft resolution included the LAS objective of forming a new national unity government, which required Assad to step back as part of a democratic transition process, then grant full authority to his deputy and hold free elections under Arab and international supervision ²⁴⁶. In light of the successful mediation efforts in Kenya, Kofi Annan was named joint UN-LAS special envoy for Syria on February 23, 2012. *"Special envoy [had to] provide good offices to end all violence and violations human rights, and promote a peaceful solution to the Syrian crisis. "* ²⁴⁷. The special envoy was guided in this effort by the provisions of General Assembly resolution A / RES / 66/253 and by the relevant resolutions LAS. In making the functions as a special envoy, Annan consulted Member States and *"engage [d] with all relevant [parties] within and outside Syria in order to end [mass atrocities] and the humanitarian crisis" in Siria.*

²⁴⁵ U.N. SCOR, 67th Sess., 6710th mtg., U.N. Doc. S/PV.6710, at 2 (Jan. 31, 2012); Neil MacFarquhar, *U.N. Tentatively Backs a Plan for Syria*, N.Y. TIMES (Feb. 2, 2012), http://www.nytimes.com/2012/02/03/world/middleeast/diplomats-at-united-nations-work-on-revisions-to-syria-resolution.html?_r=0.

²⁴⁶ Sec. Council, Security Council Fails to Adopt Draft Resolution on Syria as Russian Federation, China Veto Text Supporting Arab League's Proposed Peace Plan Security Council, U.N. Press Release SC/10536 (Feb. 4, 2012) [hereinafter Security Council Fails to Adopt Draft Resolution].

²⁴⁷ Press Release, Sec'y-Gen., Kofi Annan Appointed Joint Special Envoy of United Nations, League of Arab States on Syrian Crisis, U.N. Press Release SG/SM/14124 (Feb. 23, 2012).

The Commission of Inquiry, established under Resolution S-17/1 on the situation in Syria, presented its second report to the Human Rights Council on February 22, 2012. The report concluded that the Syrian government had "*manifestly failed in the his responsibility to protect [his people]*". Since November 2011, Syrian forces have committed more "*widespread, systematic and serious*" human rights violations. ²⁴⁸.

In light of the continuing escalation of violence in Syria, the president of the Security Council released a statement on March 21, 2012, reiterating the deteriorating humanitarian situation in Syria and asking Damascus to grant access to the undersecretary general for humanitarian affairs and the emergency aid coordinator. In light of this statement by the president of the Security Council, UN Secretary-General Ban Ki-moon expressed the hope that this development will mark a turning point in the international community's response to the crisis Syrian.²⁴⁹ On 14 April 2012, the Security Council unanimously adopted resolution 2042, which underlined the primary responsibility of the Syrian government to protect its population and authorized the deployment "*of up to 30 unarmed*

²⁴⁸ Human Rights Council, Rep. of the Commission of Inquiry on the Syrian Arab Republic, UN Doc. A/HRC/19/69 (Feb. 22, 2012).

²⁴⁹ U.N. Secretary-General, Statement Attributable to the Spokesperson for the Secretary-General on Syria (Mar. 21, 2012), <http://www.un.org/sg/statements/index.asp?nid=5934>.

*military observers [in Syria] to maintain contact with the parties and start reporting on implementation of a complete cessation of armed violence in all its forms by all parties, pending the deployment of the mission”.*²⁵⁰

On 7 June 2012, Annan informed the Security Council of the progressive and inexorable deterioration of the situation in Syria and, on 15 June 2012, UNSMIS suspended its activities. Following Annan's report to the Security Council, the Russia suggested a conference to establish a contact group on Syria.²⁵¹ On 19 July 2012, a draft resolution under Chapter VII of the UN Charter was presented to the Security Council, sponsored by France, Germany, Portugal, United Kingdom and United States. The resolution further emphasized to the Syrian government its primary responsibility to protect the population and prevent atrocities. It also authorized the Security Council to act under Chapter VII of the UN Charter to request the verifiable conformity within ten days of the adoption of resolution. On September 19, 2013, in light of the accusations of possession and use of chemical weapons by the Syrian regime,

²⁵⁰ S.C. Res. 2042, U.N. Doc. S/RES/ 2042, ¶ 7 (Apr. 14, 2012).

²⁵¹ Press Release, Kofi Annan Found., Remarks to the UN General Assembly by Joint Special Envoy for Syria Kofi Annan (June 7, 2012), <http://kofiannanfoundation.org/newsroom/press/2012/06/remarks-to-general-assembly-joint-special-envoy-syria-kofi-annan> [<https://web.archive.org/web/20120610012650/http://kofiannanfoundation.org/newsroom/press/2012/06/remarks-to-general-assembly-joint-special-envoy-syria-kofi-annan>].

Russia and the United States have transmitted to the Security Council their framework for the elimination of Syrian chemical weapons agreed in Geneva on September 14, 2013. In particular, the resolution prohibited Syria from "*using us , develop [produce], produce [ing], otherwise acquire [ing], store [ing] or conserve [ing] chemical weapons or transfer [sound]. . . to other states or non-state actors*", and also stressed" that no part in Syria should use, develop, produce, acquire, store, preserve or transfer such weapons. ".²⁵² However, Resolution 2118 does not mention the international community and the its consequent responsibility to protect the Syrian population from mass atrocities, but refers exclusively to the threat to international peace and security represented by the possession and use of chemical weapons by Syria.

Secretary-General Ban Ki-Moon saw the resolution pass as "*the first news of hope about Syria for a long time*".²⁵³ However, he noted, however, that "even in the midst of this important step" *we must never forget that the catalog of horrors in Syria continues with bombs and tanks, grenades and pistols. "He said*

²⁵² Letter dated 19 September 2013 from the Permanent Representatives of the Russian Federation and the United States of America to the United Nations addressed to the Secretary-General, U.N. Doc. A/68/398-S/2013/565, at 1 (Sept. 24, 2013).

²⁵³ Press Release, Sec. Council, Security Council Requires Scheduled Destruction of Syria's Chemical Weapons, Unanimously Adopting Resolution 2118 (2013), UN Press Release SC/11135 (Sept. 27, 2013).

Syria's plan to eliminate chemical weapons was not" a license to kill with conventional weapons ". Ki-moon also pointed out that those responsible for the chemical attacks in Syria should be brought to justice and declared that a United Nations mission had returned to Syria to complete its investigations.

In the debate following Resolution 2118, the member states of the Security Council *"praised the text for imposing binding obligations... The al-Assad regime, [requiring] the [regime] to get rid of its" instruments of terror "*. *"192 US Secretary of State Kerry stated that the Assad regime" brought the burden of respecting the terms of the resolution "*²⁵⁴. Despite the efforts of the international community, violence continued throughout Syria. Helicopter bombardment was reported in the city of Kafr Zeita in central Hama province in February 2014. *"Bombing in eastern Ghouta on the outskirts of Damascus, in the city of Mleiha, was also reported..At the end of 2014, hundreds of thousands of Syrian civilians have fled from rebel parts of the city of Aleppo under heavy aerial bombardment by the Syrian government, which has created one of the largest refugee flows in the entire civil war.*²⁰⁹ *Even today, unrest continues in Syria. Thousands of civilians are fleeing Syria. Some fight for their lives in the midst of the seas while others die before*

²⁵⁴ *Syria Army Captures Village in Hama Province*, AL JAZEERA (Feb. 18, 2014), <http://www.aljazeera.com/news/middleeast/2014/02/syria-army-captures-village-hama-province-201421843521885341.html>.

*reaching their destinations.”*²⁵⁵The Syrian refugee crisis has been widely discussed in recent years and many countries have agreed and accepted many refugees.

4.3 The Type of Syrian Conflict and the Implications of its Legal Classification on the Application of the Principle of Humanitarian Access

The Syrian question as set out in the third chapter demonstrates that the path of research into the effects of the interaction between human rights and humanitarian law is not addressed to the mere regulation of the law of armed conflict. This process has a more general objective, or the legal balance of the international community. As historical events have been shown, the principle of humanity determines the the use of force, making it possible for the regulation of the phenomenon of war by specific means is necessary pillars and, in particular, the articulation of humanitarian law as natural evolution of the law of peoples. In this sense, the doctrine of military necessity is another fundamental principle, to regulate and contain the

²⁵⁵ *Amateur Video Said to Show Syrian Army Tank Attacked*, TELEGRAPH (Feb. 17, 2014, 10:47 PM GMT),<http://www.telegraph.co.uk/news/worldnews/middleeast/syria/10645233/Amateur-video-said-to-show-Syrian-Army-tank-attacked.html>.

arbitrary use of force. This type of principle reach a mutual dialectical compromise, aimed at balancing and suppressing the arbitrary use of force of war, through a relationship of interaction between human rights and law humanitarian. During the various phases of the Syrian crisis, the traditional tension between the classical principle of effectiveness and that of legality or of the democratic legitimacy that characterises the contemporary phase of international relations. The "hybrid" nature of the Syrian conflict also makes the application of certain principles of international law problematic humanitarian as well as reiterating the topicality of the issue - remained rather "fluid" in international law and in the practice of the United Nations - on the relationship between the recognition of the right of peoples to self-determination and the principle of respect for the rule of law and the rule of law and the rule of lawsovereignty and territorial integrity of states. A challenge that has proved to be particularly difficult to The aim of winning is to identify the necessary balance between the new duties and responsibilities of protection for civilian populations or for the protection of human dignity and fundamental rights, imposed by norms and principles that have developed since the second half of the last century. These are flanked and contrasted with the obligations arising from traditional and consolidated rules of international law, relating in particular to the prohibition of the unilateral use of force, non-intervention

and, again once, to the safeguarding of the territorial sovereignty of states.

In the Syrian scenario, the violence against the civilian population objectively caused an unprecedented humanitarian catastrophe. The legal qualification of the conflict or the establishment of more than one category of conflict must take into account the conditions of the civilians, who are tortured regardless of the definitions. This concept would lead to the conclusion that the coalition's interventions, both in anti-Isis and against the Assad regime, are to be considered justifiable from a humanitarian point of view. The use of chemical weapons is just one of many cases of human rights violations. Of course, with thousands of deaths and more than seven million refugees, it is not appropriate to look for a cause that can only be attributed to government forces. Different armed groups and international actors operate on the territory. Reports from the Commission of Inquiry set up by the Human Rights Council highlight security of the civilian population is also constantly put at risk by the attacks on the population aircraft and military activities of the States which over the years have intervened. The number of military actions in Syria is increasing, whether through military action on the ground, in support of the Syrian regime (such as Russia) or in support of organized opposition, or through the provision of logistical, material or financial support to the various armed groups. Whatever the basis for the legitimation of such interventions

and whatever the reason is the method of implementation, there is no doubt, however, that the States which carry them out have an obligation to respect and ensure that all "actors" respect.

The Commission has also taken note of the fact that the Geneva Conventions of 1949 have not yet been ratified by the parties involved and that the rules and principles of humanitarian law are enshrined in the four Geneva Conventions of 1949. It is precisely in relation to these provisions that certain standards must always be respected in all circumstances, including in the case of non-international armed conflicts which have occurred in the past they carry out on their territory.

It should also be recalled that the obligation to respect and ensure respect for these minimum principles of humanitarian law implies, in particular, that a Party shall refrain from providing aid or assistance to another State where there is a reasonable expectation based on the previous conduct of that other State, that the latter may, thanks to the help received, commit an infringement humanitarian law or a war crime or gross violations of human rights human rights. Reports of the Committee of Inquiry into Crimes and Gross Violations human rights in Syria, as already mentioned, have established that Syrian government forces have used chemical weapons in a number of circumstances in attacks on the civilian population, classifying this conduct as crimes of war. Despite the Commission's repeated complaints and appeals to the Council

was not in a position to adopt any resolution, even if implicitly containing a condemnation of the Syrian Government for its proven use of chemical weapons or for other conduct that could be qualified as international crimes, because of the veto of some permanent Members. A project of resolution on the referral of the situation in Syria to the Criminal Court on the basis of Article 13 of the Rome Statute, which was submitted to the 2014 under consideration in the Council by a large number of states, was blocked the Russian and Chinese vetoes; this, despite the fact that the proposed tension expressly excluded the conduct of citizens, the military and others from the jurisdiction of the criminal court personnel of States, other than Syria, which were not parties to the Statute of Rome.

4.4 Historical Antecedents: Similarities and Differences with the Syrian Case

Comparing the situation in Syria with historical precedents in the application of humanitarian law is very difficult. In particular, difficulty lies above all in the acknowledgement that the Syrian conflict is changing its characteristics also because of the interventions of different States. The reason for the interventions also changes. If before the use of chemical

weapons and the actual detection of human rights violations, the interventions of Russia and the Coalition hit the Isis, after the use of chemical weapons and therefore also the unilateral intervention of the United States of America, the legal conditions have changed. Moreover, we have moved on from the application, even if much debated, of Article 51 of the United Nations Charter, for example, to the humanitarian justification of interventions.

If we want to make a comparison between the Syrian case and the historical precedents that characterized it, we must point out that the "humanitarian" intervention in Kosovo was the first case, in which the States used, an extensive construction of the unilateral intervention model provided for through collective self-protection by Article 51 of the Charter. These measures were taken in response not to an armed attack, but to a serious and large-scale violation of human rights. We are reporting on what was said in Resolution 1203 (1998) by the Security Council itself, which spoke of a "humanitarian catastrophe". In international law studies²⁵⁶, attempts to justify intervention are based on more classical considerations. However, it is significant that, almost twenty years later, <<the intervention is currently considered completely legitimate by some authors who refer to the doctrine of the so-called responsibility to

²⁵⁶ VERLAGE, Responsibility to Protect, Tübingen, 2009, p. 269 ss.

protect. We are referring to a doctrine which, despite its dubious value on a strictly positive level, indirectly proposes to protect, by means of an autonomous regulatory approach, but in line with what we have said, many collective values of the international community pursued by the production standards of erga omnes obligations>>>²⁵⁷.

