

## Original Paper

# Does Responsibility to Protect (R2P) Make Difference to Civilians?: An Analytical and Evaluation Study

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### Abstract

*In 2001, the International Commission on Intervention and State sovereignty (ICISS) proposed rethinking on sovereignty through the prism of a new concept: the “Responsibility to Protect” (R2P). Several years after, its message has been achieved? This is answer to this question that, in the aftermath of the Arab spring, at the end of an intervention that is controversial in Libya and in the face of the Syrian drama, we decided to make an evaluation, by analyzing this doctrine.*

*From details of methodological of the purpose of this article, the review of the legal framework of the “Responsibility to Protect” (R2P) in international law is based on pre-existing concepts and rules that are sometimes approached such as the international responsibility and criminal responsibility priori conceptualization of the “Responsibility to Protect”, will be the first axis of this study. In the second, axis the responsibility to protect the population rests primarily on the territorial State against war crimes, crimes against humanity, crimes of genocide and ethnic cleansing. It must be stated that the obligation to protect the concerned State, was necessary before the States itself by establishing international legal standards. If the State is not willing to do or unable, the subsidiary protective role is the responsibility of other actors.*

*The reality of major obstacles reduces the effective implementation on the ground of the “Responsibility to Protect”. These obstacles can be linked with the same design of it, just as they may result from external causes that could make inoperative the responsibility to protect in view of the situation, the international community application does not rely on the implementation of the responsibility to protect in some cases that meet, however, all the conditions to act within this framework. In the third axis of this study, it will be also a review of the operational legal framework.*

*The United Nations has adopted several resolutions on the “Responsibility to Protect”, examining not only their support to the doctrine, but also their willingness to authorize the deployment of peacekeeping operations and to adopt resolutions in support of military intervention paragraph. But*

*the Security Council of the United Nations has not always been unanimous about the situations to which the “responsibility to protect” applies. The case of Darfur and the crisis of the Syria, there was something else, they were exemplary cases of the application of the “Responsibility to Protect” inertia, and the different responses by the international community in the face of these crises, will allow us in the Fourth axis of interesting conclusions about the difficulties in the application thereof.*

### **Keywords**

*the International Commission on Intervention and State sovereignty, the “Responsibility to Protect”, International Responsibility, the international community, the Security Council*

## **1. Introduction & Overview**

From the years 1990, Member States of the United Nations have gradually shifted the center of their security concerns from States to individuals. The state is the first guarantor of the protection of the rights of the human person. There is also an obligation in international law for any State to respond to violations of these rights. The “Rwandan genocide” in 1994 (Nikuze, 2014, p. 1099; Verwimp, 2004, p. 233; Rohr, 2009, pp. 1-4; Graybill, 2002, p. 88) (Note 1) and the massacre in Srebrenica in 1995 (Cedric Ryngaert & Nico Schrijver, 2015, pp. 219-220; Southwick, 2005, pp. 192-195; Gruñfeld & Vermeulen, 2009, p. 222; DiCaprio, 2009, p. 74; Herman, 2006, pp. 409-410) (Note 2) make the Member States of the United Nations be aware of, apart from the fact that governments are not always able to protect their citizens, they can sometimes be the source of threats (Sarkin, 2012, pp. 18-19; Thakur, 2016, pp. 416-427; Luck, 2010, pp. 350-361; Luck, 2008, p. 2). With such aim of achieving greater international sovereignty and the imperative to intervene for the purposes of human protection, was the call of the former UN Secretary-General, Kofi Annan. The International Commission on Intervention and State Sovereignty (ICISS), set up by Canada in September 2000, proposed, in December 2001, the concept of “Responsibility to protect”.

The responsibility to protect leads to thinking of sovereignty as a responsibility and no longer as an absolute right. Responsibility is threefold: to warn of war crimes, genocide and crimes against humanity, to suppress them when prevention has failed and to rebuild the country to ensure that such events do not recur. The responsibility to protect is above all the purview of the State in whose territory the conflicts take place. It is only if a state fails to protect its population, either because of lack of will, or by impossibility (this would be the case of own government failure that it would not be able to put an end to the clashes), it is up to the international community to act (Gagro, 2014, pp. 69-70).

It is clear that the prevention of conflict must remain the first objective of international cooperation in the face of the magnitude of the destruction of property, killings, suffering, injuries and damage to the environment. The second objective is to ensure that humanity be safeguarded in the face of the reality of armed conflict and to avoid human suffering (Zupančič, 2009, pp. 69-70). The purpose of the International Humanitarian Law (IHL) is specially to alleviate the suffering of all victims of armed conflict in the power of the enemy; it's the noble ambition of IHL. The latter, is defined as the set of

legal rules on the protection of the human person in times of hostilities (Alexander, 2015, p. 111). As such, the IHL is complementary to the international right of the human person by its traditional component (classic IHL) and its modern (modern IHL) component. In classic IHL, a distinction is usually performed between The Hague law, which fixed the rights and duties of belligerents in the conduct of operations and limits the choice of means of harm, and the law of Geneva, intended to regulate hostilities, mitigate the rigors as much as military requirements permit. For example, classic IHL is legal rules at the international level to protect the victims of war. It represents the first version of the IHL, which was systematized by the end of the nineteenth century. Today, we consider that the law of Geneva and the law of The Hague were merged. Classic IHL would then consist of these two bodies which are however not totally separated, insofar as certain rules of the law of the Hague have for effect to protect the victims of conflicts, the Geneva law rules limit the action of belligerents during the hostilities (Thürer, 2007, p. 2) (Note 3). Modern IHL is complementary to the classic IHL, without, however, to replace it. Thus, the analysis is different: while the classic IHL was founded on the principle of neutrality, modern international humanitarian law is based on the idea of intervention or interference, i.e., in terms of action to act or, more precisely, to react (Kolb, 2013, pp. 23-24) (Note 4). The international law Commission had made a distinction between serious violations of an obligation under peremptory norms *jus cogens* and violations of obligations owed to the community international *erga omnes*, therefore, that the consequences of violations of these two categories are different, depending on whether based on the (art.41) (Note 5) of the text beyond Commission on responsibility of States for fact internationally wrongful, and relative to the specific consequences of the violation of standards mandatory (art.40), or on (art.48) (Note 6) on violations of obligations owed to the international community as a whole. In addition, in the international legal order, the fundamental human rights obligations which weigh on the State and whose violation can lead to international enforcement action against him, are very similar to those that can result in criminal responsibility of the individual. The crimes covered by the responsibility to protect can be cleared of the offences within the jurisdiction of the ICC. The Rome Statute is essential in the delimitation of the scope of the responsibility to protect.

The military intervention, which could in principle be decided only by the Security Council on the basis of Chapter VII of the Charter of the United Nations, because of a threat to international peace and security, is the ultimate remedy! Before using it, the international community has a set of measures as a diplomatic sanction and embargo (Note 7). That is likely to put pressure on the failing states. In addition, rigorous beacons (including the just cause, proportionality of the means,) must be respected in the implementation of the responsibility to protect. From its adoption and its entry in the international legal field, the responsibility to protect has received a concrete application, especially in the case of Darfur in 2006, in 2008 Kenya and Libya in 2011. The new concept of responsibility to protect seems to have an application ambiguous on the occasion of the emergence of a new deal on the internal and international, one of the popular revolts. The death toll in different Arab countries was the breath of the

revolutions in several thousands, especially in Syria.

This article aims to evaluate the doctrine of the “responsibility to protect” in analyzing, and specifying, first the concept, heiress of a theory on the “right of humanitarian intervention”. Next, it should analyze the relationship of the State having failed with the body of rules governing the consequences of its action for the breach of an international obligation. It is interesting, in this regard, to review the applicability of the legal regime of international responsibility of a State for internationally wrongful as to the breach of responsibility to protect. In addition, analyze the international criminal responsibility of individuals, but also the possibility to engage the State, authors of international crimes, turns out to be necessary. Finally, it is also important to identify, thoroughly authority appropriate protection, as many points that have not quite yet caught the attention to and in connection with, the assessment of the concept of the “responsibility to protect”. In practical terms, the implementation of the concept of “responsibility to protect”, by the competent authorities on case studies, will help illustrate the emergence of this concept of the fact of its use by the United Nations and its Member States, with the right to authorize the use of force, in order to protect the victims of the failure of their States. This case study is to understand the obstacles to the implementation of “Responsibility to protect”, hence the need to consider measures to strengthen the efficiency and effectiveness of this concept or the search for a new doctrine.

## **2. Analyzed the Conceptual Framework of Responsibility: What Is the Type of Responsibility?**

### *2.1 R2P and International Responsibility between Convergence and Variance*

Article (I) of the International Law Commission on International Responsibility for Internationally Wrongful Acts specifies that “every internationally wrongful act of the State entails the international responsibility of that State”. This means that the existence of an internationally wrongful act on the part of the State constitutes, as such, the source of international responsibility. This means that the existence of an internationally wrongful act on the part of the State is, as such, the source of international responsibility (Note 8). The PCIJ has applied this principle enunciated in several cases, notably in the case “Phosphates in Morocco” stating that: affirmed that when a State commits an internationally wrongful act against another State international responsibility is established “immediately as between the two States” (Note 9). The ICJ, for its part, has affirmed this principle, particularly in the “Straits of Corfu” cases (Note 10), “Military and Paramilitary Activities in and against Nicaragua”. Further, in its advisory opinions on the United Nations Reparation for Injuries and the Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, where it stated that “it is clear that the refusal to fulfill a treaty obligation is likely to engage international responsibility” (Note 11). Similarly, the Arbitral Tribunal in the “Rainbow Warrior” case insisted that “any violation by a State of any obligation, of whatever origin, gives rise to State responsibility” (Note 12). The State must be guilty of an internationally wrongful act so that its international responsibility can be engaged, that is, an act contrary to the international obligations of that State.

It is worth mentioning that the State is answerable for its international wrongful acts means that its conduct must be assessed in the light of its international obligations, which alone make it possible to engage its responsibility in the international law order. There is a breach of an international obligation by a State where “when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character” (Note 13). Two elements must, therefore, be met: State conduct that may be an action or an omission, and its contrariety with a rule of international law. The origin or the character of the violation, as already stated, irrelevant in the assessment of unlawfulness which may be either in breach of a treaty obligation (Olleson, 2007, p. 102). Professor James Crawford makes a distinction between “Primary obligations” by which “gives rise, immediately by operation of the law of state responsibility and “Secondary obligations” or series of such obligations (cessation, reparation) (Crawford, 2002, p. 876) (Note 14).

It is a settled rule of international law that a State may not depend on the provisions of its Domestic law as support for neglecting to agree to international obligations (Palombino, 2015, p. 504). The supremacy of international law over domestic law has recently been reiterated in the jurisprudence of the PCIJ and ICJ. The most illuminating decision in such manner is that conveyed by the Permanent Court of International Justice in *Treatment of Polish Nationals*. In line with this decision, a State can’t illustrate as against another State its very own Constitution with a view to dodging obligations officeholder upon it under international law or treaties in force (Note 15). Later, in the “*Pulp Mills on the River Uruguay*” case, the Court held Uruguay liable for breach of its reporting obligations under the 1975 Uruguay River Statute, noting that it gave priority to its own legislation on the procedural obligations it had under the 1975 Statute. In addition that, the breached rule or obligation must be in force with respect to the State in question at the time the breach occurs (Fitzmaurice, 2007, p. 61) (Note 16). Finally, in order for the act in question to constitute a violation of international law, it must not be covered by a circumstance precluding wrongfulness. In other words, there is no wrongfulness when one of the circumstances envisaged is present because by virtue of that presence the objective element of the internationally wrongful act, namely the breach of an international obligation lack. These circumstances are set out and defined in Chapter V of the Draft Articles of the International Law Commission (ILC) on State Responsibility. They are sometimes related to the facts of the other State; the consent of the State, self-defense and countermeasures, sometimes the impossibility of acting out of force majeure, distress and the state of necessity (Note 17). The notion of peremptory rule, however, limits the play of all these circumstances as a matter of art. 26 of the ILC draft article on State responsibility in domestic law (Note 18).