Further comparisons in the Syrian case can certainly be made with interventions in Afghanistan and Iraq. In particular, for Afghanistan, the intervention was carried out by the American and British forces (with the limited logistical and military aid of other States, but with the consent, in practice, of all) in response to the terrorist attack on the two Twin Towers of New York on 11 September 2001. The attack began on October 7, 2001 with the well-known operation "Enduring Freedom", which resulted in a military protection and occupation of Afghan territory. This operation was never explicitly authorized by the Security Council. The UN in this case assumed a position that we can certainly consider halfway, and such as not to be able in any way to be considered exhaustive. In fact, Resolution 1368 (2001) did no more than recognize that the "terrorist attacks" suffered by the United States constituted a "threat to peace". This threat also enabled the use of the natural right of legitimate individual and collective defence under Article 51 of the UN Charter.

²⁵⁷ PICONE P., L'insostenibile leggerezza dell'articolo 51 della Carta dell'Onu, in Riv Dir Int., 2016, p. 7

In this perspective, recourse to self-defence was necessary in order to delegate the management of the entire case to the United States. This operation of constitutional engineering was therefore carried out without worrying about the fact that it was in contrast with the traditional interpretation, traceable to the Charter, of art. 51. The provision was in fact used to combat a practice, terrorism, which is certainly contrary to the founding values of the international community. With this intervention, the possibility remains definitively acquired, for the evolution of the legitimate defence, that, at least under certain conditions, the "armed attack" against which one can react has been put in place by non-state actors.

4.5 An endless succession of interventions with conflicting aims

Analysing the different phases of the Syrian conflict and therefore wanting to interpret the interventions also in the light of the typical principles of humanitarian law and therefore of the responsibility to protect, conflicting facts emerge. The contrasts lurk because of the succession of different

interventions, with different motivations and conducted by perhaps different²⁵⁸.

As far as Russia is concerned, which intervened at a certain moment in the conflict, alongside al-Assad's Syria, the prevailing opinion is that such an intervention would be based on a sort of explicit request on the part of the Government in question²⁵⁹.

This type of reflection serves to justify the double and simultaneous defence of the Government by Russia. Defense that has been criticized by the United States and other Western States.

As regards the attack by the States of Coalition that bombards the forces of ISIS on Syria's soil from above, the justification for such behaviour should be found in collective self-protection, based, however, in that case, on the paradigm of the state "unwilling or unable" to react. In practice, it is believed, that the Coalition States most involved in the war against ISIS would act in Iraq (which also attempts to combat the phenomenon with its own national army) on the basis of the principle of collective self-defence, while conducting, as the criterion considered, military operations (from above or on the ground) also in Syria.

This type of explanation is not very detailed. Authoritative

²⁵⁸ WELLER, Permanent Imminence of Armed Attacks: Resolution 2249 (2015) and the Right to Self Defence Against Designated Terrorist Groups, *EJIL: Talk!*, www.ejiltalk.org, 26 novembre 2015

²⁵⁹ MILANOVIĆ M, "The Clearly Illegal US Strike in Syria", in *EJIL:Talk!*, 7 aprile 2017, disponibile su www.ejiltalk.org, p. 14 e ss.

studies have criticized the use of this last criterion, claiming the opposition to it of various States, and the silence of many others, politically linked and therefore subordinate to the United States²⁶⁰.

The truth is, in fact, that an extensive interpretation of the type indicated could not fail to affect the architecture and functioning of the United Nations' collective security system, opening an even greater door to the traditional difficulties and uncertainties of application of Article 51, and to the unrestricted prevalence of unilateralism within the system itself²⁶¹.

It should also be stressed that, in relation to humanitarian law, strong doubts and, in any case, a kind of illegitimacy should be expressed even after the unilateral attack by the United States of America in 2017. The US position is not much more articulated when referring to the Security Council debates on armed intervention against the Syrian air base. The most interesting thing here is the particular perspective in which the US initiative is placed. In the absence of an effective reaction from the international community, states would be entitled to intervene unilaterally: "when the international community consistently fails in its duty to act collectively, there are times when states are compelled to take their own action. The

²⁶⁰ PICONE P., L'insostenibile leggerezza dell'articolo 51 della Carta dell'Onu, in Riv Dir Int., 2016, p. 7

²⁶¹ PICONE P., Il ruolo dello Stato leso nelle reazioni collettive alle violazioni di obblighi erga omnes, in Riv. Dir. Int., 2012, II, p. 859 e ss.

indiscriminate use of chemical weapons against innocent civilians is one of those times."²⁶²

Reconstructing the intervention of the United States from the point of view of humanitarian law means noting that the idea of linking US action to the need to put an end to a humanitarian emergency situation is particularly clear from the statements made by the British representative in the Security Council, who states that 'The United Kingdom supports the United States air strikes on the Al-Shayrat air field because war crimes have consequences'²⁶³. The United States strike was a proportionate response to unspeakable acts that gave rise to overwhelming humanitarian distress²⁶⁴. The latter references closely recall the reasons already put forward by some Western states during the previous crisis that occurred in August 2013, when the use of chemical weapons by the Syrian government in some districts of Damascus had caused a large number of civilian casualties. On that occasion, a note <<issued by the United Kingdom indicated in the doctrine of humanitarian intervention the legal basis for armed action, conducted unilaterally and aimed at ending the humanitarian emergency and discouraging the further use of chemical weapons by the Syrian side. On that

²⁶² UN Doc. S/PV.7919

²⁶³ Consiglio di Sicurezza, UN Doc. S/PV.7919, cit., p. 5

²⁶⁴ LEDERMAN M, "My Discrete but Important Disagreement with Harold Koh on the Lawfulness of the Strikes on Syria", in *Just Security*, 7 aprile 2017, disponibile su www.justsecurity.org, p. 58 e ss.

occasion, only the adoption of Security Council Resolution no. 2218 (2013) of 27 September 2013, which established a complex regime for the control and destruction of chemical arsenals in the possession of the Syrian government, had prevented the armed action of Western states>>265.

4.6 *Application of "just war" requirements to the Syrian case*

Within the context of humanitarian intervention, the state emergency is considered to be a phenomenon responsible for the state of exception, based on a negative legal system, concerning the "non application" of standards. In the light of this legal model, it would create a parallel system, i.e. the hypothesis of a control mechanism alternative to the ordinary, which legitimises any exceptionality, making it a "normal" instrument²⁶⁶. The question arises as to whether it is desirable a repression of the state of emergency, considering it to be a prejudicial system in its entirety, or if necessary design a parallel legal system, considering possible and, it would even be desirable to limit this phenomenon to a single area conventional legal model (*jus ad tumultum* and *jus in tumultu*). It must also

²⁶⁵ ARCARI M., La risposta statunitense all'uso di armi chimiche in Siria e la confusione delle categorie dello *ius ad bellum*, *Diritti umani e diritto internazionale*, 2017, II, p. 378 e ss.

²⁶⁶ BIANCHI A, "The International Regulation of the Use of Force: The Politics of Interpretive Method", in *Leiden Journal of International Law* 2009, p. 651 ss., p. 671

be said that the inability of the international community to consider the individual always and only as such, avoiding any possible social-legal qualification functional to a historical or political phenomenon has led to the emergence of legal principles and rules, in particular in the international conventional law. In that regard, it is not wrong to maintain the right to international humanitarian law as a legal instrument for the recognition of a legal subjectivity of the individual, precisely because of the limits of the imposed on States in the conduct of a phenomenon of war, despite the fact that there are, at the same time, limits to the legal protection proposed in this respect the qualification of the individual for the purposes of his or her protection²⁶⁷.

By focusing on the responsibility to react, which is unquestionably the heart of the report, humanitarian intervention - including preventive intervention - is only allowed in "extreme cases", if peaceful measures prove insufficient. An example is provided when China and Russia were opposed to any kind of intervention against the Syrian regime, while on the contrary, the United Kingdom, the United States and their allies were in favor of the use of force in Syria. The United States, the United Kingdom and France threatened Syria with the use of unilateral force only after the Syrian attack on chemical weapons in August 2013. Although the United

²⁶⁷ LEDERMAN M, "My Discrete but Important Disagreement with Harold Koh on the Lawfulness of the Strikes on Syria", in *Just Security*, 7 aprile 2017, disponibile su www.justsecurity.org, p. 58 e ss.

States and the United Kingdom have threatened Syria with a possible use of unilateral force, neither country justified their requests for intervention in Syria on the basis of R2P. Both countries justified their commitment to use unilateral military force against Syria based on Syria's use of chemical weapons.

The United Kingdom has threatened the Assad regime with the use of unilateral force to stop the use and production of chemical weapons and protect the civilian population. They justified their decision on humanitarian intervention without referring to R2P. The legal position on the United Kingdom's military action against Syria is set out in a note from the government dated 29 August 2013: under the doctrine of humanitarian intervention it would be lawful for the United Kingdom to use force against another state without a Council resolution security authorizing the use of force, if the Security Council cannot agree to authorize the use force and if other conditions are met. The document goes on to list three conditions that should be met:

- (i) there is convincing evidence, generally accepted by the international community as a whole, of extreme humanitarian distress on a large scale, requiring immediate and urgent relief;
- (ii) it must be objectively clear that there is no practicable alternative to the use of force if lives are to be saved;
- (iii) the proposed use of force must be necessary and proportionate to the aim of relief of humanitarian need and must be strictly limited in time and scope to this aim.

On January 14, 2014, the UK Office for Foreign Affairs and the Commonwealth presented an official response to questions posed by the Foreign Affairs Committee of the House of Commons on the legality of humanitarian intervention without authorization from the Security Council.²⁶⁸ This document resulted in a sort of reconciliation with the British and R2P legal position as reflected in the 2005 World Summit Results document.²⁶⁹ As noted by Goodman, the document highlighted three related positions:

1. R2P and the 2005 World Outcome Document involve political commitments aimed at the Security Council taking action;
2. R2P as set out in the 2005 World Summit Outcome Document does not address the question of unilateral State action in the face of an overwhelming humanitarian catastrophe; and
3. Unilateral humanitarian intervention is a lawful option when the Security Council fails to take action to stop an overwhelming humanitarian catastrophe.

Harold Koh agrees with former British legal adviser Sir Daniel Bethlehem, who said that "*i in the case of the law on*

²⁶⁸Hugh Robertson, *Further Supplementary Written Evidence from the Rt. Hon. Robertson MP, Minister of State, Foreign and Commonwealth Office: Humanitarian Intervention and the Responsibility to Protect*, JUSTSECURITY.ORG (Jan. 14, 2014), <http://justsecurity.org/wp-content/uploads/2014/01/Letter-from-UK-Foreign-Commonwealth-Office-to-the-House-of-Commons-Foreign-Affairs-Committee-on-Humanitarian-Intervention-and-the-Responsibility-to-Protect.pdf>.

²⁶⁹Ryan Goodman, *UK Government Issues Major Statement on Legality of Humanitarian Intervention*, JUSTSECURITY.ORG (Jan. 30, 2014, 8:44 PM), <https://www.justsecurity.org/6583/uk-government-issues-major-statement-legality-humanitarian-intervention/>.

humanitarian intervention, an analysis that is based simply on the prohibition of the threat or use of force referred to in Article 2, paragraph 4 of the Charter of the United Nations and the related principles concerning non-intervention and sovereignty, it is ... excessively simplistic. "This evidence occurs in the case of human rights violations of such a magnitude that they "genuinely shock the conscience of mankind". All on condition that six points are respected: just cause, right intention, legitimate authority, extrema ratio, proportionality and prospects of success" 269

It has been noted several times that the proposed conditions correspond quite faithfully to those of the Christian theological tradition of just warfare. No one doubts *"that these are more than reasonable principles, but one wonders whether reasonableness is sufficient to conclude that conduct is permitted under international law. It must be acknowledged that the real problem is not about the conditions understood in general terms, but about the concrete way in which those conditions are interpreted"*²⁷⁰.

However, although Article 2, paragraph 4, and Article 24, paragraph 1, of the Charter give the Security Council the responsibility to act in cases where there is a threat to international peace and security, the Charter does not respond to the question whether a group of states with real and justified

²⁷⁰ FOCARELLI C., La dottrina della responsabilità di proteggere e l'intervento umanitario, in Riv. Dir. Int., 2008,II, p. 317 e ss

humanitarian reasons can act collectively with civil protection in cases where the Security Council does not take effective measures to protect civilian populations from mass atrocities. The United States and the United Kingdom have maintained the open option for humanitarian purposes without the approval of the Security Council. After the Syrian attack on chemical weapons in August 2013, these countries also adopted an approach similar to the Syrian crisis. Therefore, in Syria, even without a Security Council resolution, the United States, the United Kingdom and France openly declared their willingness to take military action against the Assad regime, even without a Security Council resolution authorizing it ²⁷¹. However, regardless of whether the authorization of the Security Council was necessary to intervene and protect the civilian population in Syria, the use of chemical weapons should not have been the determining factor of the whole affair. The attention of the international community was on chemical weapons and this approach has undermined the response to other serious crimes that have continued throughout the period in Syria.

It may well be that in medieval Christian Europe the requirements of the just war were placed in a social and cultural

²⁷¹

US Ready to Launch Syria Strike Says Chuck Hagel, BBC (Aug. 27, 2013), <http://www.bbc.com/news/world-us-canada-23847839>; Tim Ross & Ben Farmer, *Navy Ready to Launch First Strike on Syria*, TELEGRAPH (Aug. 25, 2013, 10:00 PM EST), <http://www.telegraph.co.uk/news/worldnews/middleeast/syria/10265765/Navy-ready-to-launch-first-strike-on-Syria.html>.

context so homogeneous as to produce predictable and generally accepted concrete results, but today's world does not appear so homogeneous and the same principle can lead in practice to very different results²⁷².

The criterion of just cause has been interpreted by the Commission (ICISS, International Commission on intervention and State Sovereignty) as meaning that military intervention is admissible only in two extremely serious cases (mass killings, with or without genocidal intent, and large-scale ethnic cleansing) The Commission has also taken note of the fact that the Commission has not yet taken any action in response to other types of human rights violations²⁷³.

The problem is that from the generic concept of just cause we can also arrive at other solutions, more or less inclusive. The same could be said of the intervention aimed at re-establishing a democratically elected government, which in the report is excluded from the responsibility to protect because it would exceed the requirement of just intention. On the other hand, if the concepts of just cause and right intention are too indeterminate and can lead with equal plausibility to different solutions, the problem arises of how to determine them more and here the problem of promotion becomes legal.

²⁷² BIANCHI A, "The International Regulation of the Use of Force: The Politics of Interpretive Method", in *Leiden Journal of International Law* 2009, p. 651 ss., p. 671

²⁷³ FOCARELLI C., La dottrina della responsabilità di proteggere e l'intervento umanitario, in *Riv. Dir. Int.*, 2008,II, p. 317 e ss.

4.7 Operations in Syria and the problems of qualification of armed conflicts

In the case of Syria the armed conflict between government forces (including militias) and rebels has made the application of international humanitarian law. A humanitarian law whose application over the years has never produced unequivocal reflections. Humanitarian intervention and in any case the application of the principle of responsibility-based intervention to protect applies when all parties to the conflict do not protect civilians²⁷⁴.

The main problem must be substantially sought acknowledging that any civilian death is not a violation of international humanitarian law. The parties can attack military targets, including enemy fighters and weapons depots, but also civil constructions and infrastructure used by enemy forces. Civilians taking "a direct share in the hostilities" may be affected for the period they have joined in the fight, including civilian leaders who command the forces. At the same time, fighters who have been knocked out, captured or surrendered have the right to be protected from attack. In this regard, international humanitarian

²⁷⁴ LEDERMAN M, "My Discrete but Important Disagreement with Harold Koh on the Lawfulness of the Strikes on Syria", in *Just Security*, 7 aprile 2017, disponibile su www.justsecurity.org, p. 58 e ss.

law does not limit itself to prohibiting attacks on civilians, but also indiscriminate offensives, those who do not want or cannot distinguish between military and civilian objectives. This can happen when the raids are not aimed at hitting military targets, or when the particular range of weapons is substantially indiscriminate, as happens in very populated areas. Assaults must always provide that the loss of civilian life or damage to civilian property is not disproportionate to the expected military advantage²⁷⁵. The treatment of prisoners is also important for International Humanitarian Law. The application of this specific legislation is too often overlooked, as personal feelings towards the enemy that have nothing to do with impartial justice come into play. Both international humanitarian law and international law place particular emphasis on human rights and therefore lay down standards to protect detainees from all forms of execution, torture or other abuse. The fundamental principles of human rights also apply during real emergencies, while the legal requirements for detention are examined by the jurisdiction and submitted to the competent authority. The competent authorities act because applying the rules of war crimes and prosecuting those who commit them is vital, because they are carried out by people with criminal intent. It is not only the fighters who carry out these crimes who are to blame, but also those who help them and are their accomplices, those who give orders or simply watch these acts. The

²⁷⁵ BIANCHI A, “The International Regulation of the Use of Force: The Politics of Interpretive Method”, in *Leiden Journal of International Law* 2009, p. 651 ss., p. 671

qualification of the Syrian conflict is a very complex exercise, especially with regard to the application of international humanitarian law as regards the application of the principles to which we referred earlier. As also concluded by the UN Commission of Inquiry on Syria (report A/HRC/21/50), the phase of civil war took place between the end of July 2011, when to defend the street demonstrations they were flanked by an armed opposition, the Free Syrian Army (FSA), and 2012. In this period the legal requirements for the existence of a civil war were there²⁷⁶. But since 2012, things have changed radically, both among the rebel front and among the governmental front. It is enough, therefore, to look at the countless nationalities and armies of third countries engaged in various capacities in the conflict to understand that it is no longer possible to speak of a civil war. The Syrian conflict appears to be what in practice (although not yet codified) is defined as "war by proxy", proxy war, or "internationalized" conflict. In this conflict, in addition to the belligerence between the government and the rebels, there is a conflict between Coalition and ISIS, Russia, Turkey and Kurdish militias YPG, between rebels and ISIS, occasional Israeli aerial bombardments to military targets on Syrian territory and so far two U.S. military operations against Syrian military targets.

²⁷⁶ BARTOLINI G., Gli attacchi aerei in Siria, l'operazione Inherent Resolve e la complessa applicazione del diritto internazionale umanitario, in *Dir. Um. e dir. internazionale*, 2017, II p. 400 e ss.

With regard to the US attack of 7 April, the first problem is that of its possible subjection to international humanitarian law, that is, whether this military action can be qualified as an armed conflict and, secondly, to what type it can be attributed. It is obvious that in the context in question, because of the military opposition between the United States and Syria, the relevant hypothesis is provided by the notion of international armed conflict expressed in Article 2 common to the Geneva Conventions of 1949. This term, although not clearly defined in the tactical discipline, has nevertheless given rise to substantially agreed solutions in doctrine and practice, as can be seen in the new Commentary prepared by the CICR in 2016. The limited nature of this specific US action, similar to the most recent bombardments of pro-regime forces to inhibit their movement in a de confliction zone or to the shooting down of Syrian military aircraft, allows us in particular to dwell on one of the few controversial elements, that is, the possible need that armed hostilities between two or more States must be characterized by requirements of intensity or duration of a relevant nature in order to be characterized as an international armed conflict²⁷⁷. The attack conducted by the United States on 7 April 2017, however, represents only a small portion of the military activities developed by a growing number of states in

²⁷⁷ BIANCHI A, “The International Regulation of the Use of Force: The Politics of Interpretive Method”, in *Leiden Journal of International Law* 2009, p. 651 ss., p. 671

the territories of Syria and Iraq in recent years²⁷⁸. With regard to the military activities related to Inherent Resolve in the Syrian territory from September 2014, however, there is no doubt that the problems related to their qualification are very complicated. Alongside the Syrian question, therefore, there is a coalition fight, within another state, with a group of fighters active in the whole of this state. The qualification of the conflict is very complicated²⁷⁹.

The main argument supporting the framing of these war activities within the framework of the discipline of non-international armed conflicts is provided by the nature of the actors involved. Since the actions are directed against an organised armed group, rather than against a State, many authors believe that the identity of the parties to the conflict would be of absolute importance, regardless of the fact that, in order to strike these organised armed groups, it is necessary to intervene in the territory of another State. This solution, which has also been taken up by the International Criminal Court, is reflected in the new Commentary on the Common Article 3. In this, in several sections, it is stressed that, in operations against organised armed groups present in other States, relations between non-state entities and the non-territorial State are

²⁷⁸ BARTOLINI G., Gli attacchi aerei in Siria, l'operazione Inherent Resolve e la complessa applicazione del diritto internazionale umanitario, in *Dir. Um. e dir. internazionale*, 2017, II p. 400 e ss.

²⁷⁹ KOH H.H., "The War Powers and Humanitarian Intervention", in *Houston Law Review* 2016, p. 971 ss

governed by the regime of non-international armed conflicts. In particular, for the ICRC scenario if the non-State armed group does not act on behalf of the second State, it is conceivable that the confrontation between the first State and the non-State armed group should be regarded as a non-international armed conflict. At the same time, due to the evaluations introduced by the ICRC in the new Commentary, it is necessary to evaluate a separate interpretative problem, which has so far been scarcely examined. In particular, it is necessary to analyse the possibility of considering that actions carried out against an armed group organised in the territory of another State may, in any case, lead to the emergence of an international armed conflict between the States involved. In fact, the new ICRC in art. 2 common affirms peremptorily as, although "the intervening State may claim that the violence is not directed against the government or the State's infrastructure an international armed conflict arises between the territorial State and the intervening State when force is used on the former's territory without its consent". According to this approach, therefore, the lack of consensus is the decisive element in the qualification of inter-state relations, also "in situations in which a State attacks exclusively members of a non-State armed group or its property on the territory of another State"²⁸⁰. The solution proposed by the ICRC, probably

²⁸⁰ BIANCHI A, "The International Regulation of the Use of Force: The Politics of Interpretative Method", in *Leiden Journal of International Law* 2009, p. 651 ss., p. 671

capable of representing "the type of theoretical result that causes military commander's eyes to glaze over as this state of legal affairs is explained to them", well as being theoretically feasible, should then be tested with respect to the material application of the relevant standards. In fact, if one admits an 'armed conflict with a double classification', one should understand the actual consequences, not limited only to the correct categorisation of the hostilities²⁸¹. The consequence would be that the relevant discipline would end up being determined by the relevant discipline of international armed conflicts. In order to fulfil their obligations in this area, the Member States should also assess the importance of this legislation. Therefore, although participating States have consistently indicated their willingness to adhere strictly to their obligations under this standard of international humanitarian law through measures seemingly appropriate for this purpose, such as a thorough visual check of objectives, the use of context-based functional ammunition, or a timeframe calibrated to reduce potential harm to civilians, it is not possible to uniquely qualify the conflict. In this respect, it can be seen that, since the last reports, the International Commission of Inquiry on Syria set up by the Human Rights Council has also started to challenge, in limited cases, some of the attacks conducted by the coalition. The intervention of the Coalition, therefore, is inspired by the desire to give a guarantee to international

²⁸¹ MILANOVIĆ M, "The Clearly Illegal US Strike in Syria", in *EJIL:Talk!*, 7 aprile 2017, disponibile su www.ejiltalk.org, p. 14 e ss.

humanitarian law, certainly distancing itself from the other actors in the area, as also attested by the practice of assessing any civil loss resulting from the attacks, so as to achieve a conduct that goes beyond what is strictly required. Several issues deserve a more open confrontation between the various actors involved, including the other States operating in this multinational coalition, which are unlikely to be able to continue to exploit national caveats and the willingness of other States to conduct their own attacks legally more doubtful so as not to take positions on the matter.

4.8 International Justice: Options for Syria

International crimes involve the responsibility of the state and the criminal responsibility of the individual. Any unlawful act by a State at international level entails that State's international liability and likewise, including under customary law, the State is liable for all acts committed by members of its military and security forces. As further specified by the Commission, the responsibility for crimes against humanity and violations of fundamental human rights, as well as the duty to punish those responsible, lies with the Syrian Government.

With regard to individual criminal liability, according to Art. 25(3) St-ICC, individuals may be tried if they commit an international crime. They may be tried if they attempt to commit it or contribute to it, incite or facilitate its commission. Article 25(4) St-ICC further specifies that 'nothing in this Article relating to the criminal liability of individuals shall affect the liability of States in international law'. The term "individuals" includes all persons without distinction, including government officials, heads of state, members of parliament or members of government. There is therefore no immunity. The limited immunity enjoyed by certain State office-holders can be invoked only in national courts²⁸². This is specifically the case with functional immunity (*ratione materiae*), i.e. the immunity of organs or officials of the State in the exercise of their functions operated on behalf of the State, so that the responsibility for such actions lies with the State and not with the official himself. As stated in Art. 27(2) St-ICC, these immunities cannot be invoked in international law and therefore anyone who commits international crimes can be tried under the DIP regardless of their position, role or function. There is also a particular criminal liability, provided for by Art. 28 St-ICC, as well as by Art. 7(3) St-ICTY and Art. 6(3) St-ICTR, for military leaders, who are responsible for acts carried out by forces under their command or control. Commanders and

²⁸² LEDERMAN M, "My Discrete but Important Disagreement with Harold Koh on the Lawfulness of the Strikes on Syria", in *Just Security*, 7 aprile 2017, disponibile su www.justsecurity.org, p. 58 e ss.

superiors are punishable if they know, or should know, that their subordinates commit international crimes or do nothing to prevent them from committing or failing to suppress such conduct. This provision is essential to prevent superiors from passing the responsibility on to their subordinates by hiding behind the fact that they ignored such criminal conduct²⁸³.