At first reading of the draft articles of 1976, the Commission held two different categories of violations of international law: the “delict” and the “international crime”, the definition of which was given in art. 19 constituted a crime of the state “An internationally wrongful act which results from the breach by a State of an international obligation so essential for the protection of fundamental interests of the international community that its breach is recognized as a crime by that community as a whole,

constitutes an international crime” and was thus characterized, Inter alia, as “serious breach on a widespread scale of an international obligation of essential importance for safeguarding the human being, such as those prohibiting slavery, genocide and *apartheid*”. The Para.3 of this provision provided a list of international crimes: aggression, the maintenance by force of colonial domination, slavery, genocide, apartheid, serious preservation of the human environment, in particular. All other internationally wrongful acts were described as delict under para.4 (Howard, 2001, p. 8, p. 9, p. 11) (Note 19).

The proposals of the Drafting Committee were to be submitted to the comments of the members of the Commission. Finally, the Commission abandoned any allusion to possible degrees of wrongfulness definitively in the first part of the draft adopted in 2001. On the other hand, this distinction reappears in chapter III of Part II of the draft legal concerning regime applicable to serious breaches of obligations arising from peremptory norms of general international law, i.e., the norms of the “jus cogens”. The latter replaces the old terminology “crime”, while essentially retaking the provisions that drew the consequences and allowing for future developments.

A provision in the 2001 of the Commission text opens a possibility of broad perspective in terms of the responsibility to protect, that of art. 48 of the draft of the Commission which provides that “Any State other than an injured State is entitled to invoke the responsibility of another State in accordance with paragraph 2 if: (a) The obligation breached is owed to a group of States including that State, and is established for the protection of a collective interest of the group; or (b) the obligation breached is owed to the international community as a whole”. The art.48 relates to the invocation of responsibility by States other than the injured State acting to defend a collective interest. The State other than the injured State is not in its individual quality due to an injury that it suffered, but in its capacity as member of a group of States to which the obligation is due, or even Member of the international community as a whole. Art.48 defines the categories of obligations whose breach may authorize States other than the injured State to invoke the responsibility of a State. Under the terms of paragraph (a), two conditions must be met before this responsibility could be engaged. First, the obligation whose breach gave rise to liability should be an obligation to a group to which part the State invoking responsibility. Second, it must be an obligation established for the protection of a collective interest. Such obligations are sometimes referred to as “obligations *erga omnes* parties”. Paragraph (b) provides that States other than the injured State may invoke responsibility if the obligation in question was an obligation to the international community as a whole. This provision aims “obligations *erga omnes*”, notion that the ICJ in the “Barcelona Traction” case stated “an essential distinction” between obligations owed to particular States and those owed towards the international community as a whole (Ardit Memeti & Bekim Nuhija, 2013, pp. 32-33; Bird, 2011, p. 884; Villalpando, 2010, p. 401; Sicilianos, 2002, p. 1131) (Note 20). These obligations include the prohibition of genocide, violations of constituent obligations of crimes against humanity and war crimes. So, each State is entitled, as a member of the international community as a whole, to engage the responsibility of a State which would

commit the violation of such obligations on the basis of art. 48 (Note 21).

The most relevant hypothesis in terms of responsibility to protect is the art.48 of the draft articles on the responsibility of the State for internationally wrongful acts, under art.48.1. Para.2 of art.48 shows the forms of reparation that may request States other than injured States:

“(a) any State entitled to invoke responsibility under paragraph 1 may claim from the responsible State: the cessation of the internationally wrongful act and d. are assurances and guarantees of non-repetition, in art. 30; (b) performance of the obligation of reparation in accordance with the preceding articles, in the interest of the injured State or of the beneficiaries of the obligation breached”.

The legal principle that the cessation and non-repetition of the breach of an international obligation, lies in the continuing nature of the duty to carry out the obligation. Continuing the commission of an internationally wrongful fact would be contrary to the nature and the very foundations of the rule of law. As the Commission indicates in his draft article “The legal consequences of an internationally wrongful act does not affect the continued duty of the responsible State to perform the obligation breached”. Regardless of whether the responsible State concerning the obligation to stop the unlawful conduct and to completely repair the harm caused, it isn’t give because of his obligation to play out the commitment it has ruptured. Keeping up an international obligation, despite a violation thereof, is basic of idea of wrongful act and obligation of suspension (Note 22).

The cessation of the internationally wrongful fact appears as the first condition for any remedy if this fact is of a continuing nature. In the event that the obligation violated is due to the international community as a whole, any state is empowered to require the responsible State to cease the wrongful fact and in a convenient situation to request restitution. In the case of “Application of the Convention on prevention” and repression of genocide, the Court held that:

“Serbia and Montenegro shall immediately take effective steps to ensure full compliance with its obligation to punish against acts of genocide under the Convention on the Prevention and Punishment of the Crime of Genocide or any other act prohibited by the Convention and to transfer individuals accused of genocide or any other act prohibited by the Convention to the International Criminal Tribunal for the former Yugoslavia and to fully co-operate with this Tribunal” (Note 23).

In conclusion, the crime of genocide committed by a State or on the territory of another State, or against its own population, any State has the right to demand the cessation of this crime and its repair, but not for himself in favor of the State on whose territory the genocide has been committed, or victims, regardless of their nationality. The “Responsibility to protect” failed the international community thus arises in the same context as in the law of the international responsibility of States for the reaction of the State other than the injured State.

Most of the obligations described as “*erga omnes*” at the present time imply negative duties, namely an obligation to refrain from certain behavior. In this context, the ICJ, in the judgment on the “Barcelona Traction case”, identified the category of obligations of States to the international community as a whole, surpassing reciprocal relations between States. The court in this case stated in substance that the

obligation to respect a certain core of human rights from which “for example, in contemporary international law, the outlawing of acts of aggression and genocide, but also principles and rules concerning the fundamental rights of the human person, including protection against the practice of slavery and racial discrimination, corresponds to an obligation ‘*erga omnes*’”. In the case “Application of the Convention on the Prevention and Punishment of the Crime of Genocide”, the court stated that “the rights and obligations enshrined by the Convention are rights and obligations ‘*erga omnes*’” (Note 24). The category of obligations “*erga omnes*” covers only those obligations which protect the collective interests which are in the interest of the entirely international community, moreover which is of the same nature as the norms Mandatory

The concept of responsibility to protect was created to remind States and the international community of their responsibility to act effectively in the face of major human catastrophes. The authors wanted to learn from both inactions in Rwanda and Srebrenica, and from military intervention in Kosovo without permission from the UN Security Council. In this respect, the responsibility to protect has been conceived as the obligation of each State in exercising its sovereignty to protect its population from disasters that can be prevented catastrophe, mass murder, and systematic rape. If they are not willing or unable to do so, this responsibility must be borne by the entirely international community of the State (Note 25). The High-level Panel on Threats, Challenges and Change has called the obligation of a joint obligation of all States to a collective responsibility to protect (Note 26).

As part of the responsibility to protect, when the State has failed or wanted to prevent the above-mentioned crimes or punish the perpetrators, victims have a right to seek redress against the State on the basis of the responsibility to protect?

The right to compensation for victims of international crimes, based on the failure of the State to protect, is not yet established. There are certain practices which tend to recognize the possibility for victims to claim compensation against the State (Evans, 2012, p. 17). However, there is no indication that this repair is based on a breach of the responsibility to protect. In this respect, the meeting of States in Rome, a background was established by the Statute of the International Criminal Court to support the Court in its repair function, for the benefit of victims of crimes within the jurisdiction of the Court. The amounts transferred to Trust Fund and allocated to the victims come from the contributions volunteers of States, individuals and organizations. Thus, the Participation in the compensation of victims wasn't an obligation for the States. In addition, The United Nations keeps up a Voluntary Trust Fund on Contemporary Forms of Slavery set up by the General Assembly in 1991 to, entomb alia, stretch out, through set up channels of assistance, humanitarian, philanthropic, legitimate and financial aid related to people whose human rights have been seriously violated because of contemporary types of slavery (Megret, 2010, p. 133). Therefore, it does not appear to establish an obligation to fix the responsibility of the States on the basis of the responsibility to protect. Finally, the victims of crimes under international law have no rights against the States, based on the responsibility to protect; they are receiving but not licensed.

## 2.2 What about Criminal Responsibility?

International criminal repression is based on the principle of the international responsibility of individuals, which has considerable extension in terms of persons and facts subject to its rules, an extension reinforced by the establishment of mechanisms International judicial bodies to judge and punish individuals responsible for certain illicit behaviors. This principle is also entrenched in international law in which individuals must keep lest their states be held susceptible for their “Acts and Omissions” (Levy, 1945, p. 325).

The international responsibility of individuals means a customary regime of criminal responsibility accommodating the discipline of individuals who have executed international crimes. The perpetrators of acts constituting an international offence are responsible for that chief and liable to punishment which is pronounced by an internal court or international criminal court. In other words, the international responsibility of the individual implies that international law determines illegal individual acts as international offences (Bonafè, 2009, p. 13). For the Commission, the term “international responsibility of the individual” refers to the responsibility of individual persons, including State agents, according to certain rules of international law applying to conduct such as Commission of Genocide, war crimes and crimes against humanity.

As part of the “Responsibility to protect”, the World Summit Outcome has issued several hypotheses in order to implement liability. It refers to crimes against humanity, crimes of genocide, war crimes and ethnic cleansing. These assumptions can be reconciled with the consequences of offences within the jurisdiction of the International Criminal Court. These crimes, marked by the imprint of criminal law, are defined in the instruments of international criminal law. The ICC Statute identifies them in art.5 on crimes within the jurisdiction of the Court, art.7 on crimes against humanity, art.8 on war crimes, art.6 on crimes of genocide, the latter being also defined by art.2 of the 1948 Convention on the Prevention and Punishment of the Crime of genocide, or by art.4 of the ICTY Statute and art.2 of the ICTR. All these texts are well within the scope of international criminal law. It is therefore for the international community of States to allow and organize the prevention and suppression of international crimes committed by individuals.

The era of the ICC, the most successful of the “Responsibility to protect” in criminal leaders remain, so far, the conviction of former Liberian President Charles Taylor for war crimes and crimes against humanity: aid and complicity of murder, rape, sexual slavery, of recruitment of children soldiers committed in Sierra Leone (Note 27); the arrest of the former President of Côte d’Ivoire, Laurent Gbagbo, and his transfer to the Hague to answer post-election abuses in 2010, or the surrender of Bosco Ntaganda to the ICC, which was the subject for war crime and crimes against humanity committed in the province of Ituri (Deutch, 2016, pp. 681-682). These convictions show a considerable progress of international law and reflect the will of the international community to repress serious violations of fundamental human rights and punishing those responsible for the atrocities mainly against civilians.

Other international jurisdictions also participate in criminal law enforcement of the crimes covered by the Rome Statute. All this judicial mechanism demonstrates clearly that the “Responsibility to protect” has a substantial criminal warranty that can be used to deter and punish war crimes, crime against humanity, genocide and cleaning ethnic. Therefore, it may be unreasonable to see how the path of impunity remains to be cleared for international criminal law.

We hope to point out that impunity stands as the biggest challenge to face in the fight against serious and massive violations human rights, context even of the “Responsibility to protect”. Since the start of the twenty-first century, the human rights movement has been relatively synonymous with the battle against impunity. Today, to help human rights intends to support criminal responsibility for those individuals who have breached human rights or international humanitarian law (Engle, 2015, p. 1070). Impunity can be depicted as exception from punishment or sanction. At the point, when the sovereign immunity standard is stratified to the act of sovereign immunity, individuals, who have administrated and taken part in principal human rights violations, are regularly passed the limit of the law to give a cure (Ozdan, 2018, p. 41).