Russia, Iran and Lebanese Hezbollah are involved in the military operations of a regime, the Syrian regime, which as seen is operating an extensive and systematic attack against the civilian population committing crimes against humanity. From a legal point of view, this opens up the difficult question of the responsibilities of third country nationals in committing war crimes and crimes against humanity in a conflict in which they are engaged. Russia in particular has deliberately targeted civilians and civil structures using indiscriminate bombardments even with weapons prohibited by the DIU, giving rise to accusations of war crimes in Syria. In order to understand what the possible repression mechanisms applicable to the Syrian case are today, it is necessary to retrace their evolution. Syria is of fundamental strategic importance for the geopolitical interests of Russia, concentrated in the coastal zone, not to mention that Russia is the first arms supplier to Syria and the main guarantor of the legitimacy of the Assad regime. However, the unconditional Russian support, which in

²⁸³ MILANOVIC M, “The Clearly Illegal US Strike in Syria”, in *EJIL:Talk!*, 7 aprile 2017, disponibile su www.ejiltalk.org, p. 14 e ss.

fact saved the Syrian regime, has a price: on 20 January 2017 Syria sold the Tartus naval base to Russia, which will be able to dispose of it entirely for 49 years, with automatic renewal of 25, permanently anchoring up to 11 warships, including nuclear-powered, as well as dispose entirely of the air base of Hmeymim, in Latakia. This is just the latest deal Moscow snatched from Damascus for its decisive support in the reconquest of Aleppo in December 2016, which adds to the already signed hundreds of million contracts awarded to Russian companies for the reconstruction of Syria in 2016, to the military agreement signed in August 2016 that allows Russia to maintain a military presence in Syria indefinitely, and to the already signed agreements by which Syria has granted Russia, in 2013, to explore and use the oil and gas fields along the Syrian coast. Syria is an indispensable resource for Russia and it is in this framework that the stubborn Russian vetoes are inserted at every referral of Syria to the ICC. Referral to the Court would, first and foremost, undermine the legitimacy of the Syrian regime and make it politically more difficult to support a regime under investigation for international crimes. Secondly, in addition to putting political pressure on the regime's allies, a referral to the Court and a possible international arrest warrant would also put pressure on the military level, because action would be needed to bring those responsible to justice²⁸⁴. Scenario that no power involved, not

²⁸⁴ LEDERMAN M, "My Discrete but Important Disagreement with Harold Koh on the

even the United States, hopes for. It is essentially for these reasons that the Syrian scenario, although so similar to the Libyan one in its early stages of peaceful protests repressed in blood and widespread state violence that could amount to international crimes, has not seen a repetition of the same international actions, not only with regard to military intervention, but in this specific case also with regard to the referral to the ICC. Although the scenario of violence was similar, Libya did not have the same strategic, military and economic importance as Syria has for some members of the Security Council. Although the ICC is an independent judicial body, referral to the Court of a non-member State is made through a political body, such as the Security Council, which operates according to political logic²⁸⁵. This is one of the greatest limitations of the United Nations and, in fact, in recent years, efforts have been made to reform the Security Council and to ensure that, in the face of international crimes, the power of veto can be rendered null and void. But so far in vain. In Chapter IV, in 2016, the UN General Assembly approved the establishment of an investigative mechanism to assist the above-mentioned Commission of Inquiry in investigating and gathering evidence of violations of the UNHL committed in Syria since 2011. In January 2017 this Mechanism was

Lawfulness of the Strikes on Syria”, in *Just Security*, 7 aprile 2017, disponibile su www.justsecurity.org, p. 58 e ss.

²⁸⁵ MILANOVIC M, “The Clearly Illegal US Strike in Syria”, in *EJIL:Talk!*, 7 aprile 2017, disponibile su www.ejiltalk.org, p. 14 e ss.

formalized and its mandate provides on the one hand to collect, preserve and analyze evidence of violations of the IHL and human rights, and on the other hand to prepare files and files to facilitate and expedite fair and independent criminal proceedings, according to the rules of international law, in national, regional or international courts or in courts that have or could have jurisdiction over these crimes in the future. What makes this mechanism relevant is that its mandate goes beyond that of the Commission of Inquiry in that it allows it to prepare the necessary files to prosecute those responsible for international crimes committed in Syria and to lay the foundations for future trials. In other words, on the basis of Art. 8 of the mandate, the Mechanism has "a semi-judicial function". This is a significant step forward in the development of mechanisms for the repression of crimes committed in Syria and so far is the most concrete step taken by the UN. This innovative action signals the frustration of the international community at the deadlock in the Security Council and shows that a collective response is possible. The Mechanism is still in the preparatory phase but has already given rise to cautious optimism among the organisations dealing with the Syrian case, which have signed a memorandum to the UN Secretary-General with recommendations and proposals²⁸⁶.

²⁸⁶ KOH H.H., "The War Powers and Humanitarian Intervention", in *Houston Law Review* 2016, p. 971 ss

4.9 The Final Balance

The Syrian crisis has caused a tragic and devastating impact on the development in Syria through the destruction of economic, social and human capital, with unbearable and irrecoverable losses for the Syrian population. As a result of the ongoing fighting and fighting, the Syrian economy has suffered a devastating blow: about seventy-five percent of Aleppo's production facilities are no longer operational.²⁸⁷ The total loss to the Syrian economy due to the crisis by the end of 2012 is estimated at \$ 48.4 billion.²⁸⁸ Public and private investments have been negatively affected by the crisis, the unemployment rate is also rising sharply. By the end of 2012, the unemployment rate had increased by 24.3 percent. In addition to the economic impact, the Syrian crisis has mainly affected the lives of over 9 million people since the crisis began in 2011, including 6.5 million people who are now displaced.²⁸⁹

²⁸⁷ Matthew J. Harker, *Economic Rebuilding Essential to R2P in Syria*, GLOBALRISKINSIGHTS.COM (Sept. 20, 2013), <http://globalriskinsights.com/2013/09/20/economic-rebuilding-essential-to-r2p-in-syria/>.

²⁸⁸ Rabie Nasser, Zaki Mehchy & Khalid Abu Ismail, *Socioeconomic Roots and Impact of the Syrian Crisis*, SYRIAN CTR. FOR POL'Y RES. 10 (Jan. 2013), <http://scpr-syria.org/download/1363/?v=1365>.

²⁸⁹ *Syria: Pledges Prove that the People Devastated by Conflict in Syria are Not Forgotten, Says UN Chief Ban Ki-moon*, UNITED NATIONS OFF. FOR COORDINATION HUMANITARIAN Affairs (Jan. 15, 2014), <http://www.unocha.org/top-stories/all-stories/syria-pledges-prove-people-devastated-conflict-syria-are-not-forgotten-says>.

According to UN reports, " [a] as many as 2.5 million people are blocked in areas that are difficult to reach, even in besieged cities, where access to aid has been limited or non-existent. About 2 million people have fled the country and are currently living with host families and refugees in Lebanon, Jordan, Iraq, Turkey and Egypt".. UN humanitarian leader Valerie Amos, who visited displaced families in Syria in January 2014, said Syria is the "largest humanitarian crisis in the world". Although the Syrian crisis has been underway for years, the United Nations Peacebuilding Commission has not spoken or found post-war reconstruction strategies in Syria.

The Syrian crisis, recognized today as one of the worst humanitarian tragedies of the 21st century, was also accepted as the most recent and controversial controversy over the R2.246. The situation in Syria has not changed even after implementing the destruction of chemical weapons in the country. All discussions on granting aid to the affected areas ended without success. Geneva speaks of a political resolution to the conflict and the improvement of humanitarian conditions resumed on 22 January 2014, but ended without any agreement.²⁴⁷ This failure is due to Syrian opposition groups and to the pressure of the international community to oust Assad from power . The Syrian government continued to crack down on opposition groups and civilian populations living in rebel detention areas.²⁴⁹ However, clashes intensified among rebel groups and

further worsened the situation. In addition to the growing violence in the country, Syria was unable to meet the deadlines of the chemical weapons destruction plan.²⁵⁰ After the deadline of 5 February 2014 for the delivery of all chemical weapons stocks, Syria accepted a new one deadline of 10 April 251

While violence and the deterioration of human rights continued in Syria, the United Nations has also taken a series of measures to support the endangered civilian population. On February 22, 2014, the Security Council unanimously adopted resolution 2139 and asked the Syrian authorities and rebel factions to allow unimpeded support to UN humanitarian agencies ²⁹⁰. It is important to stress that Syria announced his willingness to cooperate with the Security Council resolution if the sovereignty of the Syrian state was respected. Following this resolution, UN trucks have been authorized to enter Syria on 19 March 2014.

Despite how the concept of R2P has been used and used in Libya and Ivory Coast, the Syrian crisis has so far shown that R2P is still burdened with many unsolved problems. Indeed,

²⁹⁰ *Unanimously Approved, Security Council Resolution Demands Aid Access in Syria*, U.N. NEWS CTR. (Feb. 22, 2014), <http://www.un.org/apps/news/story.asp?NewsID=47204#.U9EEcMtOVdg>.

the R2P principle seems to have had little importance for the development that this crisis has had. Years have passed since the Syrian crisis began and the reactions to this crisis have been mixed and diversified.

The analysis of state practice during the Syrian crisis revealed disagreements about whether Syria had fulfilled its responsibility to protect its civilian population. The continuing mass atrocities against civilians in Syria justify the application of the R2P principle.

The current humanitarian crisis in Syria poses important challenges and objectives for the R2P principle. As the Syrian crisis shows, cases of mass atrocities and violations of human rights still persist, similar to the atrocities that have occurred in history, both in Bosnia and in Rwanda. One of the main reasons for the continuation of mass atrocities in Syria is the inaction of the Security Council. Apart from the uncertainties of the R2P principle regarding its scope, the lack of a true consensus among some Member States has further hampered the decisive actions in the field of R2P to stop the ongoing atrocities in Syria. The international community, therefore, has dealt with very familiar controversies about sovereignty and non-intervention and the need to protect civilian populations against human rights violations. In short, it was not possible to reach a consensus among Member States on what response should be implemented to protect civilians in Syria. Similar uncertainties

also confronted the context of pre-R2P humanitarian intervention. Therefore, state practice during the Syrian crisis has revealed that in the wake of the showdown, R2P has not in any way changed existing international law ²⁹¹.

Conclusion

“R2P has diminished from a high hope into an interesting collection of words lying on the table,” Ashdown said.

The data confirmed his theory: Syria fell into a bloody civil war in 2011. Eight years later, the war has still left important wounds. At the beginning of 2018, the death toll was 400,000 and over 11 million of Syrians had been displaced, losing their homes, livelihoods and family members. The extent of the devastation goes beyond the imagination, yet the international community has resisted action and continues to send contradictory signals.

The Syrian conflict is unfortunately a bitter example in which a sovereign state and the international community in general have manifestly failed in their purpose, in the responsibility to protect civilians from crimes of mass atrocities.

²⁹¹ Muditha Halliyadde, Syria - Another Drawback for R2P?: An Analysis of R2P's Failure to Change International Law on Humanitarian Intervention, 4 Ind. J. L. & Soc. Equality 215 (2016).

CONCLUSION

The analysis carried out in this thesis has shown that although the international community considers defending the rights of civilians involved in armed conflicts a key priority. However, this conviction is not matched by extensive international engagement in practice . The Syrian conflict is a case in point even though it must be considered as an historically special case due to the number of actors, aims, victims and oppositions involved. Indeed, it has been recognized that in the Syrian camp the world powers have been and are currently being confronted, pursuing objectives independently, with the exception of those of a tormented and destroyed population to the point of exhaustion. In particular, this thesis has found that the attacks of the various actors involved are difficult to consider humanitarian. An important issue that emerges from the analysis of the Syrian conflict is that of the application of extraterritorial human rights, with particular reference to jurisdiction. The application of humanitarian law is very complex in case of conflict. It could be said that belonging to the control, whose purpose is an immediate and direct link between authority and the individual, represents the cardinal element around which the jurisdiction of the state will be

founded. This jurisdiction is therefore linked to that of the competent international court. In situations of internal or international crisis, the existence or otherwise of an armed conflict, capable of affirming the predominance of the law, international humanitarian law in taking up space for human rights, therefore remain the first condition to be established by a preliminary ruling. The question of a state of emergency, a phenomenon in relation to which the relationship between rights and human rights and humanitarian law raises particular questions and substantial and procedural problems. In fact, the main issue to be highlighted is, in the Syrian case, the one to be taken following the activation of a human rights exemption mechanism. This mechanism is extremely doubtful if international law can be considered applicable. This question was not only of a theoretical nature, as humanitarian law offers additional protection to the Charter regime, as well as being mandatory. Indeed, Article 3 common to the Geneva Conventions provides, in all circumstances, for the protection of persons, without unfavourable distinctions, who do not participate directly in the Commission. Considered that this is not a problem for Europe and that it is a problem for the Member States. In other circumstances, the rules of humanitarian law, applied in place of human rights, would lower the level of protection established by the latter.

The first part of this thesis focused on the analysis and treatment of theoretical concepts such as the use of force in its

forbidden and authorized meanings, the cardinal principles that underlie the doctrine of Responsibility to Protect and more generally of humanitarian law. The second part analysed these principles in the light of practical cases like the genocide in Rwanda, the intervention in Libya and in particular the case of Syria.

The milestone around which this thesis revolves is represented by the evaluation of the reasons why the concrete application of these principles was considered not successful by the mass atrocities perpetrated in Syria since 2011. What emerged at the end of the dissertation is that the Syrian case represents a failure in the application of the concept of the Responsibility to Protect: the failure of the international community takes place in the absence of effective actions for the protection of the Syrian population, which allowed the parties to the conflict, in particular the Syrian government to carry out war crimes and crimes against humanity in total impunity, with a dramatic and catastrophic final balance. This underlines how in the complex system of international relations, each actor is guided mainly by personal interests, thus showing how each actor is more committed to pursuing his own benefits, rather than worrying about issues such as cooperation or effective and prompt intervention in situations unstable, difficult and precarious. Therefore, faced with such a precarious and unstable international equilibrium, dominated by the change and the overthrow of the established equilibriums, the Syrian dynamic

remained on the sidelines, closed by the divisions of the member states of the United Nations and the tensions that inevitably influenced relations with these States, with a future perspective which still remains undefined and above all with uncertain traits.