In this respect, the ICC contributes to the fight against impunity and the establishment of the rule of law by ensuring that the most serious crimes remain unpunished and in promoting respect for international law. The Rome statute has in its preamble “Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes”. For instance, the Court issued two arrest warrants international against the Sudanese President Omar Al Bashir. On July 14, 2008, Moreno-Ocampo asked for a capture warrant for President Al Bashir for genocide, crimes against humanity, and war crimes against individuals from the Fur, Masalit, and Zaghawa groups from 2003 to 2008. President Al Bashir was prosecuted on March 4, 2009 as a circuitous perpetrator. The ICC found that there was sufficient proof that President Al Bashir utilized the Sudanese military and also Sudan’s Government to complete criminal activity. He was arraigned for carrying out five counts of crimes against humanity and two tallies of war crimes; in any case, the ICC did not locate that enough evidence existed to arraign him for genocide. In particular, this was the first occasion when that the ICC issued a capture warrant for a sitting head of state. On March 5, 2009, the ICC asked for that Sudan capture and surrender President Al Bashir. The following day, according to Article 89 para.1 of the Rome Statute, the ICC asked for that part states to arrest and surrender President Al Bashir whenever gave the opportunity to do as such. Sudan is not party to the Rome Statute, and has the support of several neighboring States. The Sudanese Government has also refused to cooperate with the ICC, including by preventing his investigators put foot in the country. It is this problem of cooperation which has been implicitly reference the Prosecutor of the ICC in its statement of March 4, 2009 on the occasion of the issuance by the pre-trial Chamber of the arrest warrant issued against President Omar El Bashir. The criminal is therefore still wanted by the Court today. The case Omar Al Bachir highlights the intrinsic “weakness that exist in the Rome Statute” (Barnes, 2011, pp. 1601-1602). In this respect, we can point out the obstacle of immunity from jurisdiction, which is not to impede the

exercise of the powers of the ICC. In other words, diplomatic agent cannot be prosecuted in the criminal of the receiving State courts; thus, it exempts the person immune from criminal liability, as provided in art.98 of the ICC Statute.

States may take the initiative forecasting and repression of these crimes. However, they can establish their own jurisdiction with respect to crimes prosecuted, by providing for their criminality and their repression in domestic law or, give rise to prosecutions of any person presumed guilty of serious offences on sound territory, whatever the nationality of this person or the place where the offences. These include the effective implementation of universal jurisdiction, which fills a legal vacuum that existed between the refusal or inability of States to judge for themselves their national and the lack of adequate international courts (Garrod, 2018, pp. 131-132) (Note 28). Such efforts would undoubtedly criminal density to the “Responsibility to protect”.

The prohibition of committing a crime is intended in principle for individuals. The statute of the ICC, ICTR, ICTY and SCSL effectively proved that natural persons are criminally responsible not only when they commit a war crime, but also when they attempt to commit such a crime and that they assist, contest or participate in the Commission of war crime. They are also responsible when they plan or incite to commit a war crime (Note 29). Individual criminal responsibility for war crimes committed in conflict has been explicitly included in three treaties of IHL: Protocol II to the Convention on conventional weapons, as amended, the Statute of the ICC and the Protocol II to The Hague Convention on the Protection of cultural property (Note 30).

The statutes of the ICTR and the Special Court for Sierra Leone (SCSL) explicitly state that natural persons are criminally responsible for war crimes in non-international armed conflicts. Individuals may also meet, under certain conditions, “a group of persons acting in concert” (Note 31) or a “joint criminal enterprise” and be punished as the ICTY states in Tadić case. The ICTY sought to convict in this case the individuals who had committed such acts. In this regard, he expressly stated that the violation of international law gave rise to individual responsibilities (Note 32). However, individual authors may also be agents of the State, as also mentioned in para.2 of art.4 of the ILC Draft. Such agents include “any organ includes any person or entity which has that status in accordance with the internal law of the State”. Thus, are involved all individuals, even the highest placed who occupy the leadership functions or other body exercising public authority (Note 33). On the contrary, the individual criminal responsibility of the leaders does not preclude the international responsibility of the State of which they are responsible. Indeed, the fact of the state committed the crime by its organs. Not to incur the same international responsibility as that of the individual, the international crime of the agent does not mean that the state of the agent comes out unscathed from international responsibility.

Supervisors are criminally responsible for the war crimes committed under their command. They can be held directly responsible for having ordered their subordinates to commit illegal acts. They can also be responsible for the illegal conduct of one of their subordinates. It is a form of indirect liability based on breach of a duty to act (Note 34).

International criminal law takes into account criminal responsibility of members of an armed group, when they have committed international crimes, namely war crimes, crimes against humanity or genocide. It also takes into account, to a certain extent, collective accountable nature, although their responsibility is individual. In this respect, the Statute of the ICC, has qualified as crimes against humanity, “a course of conduct involving the multiple commission of acts (...) against any civilian population, pursuant to or in furtherance of a State or organizational policy” (Note 35).

The Geneva Conventions of 1949 and the Convention of The Hague for the protection of cultural property in the Event of Armed Conflict and its Protocol II require that the Contracting Parties pursue any person who committed, or ordered to commit, of the violations under serious conditions (Note 36). For the ICC Statute, the criminal responsibility of superiors is also committed as there is commission or attempted commission of crime (Note 37). These texts require the States that behaviors prohibited, including in non-international armed conflict, are liable to criminal prosecution.

In fact, obeying an order from his superior does not relieve the subordinate of his individual criminal responsibility. In this sense, art.6 para.4 of the Statute of the ICTR provides “the fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal for Rwanda determines that justice so requires”.

Subordinate position exposes the individual to legal action, without knowing it, most often, what it is obliged to perform illegal acts. As for the military, respect for orders of their superiors is the disciplinary framework to which they are subject in all cases. This rule of responsibility of superiors applies not exclusively to the quick superior of a subordinate, yet in addition to his different superiors in the military hierarchy of leadership if the essential criteria are met (Ronen, 2010, p. 318). From there, the Rwandans, under the authority of the Mayor, have committed genocide or other acts against humanity, only because the decision maker of the commune of origin or establishment had decided so. Also, it can happen that a person is criminally responsible for an Act, although it is possible to judge and condemn it, because they cannot establish the jurisdiction of a court. This is the case, notably, when State officer alleged to be responsible has the protection of the immunities of jurisdiction, thus obstructing the establishment of the jurisdiction of a foreign court (Note 38).

As to the status of the ICC, it devotes two articles to the question of immunity. Art. 27, expressly excludes the benefit of immunity to anyone who would be involved in a procedure before the Court, particularly in its paragraph 2 “Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person”. This article shows that the statute excludes absolutely the criminal immunities accorded to a category of people with a formal quality. On the other hand, the art.98 introduced a doubt when he joined the inability of the Court to take binding measures that “would require requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person” (Note 39). The method of reasoning of article

98 is to shield the for requested State Party from being looked with clashing obligations under international law with regards to the a third state from one viewpoint (concerning immunity, or the requirements for consent, respectively) and the ICC then again (obligation to surrender following a demand), and consequently at last to shield that State Party from bringing about international responsibility (Benzing, 2004, p. 198).

From the foregoing, noted that in international law, the fact that an agent had been convicted of violations does not relieve the State of its own international responsibility. The ICJ in the case concerning application of the Convention on the prevention and punishment of the crime of genocide, also perfectly objected to the arguments of the Serbia that the genocide Convention does not commit the responsibility of the States at the rate of genocide (Note 40) as such and clear of the interpretation of art.1 of the Convention an obligation to the responsibility of States not to commit genocide. Indeed, the ICJ notes that although the text of the Convention does not impose on the States *expressis verbis* refrain from committing themselves a genocide, it is based on the qualification of “crime of the law of the people” given to the genocide by article 1 of the Convention to indicate that, if States have accepted this qualification, they logically obliged not to commit the act as well.

In addition, the Court noted that it had already concluded that the art.1 of this instrument was the responsibility of all contracting parties an obligation to prevent and punish the crime of genocide. States must therefore prevent their agents to commit such an act. In fact, the Court noted that it would be “ironic that States are thus required to prevent individuals on which they can exert some influence to commit the genocide, but it is not in the best of their ability, forbidden to commit themselves such acts through their bodies, or persons over which they control a so narrow that the behavior of these is due under international law”. To sum up, the Court stated the obligation to prevent genocide implies necessarily the ban commit. Furthermore, the ICJ has admitted that a State could be held responsible for a crime of genocide, although this responsibility has so far a criminal character. In this context, art.7 of the Draft stipulates that “the conduct of an organ of the State (...) shall be considered an act of the State under international law if the organ, person acts in that capacity, even if it exceeds its authority or contravenes instructions”.

Ultimately, that the Court opens the possibility of engaging the international responsibility of the Serbia for genocide by saying:

“The Contracting Parties are bound by the obligation under the Convention not to commit, through their organs or persons or groups whose conduct is attributable to them, genocide and the other acts enumerated in Article III. Thus if an organ of the State, or a person or group whose acts are legally attributable to the State, commits any of the acts proscribed by Article III of the Convention, the international responsibility of that State is incurred”. The criminal responsibility regarding genocide turns into a kind of essential of state responsibility. However, it emerges the need to set up that persons or groups following up in the interest of the state have in fact committed the wrongdoing of massacre and genocide, along these lines making their state internationally responsible of its execution (Gaeta,

2007, p. 644). In the long run the Court carried out the Genocide Convention as an instrument of international criminal law, expecting states to restrain individuals from participating in genocide and obliging them to hand over to a competent international criminal tribunal (Gaeta, 2007, p. 647) .

One can conclude, except for ethnic cleansing which is not the subject of a definition in international law, the aforementioned crimes in the World Summit Outcome of 2005 allow for the deduction of indications on the norms of “jus cogens”. The consequences of the breach of the peremptory obligations are laid down in art.41 of the draft of the Commission (Note 41). In addition, remember that any “State other than an injured State”, as defined in art. 48 of the draft from the Commission may invoke the responsibility of a third State in breach of such an obligation. This includes, from States which have a collective interest in respect of the obligation breached, to the extent where they are part of a group of States to which the obligation is owed. Moreover, as has been observed, the “Responsibility to protect” is limited to the duty of protection of the population against the four categories of crimes mentioned above. These crimes fall under the statute of the ICC, which, under its art. 5, is competent for the most serious crimes affecting the international community as a whole. The importance given to these crimes by the Statute also pleads in favor of the qualification of “jus cogens”. While certain crimes may be serious violations of peremptory norms (article 40 of the ILC draft), including the crime of genocide, it is not necessarily the same as violations of certain peremptory norms of general international law, for example torture. If the prohibition of torture is part of these norms (Note 42), this does not mean that any violation of this standard is a serious violation within the meaning of art.40 of the ILC project.

It is apparent that the “Responsibility to protect” seeks the international responsibility of the State which violates the obligations arising from the peremptory norms of general international law “jus cogens”. “Responsibility to protect” postulates also the duty to prosecute the perpetrators of “atrocities crimes” that affects the entire international community, and which, paradoxically, have long been unpunished. In this regard, the existence of the International Criminal Court must certainly be regarded as an essential adjuvant for the application of the principle of “Responsibility to protect”. The ICC’s opportune intervention can happen in circumstances in which crimes are now occurring. The concentration in these circumstances will be on ceasing continuous crimes and guaranteeing liability for those effectively perpetrated (Holvoet & Mema, 2015, p. 25).

The adoption of the principle of this responsibility to establish the sanction of the failure of human rights and international humanitarian law has a legal scope. However, this principle calls for the idea of accountability which also has a moral meaning.

### 3. Identifying the Appropriate Authority

#### 3.1 *The State as a Sovereign Responsible*

The possibility that sovereign State involves a responsibility to protect populations from grave violations of human rights has been progressively accepted by universal society since it was first verbalized by Francis Deng and supported by Kofi Annan during the 1990s (Glanville, 2010, p. 233).

In the logic of the responsibility to protect, the essential role in the protection of people, whatever their origins, is the authority that is in charge of controlling this territory. The idea that States may be subject by international law to rules that oblige them to protect certain persons under their jurisdiction is far from modern.

The primary responsibility of states to protect their populations has been the concept of “sovereign responsibility” in developing the responsibility to protect. According this concept, the states are capable and responsible to its own people and furthermore to the international society for the guarantee of protection its population. For example where the state can’t or reluctant to satisfy its sovereign duty to secure, the obligation moves to universal society. In other words, states have the responsibilities to prove their obligation to “the common good by protecting the environment, promoting peace, and refraining from harming their population” (Etzioni, 2016, p. 8). The ICISS take over the concept of sovereignty as a responsibility. The drafters of the ICISS report saw the concept as a way of reconciling the principle of sovereignty with the protection of human rights (Note 43). As such, responsible sovereignty will become a central element in their conception of the responsibility to protect.