Bibliography

Reichberg ., 2006, pp. 47–8

ALVAREZ, J. E. (2008) ‘The schizophrenias of R2P’ in Alston, P. and MacDonald, E. (eds) *Human Rights, Intervention, and the Use of Force*, Oxford, Oxford University Press. Keep on learning
30 of 34 http://www.open.edu/openlearn/people-politics-law/exploring-the-boundaries-international-law/content-section-0?utm_source=openlearnutm_campaign=olutm_medium=ebook Friday
(Article 2(4) UN Charter)

JAMES A. GREEN, Professor Christian Henderson, Professor Claus Kreß, Professor Sean Murphy, Professor Tom Ruys and Ms Elizabeth Wilmshurst, individually or on at least one occasion jointly, prepared drafts for particular sections. In addition, the Chair and Rapporteur wish to acknowledge the excellent editorial assistance of Alfredo Crosato Neumann in the preparation of the final draft of the report, and the valuable assistance at committee meetings of Rachel Borrell, Nathan Derejko, and Erin Pobjie.

Definition of Aggression (UNGA res. 3314(XXIX)); Declaration on the Non-use of Force (UNGA res. 42/22). So too has the International Court of Justice in a series of judgments and advisory opinions: *Corfu Channel Case, Judgment of April 9th, 1949, I.C.J. Reports 1949*, p. 4; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 14; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226; *Oil Platforms (Islamic Republic of Iran v. United States of America), Judgment, I.C.J. Reports 2003*, p. 161; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136; *Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Uganda), Judgment, I.C.J. Reports 2005*, p. 168. See also C. Gray, “The International Court of Justice and the Use of Force”, in C. J. Tams and J. Sloan (eds.), *The Development of International Law by the International Court of Justice* (Oxford: Oxford University Press, 2013), at pp. 237-261; C. Kreß, “The International Court of Justice and the ‘Principle of Non-Use of Force’”, in M. Weller (ed.), *The Oxford Handbook of the Use of Force in International Law* (Oxford: Oxford University Press, 2015), at pp. 561-604.

Nicaragua v. United States of America, at paras. 188-190

Friendly Relations Declaration, (“States have a duty to refrain from acts of reprisal involving the use of force”).

S. DARCY, “Retaliation and Reprisal”, in M. Weller (ed.), *The Oxford Handbook of the Use of Force in International Law* (Oxford: Oxford University Press, 2015), at pp. 879-896.

UN Charter, Articles 2(3) and 33.

R. LESAFFER, “Kellogg-Briand Pact (1928)”, in R. Wolfrum (ed.), *Max Planck Encyclopaedia of Public International Law*, Vol. VI (Oxford: Oxford University Press, 2012), at pp. 579-584

C. H. M. WALDOCK, “The Regulation of the Use of Force by Individual States in International Law”, in 81 *Recueil des Cours* 451 (1952); D. W. Bowett, *Self-Defence in International Law* (Manchester: Manchester University Press, 1958); I. Brownlie, *International Law and the Use of Force by States* (Oxford: Oxford University Press, 1963); T. M. Franck, *Recourse to Force: State Action Against Threats and Armed Attacks* (Cambridge: Cambridge University Press, 2002)

¹ L. M. GOODRICH and E. Hambro, *Charter of the United Nations: Commentary and Documents* (Boston: World Peace Foundation, 1946), at p. 70; N. Schrijver, “Article 2, paragraphe 4”, in J. Cot *et al.* (eds.), *La Charte des Nations Unies* (Paris: Economica, 3rd ed., 2005), at pp. 437-466

Friendly Relations Declaration

U.N.C. I. O. Docs. 334 (1945), at pp. 334-335. See also the rejection of the UK argument in *Corfu Channel*, *supra* n. 2. ¹⁸ *Nicaragua v. United States of America*, *supra* n. 2, at paras. 191, 195; Eritrea-Ethiopia Claims Commission – Partial Award, *Jus Ad Bellum – Ethiopia’s Claims 1-8*, 19 December 2005, XXVI RIAA 457, at para. 11

Nicaragua v. United States of America, *supra* n. 2, at paras. 191, 195; Eritrea-Ethiopia Claims Commission – Partial Award, *Jus Ad Bellum – Ethiopia’s Claims 1-8*, 19 December 2005, XXVI RIAA 457, at para. 11.

T. Ruys, *Armed Attack and Article 51 of the UN Charter* (Cambridge: Cambridge University Press, 2010), at pp. 12-13.

Rebaz khdir, *The Right to Self-Defence in International Law as a Justification for Crossing Borders: The Turkey-PKK Case within the Borders of Iraq*, 4(4) *Russian Law Journal* 62–80 (2016).

Murray Colin Alder, *The Origin in International Law of the Inherent Right of Self-Defence and Anticipatory Self-Defence*, 2 the western Australian Jurist 115 (2011).

kinga tibi szabó, *Anticipatory Action in Self-Defence: Essence and Limits under International Law* 32–33 (hague: t.M.C. Asser Press, 2011)

Anthony Clark Arend, *International Law and the preemptive Use of Military Force*, 26(2) the washington Quarterly 90 (2003)

British-American Diplomacy: The Caroline Case, yale Law school Lillian goldman Law Library (May 2, 2016), available at: http://avalon.law.yale.edu/19th_century/br-1842d.asp#web1.

Webster, D. and Fox, H. S. (1857) ‘Correspondence between Great Britain and the United States, respecting the Arrest and Imprisonment of Mr. McLeod, for the Destruction of the steamboat Caroline – March, April 1841’ *British and Foreign State Papers 1840–1841*, vol. 29, pp. 1126–1142 [Online].

Charter of the united Nations (adopted June 26, 1945 and entered into force october 24, 1945).

(Nicaragua v. united states of America), ICJ Judgment, June 27, 1986.

Legality of the threat or use of Nuclear weapons, Advisory opinion, July 8, 1996, ICJ reports (1996)

The Legal Consequences of the Construction of a wall in the occupied Palestinian territory, Advisory opinion, July 9, 2004, ICJ reports (2004).

Christopher Greenwood, *Self-Defence*, Max Planck Encyclopedia of Public International Law (2011) (May 3, 2016), available at: <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e401?prd=EPIL>.

The National Security Strategy of the United States of America (The White House, 2002), at p. 15. See also the discussion over widening the scope of anticipatory self-defence in J. Bybee, “Authority of the President Under Domestic and International Law to Use Military Force Against Iraq – Memorandum Opinion for the Counsel to the President”, in 26 *Opinions of the Office of Legal Counsel* (2002), at pp. 194-195; A. Arend, “International Law and the Preemptive Use of Military Force”, in 26 *Washington Quarterly* 89 (2003), at pp. 97-98.

Report on the Legal and Policy Frameworks Guiding the United States’ Use of Military Force and Related National Security Operations (The White House: 2016), at p. 9

The Chatham House Principles of International Law on the Use of Force by States in Self-Defence”, in 55 *International & Comparative Law Quarterly* 963 (2006), at p. 965; C. Greenwood, V. Lowe, P. Sands and M. Wood, all in E. Wilmshurst, *Principles of International Law on the Use of Force by States in Self-Defence* – working paper (The Royal Institute of International Affairs, 2005)

THE NATIONAL SECURITY STRATEGY OF **THE UNITED STATES**
OF AMERICA **15** (2002), available at
<http://www.whitehouse.gov/nsc/nss.pdf>

Brownlie, I. (1963). *International Law and the Use of Force by States*. Oxford: Clarendon Press.
<http://dx.doi.org/10.1093/acprof:oso/9780198251583.001.0001>

Lillich, *Forcible Self-Help by States to Protect Human Rights*, 53 *IOWA L. REv.* 325, 326-27 (1967)

¹ H. LAUTERPACHT, **INTERNATIONAL LAW AND HUMAN RIGHTS** 121 (1950).

F. DUNN, **THE PROTECTION OF NATIONALS** 19 (1932); 2 C. HYDE, **INTERNATIONAL LAW** Section 202, at 647 (2d rev. ed. 1945);

D. BoWETr, **SELF-DEFENSE IN INTERNATIONAL LAW** 87 (1958); L. McNAIR, **THE**

D. BoWETr, **SELF-DEFENSE IN INTERNATIONAL LAW** 87 (1958); L. McNAIR, **THE LAW OF TREATIES** 209-10 (1961); VAN PANHYS, **THE ROLE OF NATIONALITY IN INTERNATIONAL LAW** 113-14 (1959);

Nanda, *The United States Action in the 1965 Dominican Crisis: Impact on World Order -UN Part I*, 43 **DENVER L.J.** 439, 460 (1966).

Behuniak, *The Seizure and Recovery of the S.S. Mayaguez: A Legal Analysis of the United States Claims*, 82 **MIL. L. REV.** 157 (1978);

Friedlander, *The Mayaguez in Retrospect: Humanitarian Intervention or Showing the Flag?*, 22 **ST. Louis U. L.J.** 601 (1978);

Paust, *The Seizure and Recovery of the Mayaguez*, 85 **YALE L.J.** 774 (1976).

¹ Green, *Rescue at Entebbe-Legal Aspects*, 6 **ISRAEL Y.B. HUMAN RIGHTS** 312 (1976); Krift, *Self-Defense and Self-Help:*

The Israeli Raid on Entebbe, 4 **BROOKLYN J. INT'L L.** 43 (1977);

Use of Force for the Protection of Nationals Abroad: The Entebbe Incident, 9 **CASE W. RES. J. INT'L L.** 117 (1977).

Corfu Channel case (Merits) (United Kingdom v Albania) (1949) ICJ Rep 4-38.

Higgins, R. (1995). *Problems and Process: International Law and How to Use it* (pp. 240-244). Oxford: Clarendon Press. <http://dx.doi.org/10.1093/law/9780198764106.001.0001>

E. de Wet, *The Chapter VII Powers of the United Nations Security Council* (Oxford: Hart, 2004), at pp. 256-262.

N. Blokker, “Outsourcing the Use of Force: Towards More Security Council Control of Authorized Operations?”, in M. Weller (ed.), *The Oxford Handbook of the Use of Force in International Law* (Oxford: Oxford University Press, 2015), at p. 213.

The Use of Force against Da‘esh and the *Jus ad Bellum*”, in 1 *Asian Yearbook of Human Rights and Humanitarian Law* 9 (2017).

Blokker,, at pp. 202-226.

J. Gardam, *Necessity, Proportionality and the Use of Force by States* (Cambridge: Cambridge University Press, 2004), at pp. 188-212.

US position in W. Taft and T. Buchwald, “Preemption, Iraq, and International Law”, in 97 *American Journal of International Law* 557 (2003).

Rapport Commissie-Davids, Rijksoverheid (Dutch Government), 12 January 2010 (Davids Commission) (available at: www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2010/01/12/rapport-commissie-davids/rapport-commissie-irak.pdf); Report of the Iraq Inquiry (Report of a Committee of Privy Counsellors), 6 July 2016 (Chilcot Inquiry) (available at: www.iraquinquiry.org.uk/the-report)

Chilcot Inquiry, at paras. 99-100. See also C. Henderson, “Reading Between the Lines: The Iraq Inquiry, Doctrinal Debates, and the Legality of Military against Iraq in 2003”, in 87 *British Yearbook of International Law* (2017, forthcoming).

9/11 (UNSC res. 1368 (2001) and 1373 (2001)), and – more controversially – UNSC res. 2249 (2015) on Da’esh.

(Lauterpacht, 1952)

J. L. Holzgrefe, “The Humanitarian Intervention Debate”, in J. L. Holzgrefe and R. Keohane (eds.), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (Cambridge: Cambridge University Press, 2003), at p. 18.

Lowe, Vaughan and Tzanakopoulos, Antonios, Humanitarian Intervention (October 15, 2010). MAX PLANCK ENCYCLOPEDIA OF INTERNATIONAL PUBLIC LAW, Rüdiger Wolfrum, ed., Oxford University Press, 2012. Available on SSRN: <https://ssrn.com/abstract=1701560>

F. Tesón, *Humanitarian Intervention: An Inquiry into Law and Morality* (Irvington-On-Hudson: Transnational, 2nd ed., 1997) at p. 151; M. Reisman and M. McDougal, “Humanitarian Intervention to Protect the Ibos”, in R. Lillich (ed.), *Humanitarian Intervention and the United Nations* (Charlottesville: University Press of Virginia, 1973) at p. 177. This argument was advanced by Belgium in relation to NATO action in Kosovo in 1999: *Legality of Use of Force (Serbia and Montenegro v Belgium)*, Oral Proceedings, Public Sitting (10 May 1999), at p. 12.

Jost Delbrilck, *A Fresh Look at Humanitarian Intervention Under the Authority of the United Nations*, 67 IND. L.J. 887, 891 (1992) (“[T]he door to purely arbitrary intervention, that is, acts of aggression in disguise, would be wide open.”); see also Schachter, *supra* note 7, at 1629 (“The reluctance of governments to legitimize foreign invasion in the interest of humanitarianism is understandable in the light of past abuses by powerful states.”).

T. Weiss, *Humanitarian Intervention* (Cambridge: Polity Press, 2nd ed., 2016), at p. 41

Africa Contemporary Records (1978-1979), at B395, B433 (Tanzania).

UN Doc. S/PV.1606 (4 December 1971), at pp. 18, 22 (in relation to India's action);

UN Doc. S/PV.2108 (11 January 1979), at p. 10, and UN Doc. S/PV.2110

(13 January 1979), at p. 79 (in relation to Vietnam's action);

Keesing's 25 (1979) 29841 (in relation to Tanzania's action).

UN Doc. S/22133 (22 January 1991).

UN Doc. S/23886 (7 May 1992). See also UNSC res. 788 (1992) concerning Liberia; C. Walter, "Article 53", in B. Simma *et al.* (eds.), *The Charter of the United Nations*

A Commentary, Vol. II (Oxford: Oxford University Press, 3rd ed., 2012)

G. Marston (ed.), "United Kingdom Materials on International Law 1992", in 63 *British Yearbook of International Law* 615 (1992), at pp. 827-828

N. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000), at p. 166.