In their report, the commissioners of the ICISS attempt to reconcile the principle of sovereignty and the protection of human rights, often put in opposition in the years 1990, by necessary redefinition sovereignty. This redefinition shifts the sovereignty of a “ (...) from sovereignty as control to sovereignty as responsibility in both internal functions and external duties”. The ICISS stresses that this redefinition of sovereignty is important in three respects. First, it implies that “[...] the state authorities are responsible for the functions of protecting the safety and lives of citizens and promotion of their welfare. Secondly, it suggests that the national political authorities are responsible to the citizens internally and to the international community through the UN. Finally, it means that the agents of state are responsible for their actions; that is to say, they are accountable for their acts of commission and omission”. Thus, the concept of so-called responsible sovereignty implies that State sovereignty includes not only rights, but also the responsibilities of which States must fulfill.

The ICISS takes on the same dynamic of sovereignty as responsibility, when it declares that the responsibility to protect lies first and foremost on the State whose population is directly affected. The international community has a residual responsibility to protect the affected population when the state in question is unable or unwilling to discharge its responsibility to protect, when it is the actual perpetrator of the crimes or atrocities or when the acts that take place in this state threaten people living outside. The state has failed to fulfill the responsibilities inherent in sovereignty and must be accountable to the international community. It can no longer use the principle of sovereignty and its

corollary, the principle of non-intervention, to act with impunity.

While the definition of responsibility to protect has evolved significantly since the ICISS report of 2001, the concept of “responsible sovereignty” has remained a central element. Indeed, both the definition of the responsibility to protect adopted in the final Document outcome of the World Summit of 2005 and the definition adopted in the first thematic debate of the General Assembly devoted to the responsibility to protect in 2009 takes up this concept of sovereignty (Note 44). However, two clarifications should be made. First, the concept of responsible sovereignty is now limited to the responsibility of States to protect its populations against four mass crimes, namely genocide, war crimes, crimes against humanity and the practices of Ethnic cleansing. Secondly, the threshold for triggering the subsidiary responsibility of the international community is more difficult to achieve. Whereas before 2005, the subsidiary responsibility of the international community was committed when States were “(...) powerless or unwilling to prevent” (Note 45) one of the four mass crimes committed in its territory, it is only committed today if the states clearly do not provide the protection of their populations against them.

Therefore, Responsible sovereignty implies that State sovereignty has no more than rights, but also the responsibility to protect its people from the aforementioned mass crimes. Moreover, responsible sovereignty implies that in the event that a state is clearly unable to fulfill that responsibility, the international community has the subsidiary responsibility to protect the populations of the state in question. Thus the protection of the population against mass crimes covered by the responsibility to protect can no longer be seen as strictly in the internal affairs of the States. The latter must now be accountable to the international community when they do not fulfill this inherent responsibility for sovereignty.

States already had obligations of a legal and customary nature to protect their populations from genocide, war crimes, crimes against humanity and practices of ethnic cleansing before the conceptual development of the responsibility of Protect. Moreover, the prohibition of these crimes is considered to have the quality of *jus cogens* and the obligations to prevent and suppress these crimes apply *erga omnes*.

The “Responsibility to protect” recalls certain obligations of each State in terms of prevention, protection and suppression of crimes. These are elements of the theory of international responsibility. In this context there are provisions in the law of Geneva. It establishes, without question, protection obligations for certain categories of persons (civilians, wounded, sick), which are primarily based on States.

Health law also referred to this type of responsibility. The constitution of WHO states that “Governments have a responsibility for the health of their peoples which can be fulfilled only by the provision of adequate health and social measures”.

The same opinion that there are obligations of protection for the State responsible for the control of the territory has also been imposed, in the law of The Hague, in relation to the now customary obligations of the occupying Power. In this regard, the ICJ recalls in the “a case concerning armed activities in the territory of the Congo” that:

“As such it was under an obligation, according to Article 43 of the Hague Regulations of 1907, to take all the measures in its power to restore, and ensure, as far as possible, public order and safety in the occupied area, (...) comprised the duty to secure respect for the applicable rules of international human rights law and international humanitarian law, to protect the inhabitants of the occupied territory against acts of violence, and not to tolerate such violence by any third party” (Note 46).

Under international law, States must not only avoid human rights violations, but also protect individuals. It is therefore a double obligation; the first is negative in the sense that it is necessary to avoid committing an action. The second is positive in the sense that it allows for measures to be taken in the training of State representatives and the establishment of a balance of powers within and outside the institutions. It is worth mentioning that Human-rights treaties utilize terms, for example, “secure” or “ensure” when characterizing states’ obligations. For instance, the ECHR gives that the High Contracting Parties will anchor to everybody inside their jurisdiction the rights point by point in the ECHR (Mares, 2009, p. 1197). This legal basis for this behavior stems also so much from art.1 of the Geneva Conventions of 1949.

This obligation was the subject of a famous recognition in the “Corfu Channel” case: “The obligations incumbent upon the Albanian authorities consisted in notifying, for the benefit of shipping in general, the existence of a minefield in Albanian territorial waters and in warning the approaching British warships of the imminent danger to which the minefield exposed them. Such obligations are based, not on The Hague Convention of 1907, No. VTII, which is applicable in time of war, but on certain general and well-recognized principles, namely: elementary considerations of humanity, even more exacting in peace than in war; the principle of the freedom of maritime communication; and every State’s obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States. (...). In fact, nothing was attempted by the Albanian authorities to prevent the disaster. These grave omissions involve the international responsibility of Albania”.

The Convention on the prevention and Punishment of the Crime of Genocide, such as that against torture and other inhuman or degrading treatment or punishment, provides two illustrations: States Parties undertake to prevent, then to suppress, certain acts perpetrated against the persons who are under their responsibility, and thus to protect them. As regards the first, the ICJ has found that it “involving a denial of the right of existence of entire human groups, a denial which shocks the conscience of mankind and results in great losses to humanity, and which is contrary to moral law and to the spirit and aims of the United Nations” (Note 47).

In the judgment of the ICJ in the case between Bosnia and Herzegovina and the Republic of Serbia, the court finds that Serbia breach its obligation to prevent genocide because it did not take all the measures that were in its power to prevent the commission of genocide, not on its territory, but also outside its territory (Gattini, 2007, p. 697) (Note 48).

In the same sense, the ICJ recalled, in the case of armed activities in the territory of the Congo, that Uganda, as the occupying Power in Ituri, is responsible for taking all measures depending on it to restore and ensure as far as possible, public order and security in the occupied territory, respecting, unless absolute impediment, the laws in force in the DRC.

Today, the international obligations to protect human rights that weigh on each state are so widespread that they tend to be clearly imposed on any sovereign state. The General Assembly has, in the final Document outcome, affirmed the responsibility to protect that:

“All human rights and fundamental freedoms are universal, indivisible, interrelated interdependent and mutually reinforcing, that all human rights must be treated in a fair and equal manner important, on the same footing and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, all States, regardless of their political, their economic and cultural systems have a duty to promote and protect all human rights and fundamental freedoms”.

The responsibility to protect is based on elements of international humanitarian law, international criminal law and human rights law. This legal corpus pursue a same supreme goal is to bring this the rule of respect for the human condition. In the absence of the State concerned, others may provide protection that requires the “responsibility to protect”.

### *3.2 Is the Security Council a Right Authority, If a State Manifestly Fails to Protect Its Population?*

While a state does not want or cannot assume its responsibility for protection, it can then be assumed by others, including through armed intervention. This is still far from being a novelty, as it supports the practices of human intervention. In this regard, the doctrine of “Responsibility to protect” emphasizes the essential role of international organizations, regional organizations and civil society, to protect populations from four specific crimes mentioned above.

The three pillars of the responsibility to protect defined in the 2005 World Summit Outcome and the Secretary-General formulated in the report presented in 2009 on the implementation of the responsibility to protect, affirmed the protective role subsidiary of other actors.

The General Assembly of the United Nations could boast greater legitimacy in terms of the representation of the international community. The only possibility allowed by the United Nations to enable the General Assembly instead of the Security Council to deal with a situation where it, for lack of unanimity, could not exercise its primary responsibility in the maintenance of peace and security International, is that of the official procedure of the resolution “Uniting for the maintenance of peace” (Carswell, 2013, pp. 456-457; Ramsden, 2016, p. 270) (Note 49). According to the rules of procedure 63 of The General Assembly, it must “convene in plenary session only and proceeds directly to

consider the item proposed for consideration in the request for the holding of the session, without previous reference to the General Committee or to any other Committee” (Note 50). On the other hand, the binding force of the resolutions of the General Assembly is less than that of the Security Council resolutions. Moreover, a technical obstacle made the General Assembly a rather weak player, namely the slowness of decision-making within that body; however, the speed of the reaction is a key factor in crisis situations that the accelerated procedure of the aforementioned resolution tempers only partially. However, the recurring question still, who would have a prerogative to intervene when the State concerned was failing? Are these states as such or through an entity that is the Security Council?

It is for the Security Council to fulfill this obligation, on the basis of art.24 of the Charter, which specifies that the members of the United Nations confer on it the primary responsibility for maintenance and of international security and recognize that by carrying out the duties imposed on it by this responsibility the Council acts on their behalf. based on this obligation depended to the Security Council, the key documents supporting the responsibility to protect recognize the Security Council as the right authority to take collective action to achieve the international community’s responsibility (Nasu, 2011, p. 390).

In this case, for the implementation of the responsibility to protect, it would seem doubtful, in the state of the positive law, to consider a procedure other than those foreseen in the UN Charter on the qualification of the situation as constituting a threat to peace, a breach of peace or an act of aggression, and then recourse to the adoption of provisional measures, military or non-military measures Sanctions or the empowerment of a regional peacekeeping and security Organization to take appropriate measures.

There is also a responsibility to protect, an international responsibility to protect populations at risk, and that is why the ICISS has argued that this obligation extends to the responsibility to respond by appropriate means if catastrophe is happening or seems imminent. In extreme cases, this responsibility to react can go as far as military intervention in the territory of a State to ensure this humanitarian protection (Note 51). This explains why the Commission is absolutely persuaded and considers that there is no better body or better place than the Security Council to authorize military intervention for human protection purposes. It is not a question of finding substitutes for the Security Council as a source of authority, but of ensuring that it works better than it has done so far. This vow was reiterated by the UN at the World Summit of 2005: “ (...) 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 (...).”.

It will therefore be necessary to ensure that all proposals for military intervention are formally presented to the United Nations Security Council. In this regard, the ICISS has agreed:

- Security Council authorization must in all cases be sought prior to any military intervention action being carried out. Those calling for an intervention must formally request such authorization, or have the Council raise the matter on its own initiative, or have the

Secretary-General raise it under Article 99 of the UN Charter;

- The Security Council should deal promptly with any request for authority to intervene where there are allegations of large scale loss of human life or ethnic cleansing; it should in this context seek adequate verification of facts or conditions on the ground that might support a military intervention (Note 52).

Although, it might be questioned whether the Security Council could override its own power by violating the limitations contained in the Charter of the United Nations, in particular, article 2 §7 on non-intervention in the internal affairs of States. The ICJ, in the Lockerbie case, ruled in 1998 stated that was seized of the situation (Note 53). It should also be noted that judge Bedjaoui recalls one of the provisions of the Charter providing that “in discharging [its] duties, the Security Council shall act in accordance with the Purposes and Principles of the United Nations and by reference to another Provision”, must adopt an approach which is “in conformity with the principles of justice and international law”.

The question of the legality of the action of the Security Council is likely to remain theoretical, insofar as there is no provision for the review of judicial decisions of the Security Council, so that there is no way of decide a dispute as to the interpretation of the Charter and the qualification made by the Security Council. So, it seems that the Council will continue to have a very large margin to define the scope of what constitutes a threat to international peace and security.