S. Richmond, "Why is Humanitarian Intervention So Divisive? Revisiting the Debate over the 1999 Kosovo Intervention", in 3 *Journal on the Use of Force and International Law* 234 (2016).

UN Doc. S/PV.3988 (24 March 1999), at p. 12.

Report of the International Commission on State Sovereignty and Intervention: The Responsibility to Protect (Ottawa: International Development Research Centre, 2001) (available at: <<http://responsibilitytoprotect.org/ICISS%20Report.pdf>>). This was preceded by a report by the Danish Institute for International Affairs. See *Humanitarian Intervention: Legal and Political Aspects* (Copenhagen: Danish Institute of International Affairs, 1999)

In Larger Freedom: Towards Development, Security and Human Rights for All,

UN Doc. A/59/PV.86 (6 April 2005);

UN Doc. A/59/PV.87 (7 April 2005);

UN Doc. A/59/PV.88 (7 April 2005);

UN Doc. A/59/PV.89 (8 April 2005);

UN Doc. A/59/PV.90 (8 April 2005).

Prime Minister's Office, "Chemical Weapon use by Syrian Regime: UK Government Legal Position", policy paper (29 August 2013)

C. Henderson, "The UK Government's Legal Opinion on Forcible Measures in Response to the Use of Chemical Weapons by the Syrian Government", in 64 *International & Comparative Law Quarterly* 179 (2015), at p. 194; Rodley, *supra* n. 164, at pp. 793-794; Corten, *supra* n. 8, at pp. 873-874; S. Murphy, *Humanitarian Intervention: the United Nations in an Evolving World Order* (Philadelphia: University of Pennsylvania Press, 1996); Randelzhofer and Dörr, *supra* n. 12, at pp. 224-225; Dinstein, *supra* n. 8, at pp. 73-75; A. Sarvarian, "Humanitarian Intervention after Syria", in 36 *Legal Studies* 20 (2015); M. Byers and S. Chesterman, "Changing the Rules about Rules? Unilateral Humanitarian Intervention and the Future of International Law", in J. L. Holzgrefe and R. Keohane, *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (Cambridge: Cambridge University Press, 2003), at pp. 177, 202-203; P. Hilpold, "Humanitarian Intervention: Is

There a Need for a Legal Reappraisal?”, in 12 *European Journal of International Law* 437 (2001).

C. Greenwood, “Humanitarian Intervention: The Case of Kosovo”, in 10 *Finnish Yearbook of International Law* 141 (1999); S. Chesterman, *Just War or Just Peace: Humanitarian Intervention and International Law* (Oxford: Oxford University Press, 2001).

Fonteyne, “The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity under the UN Charter”, in 4 *California Western International Law Journal* 203 (1974), at p. 269; R. B. Lillich, “Humanitarian Intervention: A Reply to Ian Brownlie and a Plea for Constructive Alternatives”, in J. N. Moore (ed.), *Law and Civil War in the Modern World* (Clark: Johns Hopkins University Press, 1974), at p. 229; M. Weller, “Introduction: International Law and the Problem of War”, in M. Weller (ed.), *The Oxford Handbook of the Use of Force in International Law* (Oxford: Oxford University Press, 2015), at pp. 3, 31 (at least leaning in the same direction)

A. Roberts, “The So-Called Right of Humanitarian Intervention”, in 3 *Yearbook of International Humanitarian Law* 3 (2000); R. Kolb, *Ius contra Bellum: Le Droit International Relatif au Maintien de la Paix* (Basel/Bruxelles: Helbing Lichtenhahn/Bruylant, 2nd ed., 2009), at p. 315; T

B. Simma, “NATO, the UN and the Use of Force: Legal Aspects”, in 10 *European Journal of International Law* 1 (1999)

W. M. Reisman, *Criteria for the Lawful Use of Force in International Law*, 10 *Yale J. Int'l L.* (1985). Available at: <http://digitalcommons.law.yale.edu/yjil/vol10/iss2/5>

A. SHEVCHENKo, BREAKING WITH Moscow 288 (1985).

1971 I.C.J. 16. / 1975 I.C.J. 4.

W. M. Reisman, *Criteria for the Lawful Use of Force in International Law*, 10 *Yale J. Int'l L.* (1985). Available at: <http://digitalcommons.law.yale.edu/yjil/vol10/iss2/5>

Reisman, *Coercion and Self-Determination: Construing Charter Article 2(4)*, 78 *AM. J. INT'L L.* 642, 644-45 (1984).

W. M. Reisman, *Criteria for the Lawful Use of Force in International Law*, 10 *Yale J. Int'l L.* (1985). Available at: <http://digitalcommons.law.yale.edu/yjil/vol10/iss2/5>

Giuseppe Mazzini, 'On Nonintervention (1851)' in Stefano Recchia and Nadia Urbinati (eds.), *A Cosmopolitanism of Nations: Giuseppe Mazzini's Writings on Democracy, Nation Building, and International Relations* (Princeton University Press, 2009), 217–18.

S Murphy *Humanitarian Intervention—The United Nations in an Evolving World Order* (University of Pennsylvania Press Philadelphia PA 1996)

KLOSE F., *Il Congresso di Vienna e le origini dell'intervento umanitario*, *Annali dell'Istituto storico italo-germanico in Trento*, 2015, I, 39 e ss.

PICTET J, *Le droit humanitaire et la protection des victimes de la guerre*, Institut Henry Dunant, Leiden, Sijthoff, 1973, pp. 30-32

WEISS T.G., COLLINS C, *Humanitarian Challenges & Intervention*, Boulder, Colo., Westview Press, 2000, p. 14 e ss.

BONDOLFI A., *La guerra giusta in Francisco de Vitoria: un aggiornamento della dottrina medievale o un cambiamento di paradigma?* Conferenza tenuta presso il Dipartimento di Lettere e Filosofia dell'Università di Trento il 26 febbraio 2015, p. 147 e ss.

CALORE A (a cura di) , «Guerra giusta»? Le metamorfosi di un concetto antico, Seminari di Storia e di Diritto, III, Giuffrè, Milano 2003, p. 123 e ss.

COLOMBO A., I nodi politici dell'ingerenza umanitaria, «Quaderni di Relazioni Internazionali», 15 (2011, p. 163 e ss.)

TERRY F, *Condemned to Repeat? The Paradox of Humanitarian Action*, Ithaca, N.Y., Cornell University Press, 2002, p. 269 e ss.

CHANDLER D, *From Kosovo to Kabul. Human Rights and International Intervention*, London, Pluto Press, 2002, p. 365 e ss.

RIEFF D, *Un giaciglio per la notte. Il paradosso umanitario*, trad. it. Roma, Carocci, 2003, p. 286 e ss.

PICCIAREDDA S, *Diplomazia umanitaria. La Croce Rossa nella seconda guerra mondiale*, Bologna, Il Mulino, 2003, p. 214 e ss.

COLOMBO A., I nodi politici dell'ingerenza umanitaria, «Quaderni di Relazioni Internazionali», 15 (2011, p. 163 e ss.)

MARCON G, *Le ambiguità degli aiuti umanitari. Indagine critica sul Terzo settore*, Milano, Feltrinelli, 2002, p. 32 e ss.

WHEELER N.J, *Saving Strangers. Humanitarian Intervention in International Society*, Oxford, Oxford University Press, 2002, p. 74 e ss.

FLORES M., *Tra carità e investimento: paradossi e problemi dell'azione umanitaria*, Il Mulino, Bologna, 2003, p. 214 e ss.

BECKER D, *You Better Be Good. Review of David Rieff*, «Trn-Newsletter 2», Hamburg Institute for Social research, May 2003, URL TraumaResearch.net/fr_beck.htm.

COLOMBO A., I nodi politici dell'ingerenza umanitaria, «Quaderni di Relazioni Internazionali», 15 (2011, p. 163 e ss.)

Dayvid Chandle, *Unraveling the Paradox of the Responsibility to Protect* (Irish Studies in International Affairs, Department of Politics and International Relations, University of Westminster, London 2011).

Gareth Evans, *Responsibility to protect: ending mass atrocity crimes once for all* (Washington DC, Brookings Institution 2008) 56

FLORES M., Tra carità e investimento: paradossi e problemi dell'azione umanitaria, Il Mulino, Bologna, 2003, p. 214 e ss.

Gareth Evans, *Responsibility to protect: ending mass atrocity crimes once for all* (Washington DC, Brookings Institution 2008) 56

Independent International Commission on Kosovo, *The Kosovo Report* (OUP 2000) 4

International Commission on Intervention and State Sovereignty (n 2) 54-55

FOCARELLI C., The Responsibility to Protect Doctrine and Humanitarian Intervention: Too Many Ambiguities for a Working Doctrine, *Journal of Conflict & Security Law* C Oxford University Press 2008, p. 191 e ss.

Report of the International Commission on Intervention and State Sovereignty' (2001) International Development Research Centre Ottawa 10

2005 World Summit Outcome Document, UN Doc A/RES/60/1 (2005), paras. 138-139.

Luke Glanville, 'The Responsibility to Protect Beyond Borders in the Law of Nature and Nations' (2018) 28 *European J Int'l L* 1069.

Report of the Secretary-General, 'Implementing the Responsibility to Protect' (2009) UN Doc A/63/677

Andreas S Kolb, *The UN Security Council Members' Responsibility to Protect: A Legal Analysis* (Springer 2018)

UNSC Res 1653 (27 January 2006) UN Doc S/RES/1653, para 10 (the Council 'Underscores that the governments in the region have a primary responsibility to protect their populations').

UNSC Res 1706 (31 August 2006) UN Doc S/RES/1706.

UNSC Res 1975 (30 March 2011) UN Doc S/RES/1975

UNSC Res 1996 (8 July 2011) UN Doc S/RES/1996

UNSC Res 2014 (21 October 2011) UN Doc S/RES/2014

UNSC Res 1970 (26 February 2011) UN Doc S/RES/1970; UNSC Res 1973 (17 March 2011) UN Doc S/RES/1973.

UNSC Res 2016 (27 October 2011) UN Doc S/RES/2016

UNSC Res 1973 (17 March 2011) UN Doc S/RES/1973, para 4. UNSC Res 1975 (30 March 2011) UN Doc S/RES/1975, para 6 (echoing language in UNSC Res 1528 (27 February 2004) UN Doc S/RES/1528, para 6(i)).

Alex J Bellamy, *The Responsibility to Protect: Towards a "Living Reality"* (London: United Nations Association-UK, 2013) available at <http://www.una.org.uk/sites/default/files/The%20Responsibility%20to%20Protect%20Towards%20a%20Living%20Reality%20-%20Professor%20Alex%20Bellamy.pdf>, 19.

Ban Ki-moon, United Nations Secretary General, address to the Stanley Foundation Conference on the Responsibility to Protect, New York (18 January 2012).

Gareth Evans, 'The Evolution of the Responsibility to Protect: From Concept and Principle to Actionable Norm' in Ramesh Thakur and William Maley (eds), *Theorising the Responsibility to Protect* (CUP 2015) 32-34 (describing this period as R2P's 'mid-life crisis').

Mats Berdal, 'United Nations Peacekeeping and the Responsibility to Protect' in Ramesh Thakur and William Maley (eds), *Theorising the Responsibility to Protect* (CUP 2015).

Michael W Doyle, *The Question of Intervention: John Stuart Mill and the Responsibility to Protect* (Yale University Press 2015) 110.

SAECHAO, Natural Disasters and the Responsibility to Protect: From Chaos to Clarity, in *Brooklyn Journal of Int. Law*, 2007, pp. 663-707

Klein, *The Duty to Protect and to Ensure Human Rights*, Berlin, 2000;
Gross, Thwarting Terrorist Acts by Attacking the Perpetrators or Their Commanders as an Act of Self-Defense: Human Rights Versus the State's Duty to Protect its Citizen, in *Temple Int. and Comp. Law Journal*, 2001, II, p. 198 e ss.

FOCARELLI C., The Responsibility to Protect Doctrine and Humanitarian Intervention: Too Many Ambiguities for a Working Doctrine, *Journal of Conflict & Security Law C Oxford University Press* 2008, p. 191 e ss.

FOCARELLI C., The Responsibility to Protect Doctrine and Humanitarian Intervention: Too Many Ambiguities for a Working Doctrine, *Journal of Conflict & Security Law C Oxford University Press* 2008, p. 191 e ss.

FLORES M., Tra carità e investimento: paradossi e problemi dell'azione umanitaria, *Il Mulino*, Bologna, 2003, p. 214 e ss.

CHANDLER D., *From Kosovo to Kabul. Human Rights and International Intervention*, London, Pluto Press, 2002, p. 36 e ss.

BAN KI-MOON, *Implementing Responsibility to Protect. Report of the Secretary General*, 12 January 2009.

Taylor B. Seybolt, *Humanitarian Military Intervention: The Conditions for Success and failure* (Oxford University Press 2007).

Paul D. Williams and Meghan Stewart, 'Humanitarian Interventions: An idea whose times has come and gone', in W. Van Genugten, M.Scharf and S. Radhin, (ed) *Criminal jurisdiction 100 years after the 1907 (2009) Hague Peace Conference*, The Hague T.M.C. Asser Press, 227.

Patrick F. White, 'Normative Considerations bearing on the Responsibility to protect- Prospects and Implications in a Fracturing International System' (2008) Canadian Military Journal, 16

Alan J. Kuperman, 'Rethinking the Responsibility to Protect' (2009) The Whitehead Journal of Diplomacy and International Relations, 20. available at <http://blogs.shu.edu/diplomacy/files/archives/Kuperman%20-%20Rethinking%20the%20Responsibility%20to%20Protect.pdf> accessed on 15 May 2004.

Gareth Evans, 'From humanitarian intervention to the responsibility to protect' (2006) 24 Wisconsin International Law Journal, No. 3, 705-706

Lukin Robinson, 'The Tragedy of Rwanda' (December 2003) 55 Monthly Review Foundation, Issue 07, 52-54

Organization of African Union, 'Rwanda: The Preventable Genocide, African Union' available at: www.refworld.org/docid/4d1da8752 accessed on: 12 March, 2014

Holly Burkhalter, 'A preventable horror?' (1994) Africa Report, 39.6, 17.

Philip Verwimp, 'Death and survival during the 1994 Genocide Rwanda' (2004) 2 Population Studies 58, 233

The 1948 Convention on the Prevention and Punishment of the Crime of Genocide obliges "all states to prevent or punish acts of genocide."

Douglas G. Anglin, 'Rwanda: the preventable genocide, The Report of the International Panel of Eminent Personalities to Investigate the 1994 Genocide in Rwanda and the Surrounding Events' (2001) 56 *International Journal* 149.

Milton Leitenberg, Rwanda, 1994: International incompetence produces genocide (*Peacekeeping and international Relations* 23 1994) 6

Samantha Power, *A Problem From Hell, America and the Age of Genocide* (Basic Books 2013) 343.

Turquoise res 929 22 jun 1994, See: A. Wallis, *Silent Accomplice: "The Untold Story of France's Role in the Rwanda Genocide"*, London: I.B. Tauris, 128 (2006).

Taylor.B. Seybolt, *Humanitarian Military intervention, The Condition for success and failure* (Oxford University Press 2008) 72

Linda Melvern, *A people Betrayed: The role of the West in Rwanda's Genocide* (London, Zed Books 2009).

www.un.org/events/Rwanda

Walter Dorn and Jonathan Matloff, 'Preventive the Bloodbath: Could the UN have predicted and prevented the Rwanda genocide?' (2000) 1 *Journal of Conflict Studies* 20.

Alex J. Bellamy and Paul Williams, 'The new politics of protection-Cote d'Ivoire, Libya and the Responsibility to Protect' (2011) *International Affairs* 87 (4), 829-831.

Spence Zifcak, 'The Responsibility to Protect after Libya and Syria' (2012) 13 Melbourne Journal of International Law.

Reuters, 'Libya attacks may be crimes against humanity: UN', (22 February 2011)

UN Press Release, "Statement by the UN Secretary General Special Adviser on the Prevention of Genocide" (New York, 22 Feb 2011).

Declaration by the High Representative, Cathrine Ashton, on behalf of the European Union on events in Libya, Council of the European Union, 20 Feb 2011, EU Doc 6795/1/11-PRESSE 3

OHCHR, Press Release, Geneva, (18 Feb 2011).

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

Alex Bellamy and Paul Williams, 'The new Politics of Protection? Côte d'Ivoire, Libya and the responsibility to protect' (2011) International Affairs 87:4, 838-841

<http://www.icc-cpi.int/iccdocs/doc/doc1099329.pdf>. See also: Amnesty International, 'ICC Issues Arrest Warrant for Al-Gaddafi' (27 June 2011) available at: <http://www.refworld.org/docid/4e09b8512.html>, Radio Free Europe/Radio Liberty, 'ICC issues arrest warrant for Qaddafi on war crimes charges', Tripoli rejects accusations, (27 June 2011) available at: <http://www.refworld.org/docid/4e0b2e4321.html>.

Matthias Dembinski and Theresa Reinold, 'Libya and the Future of the Responsibility to Protect – African and European Perspectives' (2012) Peace Research Institute Frankfurt (PRIF), Germany, 12-14 available at: http://www.hsfk.de/Newsdetail.25.0.html?tx_ttnews%5Btt_news%5D=985&

tx_ttnews%5BbackPid%5D=5&cHash=777fb174b0&L=1 accessed on 12 May 2014.

Resolution 7360 of the Council of the Arab League meeting at the Ministerial level, (12 March 2011).

UN Security Council, Security Council resolution 1973 (2011) [on the situation in the Libyan Arab Jamahiriya], 17 March 2011, S/RES/1973(2011).

Maria Golovina and Patrick Worship, 'UN Okays military action on Libya' Reuters, (17 March 2011).

NATO Statement on Libya, following the working lunch of NATO Ministers of Foreign Affairs with non- NATO contributors to Operation Unified Protector, (14 April 2011) http://www.nato.int/cps/en/natolive/official_texts_72544.htm accessed on 20 June 2014.

BBC NEWS, 'Libya: Obama, Cameron and Sarkozy vow Gaddafi must go'(15 April 2011) available at: <http://www.bbc.co.uk/news/world-africa-13089758>.

Secretary-General on Libya, Department of Public Information, News and Media Division (New York 17 March 2011), available at: <http://www.un.org/sg/statements/?nid=5145> accessed on 05 November 2013.

Ramesh Thakur, 'The Responsibility to Protect: Norms, Laws and the Use of Force in International Politics' (2011) Routledge, 173.

Gareth Evans, 'UN targets Libya with pinpoint accuracy', The Sydney Morning Herald (24 March 2011) available at: <http://www.smh.com.au/federalpolitics/political-opinion/un-targets-libya-withpinpointaccuracy-20110323-1c6pc.html> accessed on 13 January 2014.

Kevin Boreham, 'Libya and the Responsibility to Protect doctrine' (28 August 2011) Online Opinion, Australia's e-journal of social and political debate, available at: <http://www.onlineopinion.com.au/view.asp?article=12522&page=0> accessed on 25 May 2014.

International Criminal Court chief prosecutor, Luis Gabriel Moreno Ocampo estimated that 500–700 people were killed by security forces in February 2011, See: ICRtoP, (2012) available at: <http://www.responsibilitytoprotect.org/>.

Report of the International Commission of Inquiry on Libya, UN Human Rights Council, A/HRC/19/68, (2 March 2012).

Ramesh Thakur, Libya and the responsibility to protect. Between opportunistic humanitarianism and value-free pragmatism (Institute for Security Studies 6 March 2012) 3.

Europe's World: "The Responsibility to Protect (R2P) and Libya", (02-07-2011) available at: http://www.europesworld.org/NewEnglish/Home_old/PartnerPosts/tabid/671/PostID/2621/language/en-US/Default.aspx accessed on 01 July 2014.

E-international Relations, 'Why Intervention in Libya was Justified' (25-01-2012) available at: <http://www.e-ir.info/2012/01/25/why-intervention-in-libya-was-justified/> accessed on 21 November 2013.

Simmon, 'Comment on Libya and the Responsibility to Protect' (2011) available at: <http://blog.simmonli.com/2011/03/comment-on-libya-and-the-responsibility-to-protect/> accessed on 10 February 2014.

Jason D. Meyer, 'From Paralysis in Rwanda to Boldness in Libya: Has the International Community Taken 'Responsibility to Protect' from Abstract Principle to Concrete Norm Under International Law?' Social Science Research Network (2011) available at: <http://dx.doi.org/10.2139/ssrn.2035083> accessed on 14 June 2014.

DAVYYD HILLSTROM, 'The Libyan No Fly Zone: Responsibility to Protect and International Law' (2011) Foreign Policy Journal.

GARETH EVANS, *The Reasonability to Protect: Ending Mass Atrocity Crimes Once and for All* (Washington DC: Brookings Institution Press 2008) 256.

DAYVID RIEFF, R2P, RIP, *The New York Times*, 6 (7 November 2011).

According to Human Rights Watch: eight NATO air strikes at least left 72 civilians dead, including 20 women and 24 children, See: NATO: Investigate Civilian Deaths in Libya(14 May 2012) Human Rights Watch, available at: <http://www.hrw.org/news/2012/05/14/nato-investigate-civilian-deaths-libya> accessed on 25 November 2013.

LIAM FOX: House of Commons Defence Committee, 'Operations in Libya' (2012) Volume I: Report, London, 25, available at: <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmdfence/950/950.pdf> accessed on 05 April 2014.

Martha Hall Findlay, *Can R2P survive Libya and Syria?* (Canadian Defence & Foreign Affairs Institute 2011)

MARCON G, *Le ambiguità degli aiuti umanitari. Indagine critica sul Terzo settore*, Milano, Feltrinelli, 2002, p. 258 e ss.

BETTATI M., KOUCHNER B, *Le Devoir d'ingérence*, Paris, Denöel, 1985, p. 36 e ss.

FLORES M., *Tra carità e investimento: paradossi e problemi dell'azione umanitaria*, Il Mulino, Bologna, 2003, p. 214 e ss.

MARCON G, *Le ambiguità degli aiuti umanitari. Indagine critica sul Terzo settore*, Milano, Feltrinelli, 2002, p. 258 e ss.

IGNATIEFF M, *Mission Possible?*, «The New York Review of Books», vol. XLIX, n. 20, December 19, 2002, p. 36 e ss.

BECKER D, *You Better Be Good. Review of David Rieff, «Trn-Newsletter 2»*, Hamburg Institute for Social research, May 2003, URL TraumaResearch.net/fr_beck.htm.

FLORES M., *Tra carità e investimento: paradossi e problemi dell'azione umanitaria*, Il Mulino, Bologna, 2003, p. 214 e ss.

MARCON G, *Le ambiguità degli aiuti umanitari. Indagine critica sul Terzo settore*, Milano, Feltrinelli, 2002, p. 258 e ss.

FLORES M., *Tra carità e investimento: paradossi e problemi dell'azione umanitaria*, Il Mulino, Bologna, 2003, p. 214 e ss.

PICCIAREDDA S, *Diplomazia umanitaria. La Croce Rossa nella seconda guerra mondiale*, Bologna, Il Mulino, 200, p. 236 e ss.

UN Doc. A/59/PV.86, p. 9

FOCARELLI C., *La dottrina della responsabilità di proteggere e l'intervento umanitario*, Riv. dir. internaz., fasc.2, 2008, pag. 317

FOCARELLI C., La dottrina della responsabilità di proteggere e l'intervento umanitario, Riv. dir. internaz., fasc.2, 2008, pag. 317idem, p. 192 e ss.

GILL T. D., Classifying the Conflict in Syria, Stockton Center for the Study of International Law, 92 INT'L L. STUD., 2016, pp. 352-380.

DAWLATY, Transitional Justice in Syria, Heinrich Boll Stiftung, 2013, pp.87

AL-HAJ SALIH Y., The Syrian Shabiha and Their State - Statehood & Participation,

Heinrich-Boll-Stiftung, 2014, pp. 9

ARIMATSU L., CHOUDHURY M., The Legal Classification of the Armed Conflicts in Syria, Yemen and Libya, International Law PP 2014/01, Chatham House, 2014, pp. 43

LY M., RENZI D., Dall'Egitto alla Siria, il principio di una rivoluzione umana ed i suoi antefatti, Prospettiva Edizioni, Firenze 2014, pp. 379

ARIMATSU L., CHOUDHURY M., The Legal Classification of the Armed Conflicts in Syria, Yemen and Libya, International Law PP 2014/01, Chatham House, 2014, pp. 43

LY M., RENZI D., Dall'Egitto alla Siria, il principio di una rivoluzione umana ed i suoi antefatti, Prospettiva Edizioni, Firenze 2014, pp. 379

ARIMATSU L., CHOUDHURY M., The Legal Classification of the Armed Conflicts in Syria, Yemen and Libya, International Law PP 2014/01, Chatham House, 2014, pp. 43

BUFALINI A, "Sul fondamento giuridico delle misure adottate dal Consiglio di sicurezza con la risoluzione 2118 (2013) sulla situazione in Siria", in Rivista di diritto internazionale 2014, p. 206 ss.

ANNONI A, L'occupazione "ostile" nel diritto internazionale contemporaneo, Torino, 2012, p. 59

CHARNEY C., QUIRK C., He who did wrong should be accountable" Syrian Perspectives on Transitional Justice, Syria Justice and Accountability Centre, Transitional justice research series, n° 1, Gennaio 2014, pp. 86

BUFALINI A, "Sul fondamento giuridico delle misure adottate dal Consiglio di sicurezza con la risoluzione 2118 (2013) sulla situazione in Siria", in Rivista di diritto internazionale 2014, p. 206 ss.

PAVONE R I., La siria e le armi chimiche: la risoluzione del Consiglio di Sicurezza, La com. Internazionale, 2013, IV, 715 e ss.

BUFALINI A, "Sul fondamento giuridico delle misure adottate dal Consiglio di sicurezza con la risoluzione 2118 (2013) sulla situazione in Siria", in Rivista di diritto internazionale 2014, p. 206 ss.

CHARNEY C., QUIRK C., He who did wrong should be accountable" Syrian Perspectives on Transitional Justice, Syria Justice and Accountability Centre, Transitional justice research series, n° 1, Gennaio 2014, pp. 86

SASSOLI M, "Le droit international humanitaire mis à mal en Syrie", in Plaidoyer 2/2017, p. 24 ss.

CHARNEY C., QUIRK C., He who did wrong should be accountable" Syrian Perspectives on Transitional Justice, Syria Justice and Accountability Centre, Transitional justice research series, n° 1, Gennaio 2014, pp. 86

EGAN B "International Law, Legal Diplomacy, and the Counter-ISIL Campaign: Some Observations", in International Law Studies, vol. 91, 2016, p. 242.

DAWLATY, *Transitional Justice in Syria*, Heinrich Boll Stiftung, 2013, pp. 87

FERRARO T, “Determining the Beginning and End of an Occupation under International Humanitarian Law”, in *International Review of the Red Cross* 2012, p. 138 e ss.