As part of the “Responsibility to protect”, the Security Council may investigate ground through the Commission of inquiry under Chapter VII of the Charter, as he did in Darfur by resolution 1564 of 18 September 2004 (Note 54). The report of the commission of inquiry was transmitted to the Security Council in January 2005 which referred this situation to the ICC Prosecutor. In June 2005, the prosecutor decided to open an investigation. The Security Council fully also played a role when he grabbed the ICC of crimes in Libya (Note 55).

However, after insisting on the fact that it is not to provide alternatives in criterion from the appropriate authority, since the States contemplating action must seek the authorization of the Council, the Commission also found necessary of not “rule out completely any possibility of recourse to other means to ensure accountability to protect when the Security Council expressly rejects a proposal for intervention where humanitarian or human rights issues are significantly at stake, or the Council fails to deal with such a proposal within a reasonable time, it is difficult to argue that alternative means of discharging the responsibility to protect can be entirely discounted”.

Indeterminacy appears particularly large here, as sought by the Commission, in which case the Security Council could fulfill its responsibility, the approval of military action by the General Assembly of the United Nations. It is an alternative solution to the right of veto blocking the United Nation Security Council.

Another solution would be to entrust a regional or sub regional organization with the task of conducting collective action within well-defined limits. Many humanitarian disasters have significant direct effects on neighboring countries, through cross-border propagation that can take the form, for example, of refugee flows or the use of the territory of the neighboring country as a basis by rebel groups. Neighboring States therefore generally have a strong collective interest motivated in part only by Humanitarian considerations, to respond quickly and effectively to this catastrophe. It has long been recognized that neighboring States acting within the framework of a regional or sub regional organization are often (but not always) better placed to act than the United Nations. It is worth mentioning that Chapter VIII deals with regional agreements. Article 52.1 recalls that “Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations”.

Thus, only two cases under article 53(2) ensure that regional agreements can act in a coercive manner to resolve matters relating to the maintenance of international peace and security: When the Security Council uses the Regional agreements or bodies for the enforcement of coercive measures taken under its authority or where it authorizes regional agreements or bodies to undertake coercive measures on their own initiative.

#### **4. Impediments in Practice**

##### *4.1 The Veto Impact*

The right of veto exacerbates the political character of the latter and jeopardizes its legitimacy and rapid action. There is always a strong risk that, by using a veto, the five permanent hostages should take humanitarian considerations for their own interests. The 2005 document makes a complete silence in the face of these challenges for the simple reason of reaching a consensus. The ICISS has considered some solutions. First, it proposes the adoption of a code of conduct whereby permanent members refrain from resorting to a veto in decisions concerning crisis humanitarian when their vital interests are not at stake. As the General Assembly’s president underlined in his R2P concept, “It is the veto and the lack of UNSC reform (...) are the real obstacles to effective action” (Banteka, 2016, p. 399).

The ICISS envisages other authorities which may assume this task in the alternative in case of paralysis or inaction by the Council. In that regard, it mentioned the United Nations General Assembly in the first place. The role of the General Assembly in this area can be considered in the ordinary and extraordinary context. First, the General Assembly may by adopting a resolution exert pressure on the State and make certain initiatives for the resolution of the crisis. For example, this function in the case of Syria where it was first the General Assembly that dealt with this situation and so far it seems that it has played a more prominent role in relation to the Security Council (Melling & Dennett, 2017, p. 302) (Note 56). But what was more at the center of the ICISS’s attention is the possibility of the action of

the General Assembly on the basis of the “Uniting for Peace” procedure.

Yet, the use of such a procedure is facing certain obstacles. In addition to the issue of lawful of this procedure in general in the light of the Charter, its application to authorize the military intervention on the basis of R2P seems problematic because in accordance with paragraph 1 of resolution 377 V, the recommendation of the Assembly for the use of force is concerning the breach of the peace or act of aggression. As a procedure, the Uniting for Peace procedure appears to have become part and parcel of the institutional law of the United Nations. However, it is far that the Assembly has never recommended the use of force under this resolution. One can only speculate on the reasons why the Assembly has shown so much self-restraint in this respect. One explanation could be that the Assembly has been well aware of the fundamental character of the norm of the prohibition to use force in the Charter, including the danger of eroding this norm at a time when international tension is still prevalent. Another reason could well be a policy not to antagonize the majority of the Security Council, if not all of its permanent members. Hence, this particular aspect of the Uniting for Peace Procedure relating to the use of force cannot be deemed a legally valid exercise of the powers of the Assembly and by now it has been well interred in the graveyard of the Cold War. In general terms, through the Uniting for Peace procedure and other relevant practice the functions and powers of the General Assembly have been interpreted in such a manner that the Assembly can also assume responsibility for matters relating to the maintenance of peace and security side by side with the Security Council (Schrijver, 2006, p. 15).

As aforementioned, another possibility provided by the ICISS is to use regional organizations. Despite the ban proclaimed in article 53 of the Charter regarding the use of force by regional organizations, remembering the intervention of in Liberia (Note 57) (Cardoso & da Rosa, 2014, p. 22) and Sierra Leone (Jenkins, 2007, pp. 346-348) (Note 58) without the prior authorization of the Security Council, the ICISS expressed in favor of the intervention of regional organizations who accompanied by approval in Retrospect of the Council. This proposal was welcomed by the Group of personalities. However, to keep a certain reserve about this possibility. Indeed, the prohibition of the use of force is an imperative rule of international law and some practices may not provide a satisfactory legal basis to derogate. Besides, such a waiver is likely to open the way to abuse of right.

Eventually, we see that none of these solutions can resolve in a satisfactory manner the challenges in this area. ICISS itself confessed his inability by asking the question of what “lies the most harm: in the damage to international order if the Security Council is bypassed or in the damage to that order if human beings are slaughtered while the Security Council stands by”. This position has been strongly criticized because it opens the window for unilateral intervention.

There is enough sufficient proposals either about the composition of the Security Council and the veto right, is about the creation of other organs. The doctrine must now focus on the issue of realization of these ideas. In other words, it must find ways by which we can compel the great powers to change their positions. It is important to start with less radical proposals having more chance of success. The

Secretary-General and personalities will obviously have to play the central role in deployment all their efforts to this end. In this 21st century, we have more and more cases of the application of R2P, proof is the Arab spring. The UN failure will no longer be tolerated and so there is a real threat to the authority of the United Nations. That is why it is important to act now to reform and not tomorrow where there is perhaps more likely to do so.

#### *4.2 The Unavailability of Military Force for the United Nations*

The United Nations as the axial body in the application of R2P may decide to intervene in a country, but it has no means for the implementation of its decision. Everything is possible for her is to allow the Member States to take measures for its implementation. It is undoubtedly a main hindrance to the effective implementation of R2P. Indeed, when it is the States who assume the task of intervention, they justify it in the eyes of public opinion in their countries on the basis of the face-off of their national interests. Not only the decision of intervention but also its operational implementation on the ground is affected by this involvement of the interests and the opinion of the population. It would be likely that the operation be conducted with uncertainty and somehow loose and ineffective because of the lack of interest of stakeholders. In addition, the current status of United Nations military tasks, particularly in the field of peace enforcement, isn't feasible. A substantial divergence exists between universal desires and existing U.N. abilities which, if not tended to, could undermine the adequacy of the United Nations and debilitate international standards (Telhami, 1995, p. 673).

The reason for a standing intervention force is cure enter shortcomings in the international community's conventional way to deal with crisis interventions. These incorporate, among others, delays in deployment; contingents' inadequate kit, armament, transportation and logistics capabilities; conflicts of doctrine and ethos; uneven (and, too often, low) levels of professionalism; and cumbersome command-and-control arrangements (Willis, 2013).

Article 43 was intended to give the U.N. Security Council the capacity to react rapidly through the deployment of U.N. military. Having foreseen the trouble of making a standing U.N. armed force, the U.N's. originators, including the United States, picked rather to depend on an provision that required a system of standing understandings between the Security Council and member states. This provision was intended to ensure the Security Council prompt access to military forces, offices, and other help. In light of Cold War animosity inside the Security Council, in any case, these Article 43 agreements were never activated (Houck, 1993, pp. 2-3). As well, the sheer diversity of missions handled by the UN make it impossible that a standing force could be prepared for every one of them. The proposition is of constrained importance to certain key difficulties encountered by The UN. Somalia and Bosnia have uncertainty on the abilities of even very substantial expert forces to complete troublesome missions: in these cases it is increasingly the reality of participation, the particular mandates of the forces, and the decision making methodology under which they work, which are The fundamental issues for discussion. Further, the volunteer force proposition has kept running up against the natural issue that governments appear to be impervious to supplying the UN with an autonomous military capacity, and to financing it

(Roberts, 1994, p. 160).

In order to apply the resolution of the Council, stakeholders States constitute a coalition or give NATO the conduct of the operation. In recent years, NATO is increasingly involved in military operations anywhere in the world. Its unique military power and coordination easier and more effective operation within this framework compared to a temporary coalition explain the reasons for this trend. The Panel declared itself in favor of the use of this organization for the implementation of Security Council resolutions. However, we direct certain criticism in respect of such a hypothesis, at least with regard to the application of R2P. Indeed, it is well known that the R2P, as the theory of the right of interference, is accused of being an instrument in the service of the interests of major powers and the choice of NATO for its implementation only exacerbates mistrust. In other words, UN commitment with regional organizations is a genuine gathering of states with mutual interests meeting up as alliances of the ready to address specific conflict (Kille & Hendrickson, 2011, p. 30). There was also an avoiding of the UN and a transformation to regional organizations and ad hoc alliances of the willing states (Job, 2004, p. 232).

The difficulties for the implementation of the decisions of the Council are not limited to the intervention itself. With respect to peacekeeping missions, forces are formed more by contingents from developing countries which often lack the funding and the necessary logistics for the fulfillment of their mandates. Their military power is very limited compared to the armies of powerful States. It seems that the only real solution that can address all of these challenges is implementing R2P by international force acting through the United Nations.

## **5. Evaluated Past/Present Cases**

### *5.1 The Dormancy of the Application of the Responsibility to Protect*

The case of Darfur and the crisis of Syria are two exemplary cases of the inertia of application of the “Responsibility to Protect”, and the different answers given by the international community in the face of these crises, will allow us to draw interesting conclusions about the difficulties in applying it.

#### **5.1.1 The Case of Darfur: First Failed Test**

At first glance, such a threshold seems to have reached in Darfur. Indeed, since the summer of 2003 while the Government in Khartoum supported by Arab tribal militias (Janjaweed) has embarked on a brutal policy of repression and systematic destruction aimed deliberately at civilian populations, the Conflict in the western region of Sudan will have made between 200000 and 400000. At this terrible record, the 2, 5 million of displaced persons piled up in various camps in Chad should be added (Trahan, 2007, p. 990).

At the international level, the United States characterized the action of the Janjaweed as genocide and demanded international trade sanctions against Sudan, and they even spoke of military intervention. The United Nations is talking about a crime against humanity. The situation in Darfur clearly represents a breach of the state’s “responsibility to protect”. However, the international community is

beginning to take a genuine interest in the issue in 2005, with the publication of the “Report of the International Mission of inquiry” (Totten, 2009, pp. 354-355) (Note 59) and the Security Council resolution establishing the United Nations Mission in the Sudan (UNIMIS) (Qerim, 2013, p. 97) (Note 60). Earlier in May 2004 the African Union (AU) action was implemented, where, under a first agreement signed between the belligerents, it was to be the privileged partner in the restoration of peace. Although it has received NATO and UN support, it cannot fill the lack of resources and funds, insufficient human capacity: The AU has failed to protect itself.

The transfer of the mandate to the United Nations was considered favorably when the Security Council adopted resolution 1706 (2006) Resolution 1706, which was the first to link the “Responsibility to Protect” to a particular conflict and by which decides that “UNMIS” mandate shall be expanded as specified in paragraphs 8, 9 and 12 below, that it shall deploy to Darfur, and therefore invites the consent of the Government of National Unity for this deployment, and *urges* Member States to provide the capability for an expeditious deployment (Note 61). This resolution legitimated action in Darfur which exceed the sovereignty of Sudan (Note 62). As a Mission of the United Nations is already present in the country, and in the implementation of the peace agreement signed with the rebellion in the South in 2005. Meanwhile, unfortunately Security Council could establish a sufficiently strong peacekeeping presence in Sudan, this due to the refusal of the Government of the Sudan to a United Nations-led operation. So far, Sudan has accepted the principle of a hybrid operation of the joint African Union and United Nations in Darfur (UNAMID) under the resolution 1769 peacekeeping, passed unanimously in the Security Council on July 31, 2007. Acting under Chapter VII of the Charter of the United Nations, the Security Council also decided “UNAMID is authorized to take the necessary action, in the areas of deployment of its forces and as it deems within its capabilities in order to (...) prevent the disruption of its implementation and armed attacks, and protect civilians, without prejudice to the responsibility of the Government of Sudan” (Note 63). However, UNAMID is still hampered in his movements, despite the commitments of the Government of the Sudan. It is also plagued by weakness, which delayed joining, because of obstructions that the Sudanese Government against its deployment. Furthermore, the resolution, in its preamble, recalls only the resolution 1674 (2006) on the protection of civilians in times of armed conflict which notably reaffirms the provisions of paragraphs 138 and 139 of the outcome Document of the 2005 World Summit without more details. However, the negotiations on the deployment of UNAMID, the reference the “responsibility to protect” was considered inappropriate, because unnecessary antagonist. In other words, we meticulously avoided any direct association between the “Responsibility to protect” and the deployment of UNAMID.

Notwithstanding, UNAMID has likewise confronted extensive defies. Fundamentally, the warring groups have fragmented to such a degree, to the point that as at October 2008, there were upwards of twenty seven rebel groups. These were fragment bunches from JEM and the SLA/M who all had their individual objectives and requests. Not exclusively was the civilian population being assaulted, yet even the peacekeepers were under steady danger of assault from the groups. What made the

circumstance more dangerous is that notwithstanding expanded assaults by guerillas, the mission is truly under-resourced as far as equipment, personnel and other logistics. These deficiencies made the mission susceptible to threats and assaults (Birikorang, 2009, p. 10) (Note 64).

With the exception of Russia and China, the great voices of the Security Council have supported the ICC prosecutor. The objective of combating impunity in Darfur remained not only valid, but fully necessary, given the continuing violence at the time. Violations of human rights and international humanitarian law continue, he stressed, believing that in this context, justice must be done and the responsibilities established in order to prevent and deter such acts. Impunity for past crimes and what it means for the possible commission of future crimes are unacceptable, regretting that the arrest warrants issued by the ICC remain unexecuted. The case of Darfur proves then that more than ten years after the Rwandan genocide, the Security Council and the Secretary-General, who asked the “Responsibility to protect” at the center of their speeches have failed by lack of will to put at the heart of their action.

#### 5.1.2 The Case of Syria: Drastic Failed Test

Although, the first demonstrations started in February 2011, it took them some time to become significant. For some reasons such as Syria’s ethnic and confessional socio-political structure, the lack of authority exercised by Bashar al-Assad on the regime, the long-term political and commercial relations of Syria with countries such as Russia, China and Iran, unlike what happened in the other countries of the region, spring arrived late in Syria. The first demonstrations were caused by suicide by the fire on 26 January 2011 of a Kurdish youth in Al-Hasakah, where the population is mostly Kurdish, just as the same act committed by Mohammed Blessing in Tunisia triggered the Arab awakening in the Middle East, and they intensified in The city of Ar-Raqqah following the murder of two soldiers of Kurdish origin.

The situation in Syria remained critical in 2012. More human rights violations resulting from the use of force recorded in the country have been confirmed by several international organizations. It has been noted that cases of armed violence in Syria have been transformed into a civil war under international law, and that the Syrian army and security forces have committed crimes against humanity. The United Nations assessments and reports discussed below how to help in understanding what is happening.

In the face of the fierceness of the crackdown by the Syrian government against its people, Germany, France, Portugal and the United Kingdom presented a draft resolution to the UN Security Council strongly condemning the repression and Human rights violations committed by the Syrian authorities, calling for the end of the violence, and also threatening Syria with possible sanctions. The preamble to the project referred to the concept of “Responsibility to protect”, recalling “the Syrian Government’s primary responsibility to protect its population” (Note 65). At the end, the resolution was not approved by the Security Council due to the negative vote of China and Russia. These two permanent members saw that the resolution would not help to regain peace in Syria but would, on contrary, exacerbate the tensions. To clarify its use of the veto right, Russia stated that “it is reflected ‘not so much a question of acceptability of wording as a conflict of political approaches’ regarding respect for the national

sovereignty and territorial integrity of Syria as well as the principle of non-intervention, including military, in its affairs; the principle of the unity of the Syrian people; refraining from confrontation; and inviting all to an even-handed and comprehensive dialogue aimed at achieving civil peace and national agreement by reforming the socioeconomic and political life of the country” (Morris, 2013, p. 1275).

It is worth mentioning the adoption of United Nations Security Council resolutions 2042 (Note 67) and 2043 (Note 68), respectively, endorsing the six-point peace plan of the Special envoy Kofi Annan and the establishment of the supervisory Mission of United Nations in Syria (UNSMIS). The plan aims at immediately ending any violence and violation of human rights, guaranteeing access to humanitarian agencies and facilitating a democratic and pluralistic political transposition, based on the equality of citizens, whatever Their political or ethnic affiliations or their religions, particularly in favor of the opening of a general political dialogue between the Syrian government and all the Syrian opposition forces. The mandate of UNSMIS is to monitor and support the implementation of this plan. Resolution 2042 states: “Noting that the Syrian government’s commitment on 25 March 2012 to implement the six-point proposal of the Joint Special Envoy of the United Nations and the League of Arab States and to implement urgently and visibly its commitments, as it agreed to do in its communication to the Envoy of 1 April 2012” (Note 66). Resolution 2043, while recalling the points referred to in resolution 2042, establishes for an initial period of 90 days a United Nations monitoring Mission in Syria (MISNUS) under the command of a Chief Military observer.

In addition, the UN General Assembly adopted a resolution on 16 February 2012 on “The situation in the Syrian Arab Republic”, submitted by the Arab Group and co-sponsored by 72 states, examining the full support of the international community in Arab League crisis exit plan. The resolution also requires the Syrian government to stop all violence and protect its people (Mohamed, 2012, p. 225) (Note 66).

The Arab League played a crucial role in the pressure exerted on Syria. On 25 April it published a statement condemning the use of force against demonstrators in favor of democracy in several Arab countries, stating that they “deserve support, not bullets”, but the declaration did not extend to naming Syria and Concrete measures to put an end to abuse. But in light of the emergency, the League of Arab States suspended Syria’s participation and later forced authorizes on Syria, asking for a resolution from the Security Council (Atilgan, 2014, p. 225; Norooz, 2015, p. 37).

All of these efforts political and diplomatic are unfortunately not crowned with success. In other words, the international community has is still not met its responsibility to protect to the Syrian people who subjected to unspeakable atrocities. Hence, the situation needs for military intervention in Syria. In this regard, several Western countries, the United States in the lead, evoked, a military attack on the Syrian regime, which it was also accused of using chemical weapons against civilians on 21 August 2013 near Damascus. Some felt that an intervention to be placed under NATO’s responsibility and perhaps carried out by the latter could take place without the official any UN authorization, unlike what happened in Kosovo (Paust, 2013, p. 438) (Note 67).

Recently, the Syrian conflict has undergone an evolution complicating its problematics. It takes on a national, regional and then International Army dimension. The year 2013 was really a turning point since it sees the arrival of new actors important in the conflict, as the arrival of the ISL (Daesh).

The war in Syria took a turning point since 2015. The Syrian armed forces began “broad offensive” land with the support of the Russian aircraft bombings. At last, the most recent intervention occurred in April 2017, when the US for the first time since the start of the civil war propelled an assault against the Syrian government, as striking back for the chemical weapons assault that murdered many populations. The US and Russian military forces are as yet present in Syria right now, clearly both battling ISIL. Nonetheless, having a similar foe, collaboration between the two states is rare (Perišić, 2017, p. 800).

Ultimately, it should be noted that for a number of actors on the international scene, it is certain the Syrian crisis was an opportunity to recall the illegality of any military intervention which would not previously have allowed by the Security Council. But it also illustrates the limits of the responsibility to protect when the established authorities persist in the use of force against their people, causing thousands of victims, which is clearly contrary to the principles of the Charter of the United Nations. From there on, we can only regret that the system of alliances in the Security Council continues to empty the “responsibility to protect” it’s content.

In fact, with regard to the concept of responsibility to protect itself, if its theoretical construction appears to be solid and logical, it is nevertheless lacking in terms relating to its practical application. As seen in UI in Syria, the implementation of this responsibility to protect is never simple, especially since these are very predominantly cases in which the State itself goes against some of its own citizens, and therefore does not consent to the interference of the international community. One might therefore wonder whether the very concept of responsibility to protect was not dead from the outset. Finally, from a more formal point of view, the very structure of the United Nations and its Security Council obviously has its role to play, which in particular raises the question of the veto rights of the members of the Security Council. It is his exercise (in particular the Chinese and Russian vetoes) which has blocked the majority of the resolutions on Syria since 2012. The problem is, however, that at the moment it is not possible to remove this veto right, this is where the biggest knot of the situation lies.

### 5.1.3 The Patchy Intervention in Libya

The debate between the Member States around the Libyan situation did not concern whether or not it was necessary to act to protect civilians but to protect them. That priority has been the protection of civilians against mass crimes reflects a historic breakthrough in the implementation of the principles of R2P. The current debate on tactics and the strategies needed for intervention is important, but legitimate concerns about implementation should not obscure the role of R2P in the prevention and cessation of atrocities of Mass.

The Security Council has added Libya to the problems to be addressed. It recalls, in its resolution 1970 in 2011 (Note 68), that the Libyan authorities have a responsibility to protect the Libyan people, which is reaffirmed in resolution 1973 (Note 69). Indeed, demonstrations in several cities in Libya, inspired by the Tunisian and Egyptian revolts, violently suppressed by the regime of Colonel Gaddafi, lead to an armed rebellion around Benghazi. The suppression of opponents provokes the emotion of the international community and provokes the denunciation of attacks against the civilian population by the African Union, the United States, the European countries and the Arab League, which calls for an intervention to protect the threatened civilian population. The resolution 1970 was adopted on 26 February 2011 by a unanimous vote of the fifteen members of the Security Council. The latter, in its resolution, recalls the basic principle of the responsibility to protect the population which is incumbent upon each State and the international community to intervene when States fail in their duty (Note 70). Deploing what it called the flagrant, systematic and widespread violation of the Libyan civilian population, the Security Council demanded that violence be immediately terminated, recalling the responsibility to protect Libyan authorities and the individual responsibility of perpetrators or leaders of perpetrators of attacks against civilians, and calls for measures to be taken to satisfy the legitimate demands of the population.

Pursuant to resolution 1970, the Prosecutor of the ICC opened an investigation into the Libyan situation on 3 March 2011. The court will focus its investigations on allegations of crime against humanity committed in Libya. On the other hand, the Security Council seized from the ICC only acts committed since 15 February 2011. It was regrettable that the Court was not interested in all the crimes against the Libyan regime since Muammar Gaddafi came to power in 1969. It would be forgotten that the jurisdiction of the ICC is restricted *ratione temporis* to acts committed since 1 July 2002.

The ICC investigation should focus on the most senior officials of the abuses in Libya, such as Muammar Gaddafi, his sons, as well as the Minister of Foreign Affairs, the security of the regime and the military intelligence Chief, the head of the Mr. Gaddafi's personal security. The quality of active head of State does not protect Mr. Gaddafi of prosecution (Note 71). However, the Security Council decided, in its resolution, that the ICC would not exercise jurisdiction over nationals, officials or staff in one State activity other than the Libyan Arab Jamahiriya that is not a party to the Rome Statute of the ICC (Note 72). The purpose of this restriction is to ensure that prosecutions would target members of the U.S. armed forces in the event of intervention military of the United States in Libya. Without this restriction, the United States would have certainly used their veto in the referral to the ICC.