EGAN B “International Law, Legal Diplomacy, and the Counter-ISIL Campaign: Some Observations”, in *International Law Studies*, vol. 91, 2016, p. 242.

SASSOLI M, “Le droit international humanitaire mis à mal en Syrie”, in *Plaidoyer* 2/2017, p.

24 ss.

U.N. SCOR, 66th Sess., 6520th mtg., U.N. Doc. S/PV.6520 (Apr. 21, 2011)

The Crisis in Syria, INT’L COALITION FOR RESP. TO PROTECT, <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-syria> (last visited Mar. 27, 2016).

U.N. SCOR, 66th Sess., 6524th mtg., U.N. Doc. S/PV.6524 (Apr. 27, 2011)

Human Rights Council Res. S-16/1, U.N. Doc. A/HRC/RES/S-16/1 (Apr. 29, 2011).

Fact Finding Mission on Syria: Call for Submissions (A/HRC/RES/S-16/1), OFF. UNITED NATIONS HIGH COMMISSIONER FOR HUM. RTS. (May 24, 2011), <http://www.ohchr.org/EN/Countries/MENARegion/Pages/SyriaFactFindingMission.aspx>.

OHCHR Fact-Finding Mission to Syria Terms of Reference, OFF. UNITED NATIONS HIGH COMMISSIONER FOR HUM. RTS. 1– 2 (May 24, 2011), http://www.ohchr.org/Documents/Countries/SY/TORs_FFM_Syria.pdf.

DAN BILEEFSKY, *New Move to Condemn Syria in U.N.*, N.Y. TIMES (June 8, 2011), http://www.nytimes.com/2011/06/09/world/middleeast/09nations.html?_r=0; *UN Deadlocked Over Draft Syria Resolution, as Crackdown Continues*, Radio Free Eur. Radio Liberty (June 14, 2011 11:13 AM GMT).

Syrian Refugees: A Snapshot of the Crisis—In the Middle East and Europe, MIGRATION POL'Y CTR., <http://syrianrefugees.eu/> (last updated Oct. 2014).

Press Release, Francis Deng & Edward Luck, Special Advisers of the United Nations Secretary-General, U.N. Press Release (July 21, 2011)

U.N. SCOR, 66th Sess., 6598th mtg. at 2, U.N. Doc. S/PV.6598 (Aug. 3, 2011).

ISABEL COLES & Yasmine Saleh, *Arab League Expresses Growing Concern About Syria*, REUTERS (Aug 7, 2011, 11:13 AM), <http://www.reuters.com/article/2011/08/07/us-syria-league-idUSTRE7761H720110807>.

League of Arab States Res. 7435, ¶ 1 (Oct. 16, 2011).

Timeline of International Response to the Situation in Syria, GLOBAL CTR. FOR RESP. TO PROTECT 9, <http://www.globalr2p.org/media/files/timeline-of-international-response-to-syria-27.pdf> (last visited Mar. 28, 2016).

Press Release, United Nations High Comm'r for Human Rights, Syria: Pillay Calls for Urgent Action to Halt Violence (Dec. 12, 2011), <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11>

705&LangID=E

[<https://web.archive.org/web/20150404170310/http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11705&LangID=E>].

PETER CAVE, *Saudi Arabia Says Arab League Observers Have Failed in Syria*, ABC News (Jan. 23, 2012, 8:15 AM), <http://www.abc.net.au/am/content/2012/s3413174.htm>.

YASMINE SALEH & Lin Noueihed, *Arab League Proposes New Plan for Syrian Transition*, REUTERS (Jan. 22, 2012, 6:16 PM EST), <http://www.reuters.com/article/2012/01/22/us-syria-idUSTRE8041A820120122>.

U.N. SCOR, 67th Sess., 6710th mtg., U.N. Doc. S/PV.6710, at 2 (Jan. 31, 2012); Neil MacFarquhar, *U.N. Tentatively Backs a Plan for Syria*, N.Y. TIMES (Feb. 2, 2012), http://www.nytimes.com/2012/02/03/world/middleeast/diplomats-at-united-nations-work-on-revisions-to-syria-resolution.html?_r=0.

Sec'y-Gen., Kofi Annan Appointed Joint Special Envoy of United Nations, League of Arab States on Syrian Crisis, U.N. Press Release SG/SM/14124 (Feb. 23, 2012).

Human Rights Council, Rep. of the Commission of Inquiry on the Syrian Arab Republic, UN Doc. A/HRC/19/69 (Feb. 22, 2012).

U.N. Secretary-General, Statement Attributable to the Spokesperson for the Secretary-General on Syria (Mar. 21, 2012), <http://www.un.org/sg/statements/index.asp?nid=5934>.

S.C. Res. 2042, U.N. Doc. S/RES/2042, ¶ 7 (Apr. 14, 2012).

KOFI ANNAN Found., Remarks to the UN General Assembly by Joint Special Envoy for Syria Kofi Annan (June 7, 2012), <http://kofiannanfoundation.org/newsroom/press/2012/06/remarks-to-general-assembly-joint-special-envoy-syria-kofi-annan> [https://web.archive.org/web/20120610012650/http://kofiannanfoundation.org/newsroom/press/2012/06/remarks-to-general-assembly-joint-special-envoy-syria-kofi-annan].

Letter dated 19 September 2013 from the Permanent Representatives of the Russian Federation and the United States of America to the United Nations addressed to the Secretary-General, U.N. Doc. A/68/398–S/2013/565, at 1 (Sept. 24, 2013).

Press Release, Sec. Council, Security Council Requires Scheduled Destruction of Syria's Chemical Weapons, Unanimously Adopting Resolution 2118 (2013), UN Press Release SC/11135 (Sept. 27, 2013).

Syria Army Captures Village in Hama Province, AL JAZEERA (Feb. 18, 2014), <http://www.aljazeera.com/news/middleeast/2014/02/syria-army-captures-village-hama-province-201421843521885341.html>.

Amateur Video Said to Show Syrian Army Tank Attacked, TELEGRAPH (Feb. 17, 2014, 10:47 PM GMT), <http://www.telegraph.co.uk/news/worldnews/middleeast/syria/10645233/Amateur-video-said-to-show-Syrian-Army-tank-attacked.html>.

VERLAGE, *Responsibility to Protect*, Tübingen, 2009, p. 269 ss.

PICONE P., *L'insostenibile leggerezza dell'articolo 51 della Carta dell'Onu*, in *Riv Dir Int.*, 2016, p. 7

WELLER, *Permanent Imminence of Armed Attacks: Resolution 2249 (2015) and the Right to Self Defence Against Designated Terrorist Groups*, *EJIL: Talk!*, www.ejiltalk.org, 26 novembre 2015

MILANOVIĆ M., "The Clearly Illegal US Strike in Syria", in *EJIL:Talk!*, 7 aprile 2017, disponibile su www.ejiltalk.org, p. 14 e ss.

PICONE P., L'insostenibile leggerezza dell'articolo 51 della Carta dell'Onu, in *Riv Dir Int.*, 2016, p. 7

PICONE P., Il ruolo dello Stato leso nelle reazioni collettive alle violazioni di obblighi erga omnes, in *Riv. Dir. Int.*, 2012, II, p. 859 e ss. UN Doc. S/PV.7919

Consiglio di Sicurezza, UN Doc. S/PV.7919, cit., p. 5

LEDERMAN M., "My Discrete but Important Disagreement with Harold Koh on the Lawfulness of the Strikes on Syria", in *Just Security*, 7 aprile 2017, disponibile su www.justsecurity.org, p. 58 e ss.

ARCARI M., La risposta statunitense all'uso di armi chimiche in Siria e la confusione delle categorie dello ius ad bellum, *Diritti umani e diritto internazionale*, 2017, II, p. 378 e ss.

BIANCHI A., "The International Regulation of the Use of Force: The Politics of Interpretive Method", in *Leiden Journal of International Law* 2009, p. 651 ss., p. 671

LEDERMAN M., "My Discrete but Important Disagreement with Harold Koh on the Lawfulness of the Strikes on Syria", in *Just Security*, 7 aprile 2017, disponibile su www.justsecurity.org, p. 58 e ss.

Hugh Robertson, *Further Supplementary Written Evidence from the Rt. Hon. Robertson MP, Minister of State, Foreign and Commonwealth Office: Humanitarian Intervention and the Responsibility to Protect*, JUSTSECURITY.ORG (Jan. 14, 2014), <http://justsecurity.org/wp-content/uploads/2014/01/Letter-from-UK-Foreign-Commonwealth-Office-to-the-House-of-Commons-Foreign-Affairs-Committee-on-Humanitarian-Intervention-and-the-Responsibility-to-Protect.pdf>.

RYAN GOODMAN, *UK Government Issues Major Statement on Legality of Humanitarian Intervention*, JUSTSECURITY.ORG (Jan. 30, 2014, 8:44 PM), <https://www.justsecurity.org/6583/uk-government-issues-major-statement-legality-humanitarian-intervention/>.

FOCARELLI C., La dottrina della responsabilità di proteggere e l'intervento umanitario, in Riv. Dir. Int., 2008,II, p. 317 e ss

US Ready to Launch Syria Strike Says Chuck Hagel, BBC (Aug. 27, 2013), <http://www.bbc.com/news/world-us-canada-23847839>; Tim Ross & Ben Farmer, *Navy Ready to Launch First Strike on Syria*, TELEGRAPH (Aug. 25, 2013, 10:00 PM EST), <http://www.telegraph.co.uk/news/worldnews/middleeast/syria/10265765/Navy-ready-to-launch-first-strike-on-Syria.html>.

BIANCHI A, "The International Regulation of the Use of Force: The Politics of Interpretive Method", in *Leiden Journal of International Law* 2009, p. 651 ss., p. 671

FOCARELLI C., La dottrina della responsabilità di proteggere e l'intervento umanitario, in Riv. Dir. Int., 2008,II, p. 317 e ss.

LEDERMAN M, "My Discrete but Important Disagreement with Harold Koh on the Lawfulness of the Strikes on Syria", in *Just Security*, 7 aprile 2017, disponibile su www.justsecurity.org, p. 58 e ss.

BIANCHI A, "The International Regulation of the Use of Force: The Politics of Interpretive Method", in *Leiden Journal of International Law* 2009, p. 651 ss., p. 671

BARTOLINI G., Gli attacchi aerei in Siria, l'operazione Inherent Resolve e la complessa applicazione del diritto internazionale umanitario, in *Dir. Um. e dir. internazionale*, 2017,II p. 400 e ss.

BIANCHI A, "The International Regulation of the Use of Force: The Politics of Interpretive Method", in *Leiden Journal of International Law* 2009, p. 651 ss., p. 671

BARTOLINI G., Gli attacchi aerei in Siria, l'operazione Inherent Resolve e la complessa applicazione del diritto internazionale umanitario, in *Dir. Um. e dir. internazionale*, 2017,II p. 400 e ss.

KOH H.H., "The War Powers and Humanitarian Intervention", in *Houston*

Law Review 2016, p. 971 ss

BIANCHI A, “The International Regulation of the Use of Force: The Politics of Interpretive Method”, in *Leiden Journal of International Law* 2009, p. 651 ss., p. 671

MILANOVIC M, “The Clearly Illegal US Strike in Syria”, in *EJIL:Talk!*, 7 aprile 2017, disponibile su www.ejiltalk.org, p. 14 e ss.

LEDERMAN M, “My Discrete but Important Disagreement with Harold Koh on the Lawfulness of the Strikes on Syria”, in *Just Security*, 7 aprile 2017, disponibile su www.justsecurity.org, p. 58 e ss.

MILANOVIC M, “The Clearly Illegal US Strike in Syria”, in *EJIL:Talk!*, 7 aprile 2017, disponibile su www.ejiltalk.org, p. 14 e ss.

LEDERMAN M, “My Discrete but Important Disagreement with Harold Koh on the Lawfulness of the Strikes on Syria”, in *Just Security*, 7 aprile 2017, disponibile su www.justsecurity.org, p. 58 e ss.

MILANOVIC M, “The Clearly Illegal US Strike in Syria”, in *EJIL:Talk!*, 7 aprile 2017, disponibile su www.ejiltalk.org, p. 14 e ss.

KOH H.H., “The War Powers and Humanitarian Intervention”, in *Houston Law Review* 2016, p. 971 ss

Matthew J. Harker, *Economic Rebuilding Essential to R2P in Syria*, GLOBALRISKINSIGHTS.COM (Sept. 20, 2013), <http://globalriskinsights.com/2013/09/20/economic-rebuilding-essential-to-r2p-in-syria/>.

Rabie Nasser, Zaki Mehchy & Khalid Abu Ismail, *Socioeconomic Roots and Impact of the Syrian Crisis*, SYRIAN CTR. FOR POL’Y RES. 10 (Jan. 2013), <http://scpr-syria.org/download/1363/?v=1365>.

Syria: Pledges Prove that the People Devastated by Conflict in Syria are Not Forgotten, Says UN Chief Ban Ki-moon, UNITED NATIONS OFF. FOR COORDINATION HUMANITARIAN Affairs (Jan. 15, 2014), <http://www.unocha.org/top-stories/all-stories/syria-pledges-prove-people-devastated-conflict-syria-are-not-forgotten-says>.

Unanimously Approved, Security Council Resolution Demands Aid Access in Syria, U.N. NEWS CTR. (Feb. 22, 2014), <http://www.un.org/apps/news/story.asp?NewsID=47204#.U9EEcMtOVdg>.

Muditha Halliyadde, *Syria - Another Drawback for R2P?: An Analysis of R2P's Failure to Change International Law on Humanitarian Intervention*, 4 *Ind. J. L. & Soc. Equality* 215 (2016).