In sum, all measures under Chapter VII of the Charter of the United Nations not slowed Gaddafi, term resulting in the adoption of the resolution 1973 (2011) authorizing the use of force to protect the civilian population in Libya (Brockmeier, Stuenkel, & Tourinho, 2016, p. 116; Naime, 2012, pp. 107-108) (Note 73).

The resolution follows the same logic as resolution 1970 (2011), recalling the responsibility that the Libyan authorities to protect its own population and reaffirming primarily to the parties to any armed conflict to take all necessary measures to ensure the protection of civilians (Note 74).

In enforcement measures in Chapter VII of the Charter, which include the use of force, the Security Council requests the immediate establishment of a cease-fire and the complete stop of violence and of all attacks against civilians and requires Libyan authorities respect their obligations under international law, including IHL, the ILHR and the rights of refugees (Naime, 2012, p. 108).

Confirming the principles set out in the resolution 1970 (2011), 1973 (2011) resolution paves the way for military intervention in Libya through the establishment of No Fly zone in over the Libya for the purpose of protect the population from attacks carried out by the regime. There is agreement that the establishment of such a zone, which is equivalent to a military action, depends on several factors: a mandate of the Council of Security, a request the Arab League and actors in the region, and the continuation of the bombing of Mo'amer Gaddafi's regime against its own people (Williams, 2011, p. 231, p. 248).

A few days later, following the resolution, the strikes of the international operation which is conducted under the name "Dawn of the Odyssey" intervene on 19 March 2011 with the aim of enforcing an air exclusion, since March 31 zone, it is led by NATO and baptized under the name "Unified Protector" (Corten & Koutroulis, 2013, pp. 59-60) (Note 75). It is a cause, according to one of the criteria for military intervention in the title of the "Responsibility to protect".

One of the attacks directed against Gaddafi was justified by most Member countries of NATO by the idea that "civilians will not be safe once Gaddafi step down. Developed argument is based on a broad interpretation of the expression 'all necessary measures' contained in resolution 1973 (2011)" (Gertler, 2011, p. 1, p. 16). Such an expression is fuzzy enough to leave room for different interpretations of the use of military force. This actually allows States and their military leaders to act out of control.

On October 31, 2011, as part of the enforcement of Chapter VII, the expression "all necessary measures", actually invites the self-appointed the United States, Britain and France members of a "coalition of the willing" to act unilaterally (Nimmo, 2016, p. 82). This is something that not only subverts but perverted logic of collective security of the United Nations in the service of an imperialist policy hidden behind compassionate as those proclaimed by using the slogan "Responsibility to protect".

The prohibition stipulated in art. 4.2 of the Charter, will have lost its meaning, through a resolution in relation to Chapter VII, any member can actually use force to pursue an abstract goal unilaterally and without any control. The room interpretation of the necessary measures "is not the equivalent of a blank cheque; it is limited". As the European Court of Human Rights asserted in another context, the adjective "necessary" [...] is not synonymous with "indispensable" [...] neither has it the flexibility of such expressions as "admissible", "ordinary" [...], "useful" [...], "reasonable" [...] or "desirable" (Corten & Koutroulis, 2013, p. 70). The scope given by the Council must be assessed on a case-by-case

basis.

Then, it should be noted that the way was implemented the resolution 1973 (2011) gave rise to a particularly high number of diplomatic protests. In this context, some States expressed reservations on certain provisions of the resolution of the United Nations; China issued of “serious reservations” on the subject of the resolution explaining: “is always against the use of force”, and had “serious difficulty with parts of the resolution”, were a clear indication that it was opposed to non-consensual military intervention in Libya. Consistent with its traditional rhetorical emphasis on the non-use of force, China’s preference was for the resolution of “the current crisis in Libya through peaceful means”. Second, China stressed that it “attaches great importance to the relevant position by the 22-member Arab League y [and] to the position of African countries and the African Union” (Gowers, 2012, p. 12). China held insufficient explanations provided by sponsors of the resolution, concerning the rules of the use of force and the means to be implemented to establish no-fly zone strength and the means to be implemented to establish a no-fly zone.

For the Federation of Russia, its Ambassador Vitaly Churkin indicated that: “Many questions having remained unanswered, including how it would be enforced, by whom, and what the limits of engagement would be. His country had not prevented the adoption of the resolution, but he was convinced that an immediate ceasefire was the best way to stop the loss of life. His country, in fact, had pressed earlier for a resolution calling for such a ceasefire, which could have saved many additional lives. Cautioning against unpredicted consequences, he stressed that there was a need to avoid further destabilization in the region” (Note 76). Similarly, the Germany declined to vote in favor of the resolution because it does not wish to engage in a military confrontation, believing that it would be a risk and a considerable danger drawing in the wider region.

It should also add that NATO military operations have targeted senior Libyan officials and socio-economic infrastructure. It seems that the notion of protection of civilians has been extended beyond its original design such as declared in the resolution, to achieve military and political objectives, which had only an indirect link with the threats weighing also on the civilian population. In this vein, the question that arises: the principle of “responsibility to protect”. Does it not encourage the policy of regime change?

It appeared, in fact, that part of the military operations was intended to support the forces joined to the National Transitional Council (CNT-representative body of the Libyan opposition) in their efforts to route the disloyal elements to the regime. Once the threat of massacre in Benghazi was discarded but in the face of the continued actions of Gaddafi’s troops against other cities, NATO operations continued, the dividing line between the prevention of massacres and an aerial campaign of Systematic dismantling of the military apparatus, the ultimate goal of which would be a change of regime is blurring more and more. The objective of the Coalition was the collapse of the regime, finally considering this objective as one of the necessary means to be used to protect civilians (Nesi, 2011, pp. 46-47) (Note 77).

In sum, the primary key factor that impacted international action in Libya was the clearness and instantaneous of the danger to the population. The danger of mass atrocity violations was obviously distinguished by senior UN authorities amid February and March 2011, and solidified as Gaddafi forces hedged the town of Benghazi. The second and most essential factor that gave the driving force to military activity in Libya was the regional consensus on the requirement for outer intervention. Gaddafi's disagreeability in the Arab world implied that the Arab League, the Gulf Cooperation Council, and the Organization of the Islamic Conference all censured the savagery and the violence in Libya and excluded Libya from the respective organizations. A third critical trigger was the deserting of individuals from the Gaddafi government. A few conspicuous figures, including Libya's representative to the UN, denounced the routine's brutality against protesters and approached the UNSC to convey a "conclusive, quick and gallant resolution" (Gowers, 2013, pp. 607-608).

In the light of all these elements, we noted that implementation of the responsibility to protect, in the Libyan case, pursue two agendas: the first is the protection of civilians, which is the responsibility to protect for which a UN mandate has was voted. The last is the fall of the regime, which remains unmentionable in the context of the "Responsibility to protect", because it challenges the State sovereignty.

However, viewed in this light, war against the Libya does not respect the framework established by resolution 1973 (2011). As well, there were profound divisions among Western and non-Western states over the suitability of military intervention. Those differences ejected breathtakingly as the scope of NATO's military battle unfurled. Criticism from BRICS states such as Russia and China focused on three principle topics. The first was the allegation that Western powers had surpassed the extent of the authorization in Resolution 1973 by furnishing rebels and assaulting an expansive scope of focuses past those fundamental for the security of civilians. Closely related to the primary line of criticisms was the more extensive case that R2P and population protection had been utilized by the West as an appearance for the vital objective of expelling the Gaddafi regime. While this worry over regime change was clarified most unequivocally by Russia, it was additionally a criticism of other BRICS' of NATO intervention through 2011. The third criticisms of NATO's battle in Libya were the power given to the utilization of military force and the potential for coercive reactions to accomplish more mischief than anything. Russia, specifically, explicitly drew a relation between the West's military intervention and the outset of "undeniable civil war, the humanitarian, social, economic, military and humanitarian outcomes of which override Libyan borders. The BRICS states additionally demonstrated an inclination for political, instead of military, settlements for the Libyan dispute" (Gowers, 2013, p. 609). The intervention of NATO's in Libya harmed relations among the Western and the non-Western UNSC members. The Concept of "Responsibility to protect" was utilized as a smokescreen for changing regime has without a doubt undermined the idea's truthfulness (Gowers, 2013, p. 609).

## 5.2 *The Accomplished Interventions*

### 5.2.1 Intervention in Kenya

The Kenyan case clearly illustrates the implementation of the “Responsibility to protect” in the context of the election crisis following the presidential election of 27 December 2007. Indeed, the announcement of the defeat of Raila Odingo against the outgoing president Mwai Kibaki had triggered a violent dispute between the supporters of the two men. Raila Odingo accuses outgoing president Mwai Kibaki of massive fraud. Riots erupt in the western part of the country and in Kibera. The violence has mainly affected the Rift Valley; the crisis in 2008 has taken on a national dimension, affecting many cities. This violence left around 1000 people dead and 600000 displaced persons (Langer, 2011, p. 1) (Note 78).

Many international pressures and several mediations were needed to stop the violence in March 2008. The African Union calls for dialogue between the representatives of each of the Parties. It initiated in early January 2008-through John Kufuor, President of the Republic of Ghana- a mediation process between the two parties which culminated on February 28 2008 by an “agreement on the principles of partnership of the Government of Coalition”. This event is also supported by the European Union and the United States and the United Nations, willing to apply sanctions on factions refusing a peaceful solution to the crisis.

While some considered both the criminal justice and international mediation looking back as the fruitful use of the political, diplomatic and criminal justice apparatuses of R2P, these endeavors were at the time infrequently legitimized by R2P. On 2 January 2008, Ban Ki-moon reminded Kenyan authorities of their legitimate and moral obligation to secure the lives of blameless individuals. Comparative articulations summoning the duty of a state to protect its very own natives were made by Francis Deng, at that point UN special adviser on the prevention of genocide, and by Arbor, at that point high commissioner for human rights (Junk, 2016, p. 57).

The Minister of foreign and European Affairs has referred the application of the “Responsibility to protect” the crisis Kenyan by noting the auxiliary y responsibility of the international community: “In the name of the responsibility to protect, it is urgent to help the populations of the Kenya. The Security Council must take up this question and act” (Junk, 2016, p. 57).

The resolution of the crisis to the Kenya is being make therefore in the spirit of the “responsibility to protect” application, by drawing even projects to bring about structural change. Even if they do not come in place as quickly as expected, it is a case where straight out measures of the “responsibility to protect” doctrine has been applied successfully. In fact, the State, the international community and the United Nations system contribute to the implementation of the responsibility to protect for many years already. The international community has shown in Kenya in 2008 that it was possible to avoid the worst, by a mobilization of the entire of the actors. Thence, considering Kenya as a successful case of the deliberate application of R2P was mainly a mostly description by the mediation efforts and the power-sharing agreement.

### 5.2.2 Ivory Coast

Ivory Coast is another case of the practical implementation of the “Responsibility to protect”. The most recent period of the conflict reached a crucial stage after the chief of parties questioned the aftereffects of the since a long time ago put off presidential vote of 28 November 2010. Presently equipped clash reignited between the supporters of occupant President Laurent Gbagbo and his challenger Alassane Ouattara. Inside long stretches of Gbagbo guaranteeing the election triumph, the Economic Community of West African States (ECOWAS) and the UN Secretary General reasoned that Ouattara had actually gained, yet Gbagbo and his supporters declined to move apart. As contenders from the two sides started to perpetrate outrages, UNOCI and France defied troublesome political and operational inquiries regarding how to protect civilians (Bellamy & Williams, 2011, p. 829).

Following the post-election violence and the use of heavy weapons against civilian populations, the Security Council adopted unanimously resolution 1975 March 30, 2011, on the situation in Côte d'Ivoire with reference to the principle of the “Responsibility to protect”, condemning the flagrant violations of human rights including the supporters of the two candidates were accused. In this respect, the resolution referred to the responsibility of each State to protect civilians, urged Laurent Gbagbo to withdraw (Note 79) and called for the transfer of power to Alassane Ouattara. Furthermore, the resolution claimed that the Operation of the United Nations (UNOCI), was already in Ivory Coast, in the context of impartial execution of its mandate, could use all the necessary means to carry out the task assigned to protect civilians under threat of imminent physical violence acts, within the limits of its capabilities and in its areas of deployment, including to prevent the use of heavy weapons against the civilian population. The implementation of this resolution coincides with the large military offensive called “restore peace and democracy in Ivory Coast”, launched on 28 March 2011 by the Republican Forces of Côte d'Ivoire (RFCI), new army composed mainly New Forces (former rebels), loyal to Ouattara and whose purpose was to hunt Laurent Gbagbo from authority.

On 4 April, following an escalation of violence in Abidjan, asked the Secretary-General of the United Nations, pursuant to resolution 1975 (2011), UNOCI to conduct a military operation aimed to neutralize the heavy weapons of the forces armament loyal to Laurent Gbagbo (Bellamy & Williams, 2011, p. 835).

The UN peacekeepers and supporting French powers in Côte d'Ivoire have begun military move, making the side of Ouattara, completing air strikes on the positions held by supporters of Gbagbo. In the corridors of the United Nations, Ban Ki-moon decision raises unease. Officials express doubts about the power of the Secretary-General to give such an “order” (which would return to the Security Council). The application of this procedure by the Secretary-General has been criticized by key members of the Security Council, as the Russia that said: “We believe that it is necessary once again to clearly reaffirm that it is unacceptable for United Nations peacekeepers to be drawn into armed conflict and, in effect, to take the side of one of the parties when implementing their mandate” (Bellamy & Williams, 2011, pp. 835-836).

Likewise, the representative Brazil supported that “the use of force by peacekeepers to protect civilians must be carried out with utmost restraint. This is necessary to ensure that blue helmets are not perceived as parties to the conflict. Avoiding such a perception is crucial for the continued success of peacekeeping” (Bellamy & Williams, 2011, p. 836).

Returning to the decision of Ban Ki-moon, should we conclude previous developments that the Secretary-General can take an initiative for the settlement of the outstanding issues before the Organization? It has long been that the Charter grants to the Secretary-General no decision-making on the use of force. Recall that the Charter of the United Nations defines the general Secretary as the senior official of organization, in this quality to fill all other functions for which it is responsible by the Security Council, the General Assembly, the Council Economic and social and other bodies of the United Nations. The Charter also authorizes the Secretary-General to attract the attention of the Security Council on any matter which, in his point of view, likely to endanger the maintenance of peace and international security. In addition, the Security Council has the possibility to delegate to the Secretary-General the authority for international peace and security. Indeed, the exercise of such considerable authority implies that he enjoys the full confidence of the Security Council.

In this case, such a delegation is inspired by the resolution 1528 relating to the establishment of UNOCI. Under the terms of paragraph 5 of the resolution, the Security Council “Reaffirms its strong support for the Secretary-General’s Special Representative and approves his full authority for the coordination and conduct of all the activities of the United Nations system in Côte d’Ivoire” (Note 80). Therefore, we can consider that the resolution would indeed allow Ban Ki-moon to seek the use of UNOCI force, within the strict framework of the fulfillment of its mandate.

Thus, controversies have been revealed about the impartiality of UNOCI, who has been criticized as party to the conflict Ivorian. Indeed here raised controversy relates less to the possible difficulties of implementation of the “Responsibility to protect” civilians as the uncertainties hanging over the limits and conditions for the exercise of the right of self-defense of personnel of the United Nations. In short, the military operations conducted by UNOCI against forces loyal to Laurent Gbagbo are mixed character. They are based both on the protection mandate established by resolution 1975 (2011), but also on the right of self defense more widely granted to personnel of the United Nations. This duality is implicitly confirmed by Ban Ki-moon, when justifying his decision, he said that the peacekeepers had carried out this operation to protect themselves and civilians (Bellamy & Williams, 2011, p. 836).

The implementation of this resolution has contributed to the fall of the regime of President Gbagbo, which imposes on it and members of his entourage of sanctions concerning a financial assets freeze and a ban on travel as well as his arrest. On May 5, the Ivorian constitutional Court recognizes President Ouattara’s electoral victory. Finally, it recognizes the competence of the International Criminal Court to try the perpetrators of serious crimes in Ivory Coast. January 18, 2012, while Ban Ki-Moon had drawn up the responsibility to protect balance sheet, he recalled that in 2011 “this concept had been put to the test, including defending democracy in Ivory Coast”.

There have been some fascinating improvements since the capture of Gbagbo. Specifically, on November 30, 2011, Gbagbo was suddenly given over to international custody to Hague, while the prosecutor of the ICC accused him for crime against humanity's, Gbagbo was presented with a capture warrant from the court in the little northern town of Korogho, where he had been under house capture for seven months. The prosecutor of the ICC has opened investigations concerning the acts of Gbagbo government, and figures from Mr. Ouattara's government's. "Forces supporting Mr. Ouattara likewise carried out atrocities, as per arraignment proof and reports from human rights groups" (Murphy, 2012, pp. 436-437).

Remains to say the implementation of the responsibility to protect in Ivory Coast highlights two opposing movements. The first corresponds to a humanitarian and cooperation logic. This is the continual evolution of the right to duty to interfere with the responsibility to protect. The second movement corresponds to the political and competitive logic that underpin the humanitarian action authorized by the Security Council. This more negative reading presents the responsibility to protect more as a façade behind which the intervention logics specific to each state remain linked to the traditional defense of the national interest.

### *5.3 The Situation in Myanmar: Can the ICC Make Difference to Rohingya?*

The events that took place early May 2008 in Burma have given the issue of responsibility to protect a new dimension. Cyclone Nargisen from the Gulf of Bengal devastated the Burmese provinces of the southwest, causing thousands of victims 78,000 dead and 56,000 missing. Yet, despite the extraordinary magnitude of the catastrophe and the number of people affected, the Burmese junta in power refused to open its borders to international assistance, condemning its population to certain death, for lack of food, drinking water and proper care (Wong, 2009, p. 242; Genser, 2018, p. 488) (Note 81). In order to overcome the seriousness of the situation, the hypothesis of applying the responsibility to protect was soon envisaged, with the aim of forcing access to the disaster areas. Yet, as we have seen earlier, this international duty of protection applies only in strict cases of genocide, war crimes, ethnic cleansing and crimes against humanity. Cases of natural disasters do not come within the context of the situations envisaged by the final Document, despite the report of the ICISS.

In order to circumvent this literal approach a current initiated by Bernard Kouchner, then accused the Burmese military junta, of "crime against humanity", thus justifying the application of the international duty of protection and, the where appropriate, a coercive action aimed at rescuing the population in distress. It should therefore be questioned whether the Burmese government's refusal to allow relief could constitute a crime against humanity (Haacke, 2009, pp. 163-164). The French Foreign Minister stated: "[w]e are seeing at the United Nations whether we can implement the Responsibility to Protect, given that food, boats and relief teams are there, and obtain a United Nations' resolution which authorizes the delivery (of aid) and imposes this on the Burmese government" (Alison, 2011, p. 587).

In this case, closing borders can be seen as the imposition of deprivation or active behavior. Nonetheless, a first reservation is evidence of *mens rea*. Indeed, it seems difficult to prove the mental

element which implies that the authors have taken measures calculated to result in the destruction of a part of the population. The objective pursued must be the destruction at least partial of the population. Moreover, the authors must be aware that this destruction is the result of their behavior and will become part of the ordinary course of events. The second reservation is due to the generalized nature or systematic attack. If the generalized character relates to the number of victims, it is clear from the jurisprudence that the systematic nature relates to a constant and organized practice (Note 82). This implies for the authors a certain preparation based on the continuation of a common and organized plan or policy, the implementation of which requires the commitment of important means. This condition is clearly lacking in the present case (Note 83).

Since 2012, longstanding atrocities between Buddhists in Rakhine State and Rohingya Muslims have emitted into a progression of fierce assaults, slaughtering civilians and dislodging several thousands. Recently, brutality against minority ethnic groups has taken into account by international community. Announcing a highly sensitive situation and state of emergency, the government allowed police security forces to execute “clearance operations” throughout Rakhine State, which has prompted an unprecedented level of savagery by the authority against the Rohingya (Genser, 2018, pp. 488-489). On 27 August 2018 the Human Rights Council (HRC)-commanded Independent International Fact-Finding Mission (IFFM) on Myanmar announced that the treatment of the Rohingya by Myanmar’s security forces adds up to four of the five denied acts characterized in the Genocide Convention. The IFFM discovered proof of “genocidal intent”, including discriminatory government approaches intended to change the demographic composition of Rakhine State, and a planned arrangement for the annihilation of Rohingya people group.

Unfortunately, The Security Council has not summoned R2P with respect to Myanmar, returning to when the country’s circumstance was set on its permanent agenda in 2006. Apart from a presidential articulation that lamented the abuse authorized upon demonstrators amid the Saffron Revolution, the Security Council has not substantively rendered on the use of R2P to Myanmar. Russia and China dismissed a 2007 draft resolution, which had approached the Myanmar government to stop military assaults against populations and would have built up a reason for summoning R2P (Note 84). The Council should be seized of the circumstance in Myanmar and also the ongoing reports of atrocities by the U.N. High Commissioner on Human Rights and Special Advisers Ditto, the Security Council is experiencing strain to consider the circumstance in Rakhine State. Be that as it may, any Imploring of R2P by the Security Council has remained slowed down under risk of a Chinese and Russian veto (Genser, 2018, p. 490).

Why ask the question of genocide of the Rohingya? After all, genocide, massacre or pogrom, the result is the same: in Burma ethnic cleansing takes place on racist bases, permitting massacres, rapes, and forced evictions. But to define what the Rohingya suffer from genocide is also to put the international community in the face of its responsibilities. Indeed, international law does not force military intervention in the face of a termination policy. On the other hand, since 2005, UN members are

supposed to have a responsibility to protect when a population is threatened with genocide. The path would be open to an intervention under the aegis of the United Nations, a logical development that the French President had in mind when he spoke on the Rohingya situation. This is what this martyred population implores: the protection of the international community.

Statelessness of this populace gather might be a reason for the territorial security risk. Investigate bears out that the circumstance they have been in has gone beyond Human Rights standard. A political arrangement should be made with the back of the neighboring States and Association of Southeast Asian Countries (ASEAN) and the universal community. Thailand and Malaysia have been advertising compassionate help, in spite of the fact that disputable, to Rohingya outcasts. In spite of the fact that Myanmar bears essential duties for the Rohingya emergency, despicable treatment of the Rohingyas in have nations must instantly come to a conclusion (Ullah, 2016, p. 298).

The creation of the International Criminal Court means that there is a new legal body with jurisdiction over a wide range of crimes against humanity and recognized war crimes, some of which are described in more detail in the Statute than in the current instruments. The establishment of the International Criminal Court is also a positive initiative as a means of preventing talk of double standards and justice of the victors.

However, Myanmar is not a party of the Rome Statute. Along these lines, while the ICC cannot attempt prosecutions for the wrongdoing of the crime of apartheid when it is carried out in Myanmar, since Myanmar's government demands Rohingya support in discriminatory citizenship forms as a precondition of repatriation to Myanmar, this gives the ICC a chance to declare ward, since the wrongdoing has been brought by Myanmar to the ICC party state Bangladesh (Note 85). Dissimilar to the ICC's present examination concerning the constrained extradition of Rohingya, which focuses for the most part on supposed wrongdoings carried out by the Myanmar military, obligation regarding violations related with Myanmar's citizenship procedures would to a great extent be the duty of the non military personnel government as of now drove by State Counselor Aung San Suu Kyi. This would make Myanmar's non military personnel government officials obligated just because to ICC prosecutions (Lee, 2019, p. 262).

In conclusion, the situation in Myanmar considers a deprecation of the R2P principle, in which although the principle was never purpose to contain matters of natural disasters, civilian casualties in huge number still take place due to national politics that have been set, leading to gather deaths. boosting political action, as well as a international community response, could not be realized due to the lukewarm controversy over whether the politics implored is a shape of "Crimes against Humanity" or not (Putra & Cangara, 2018, p. 61).

## 6. Conclusion

The answer to the question of whether the implementation of the “Responsibility to Protect” allows us to respond effectively to massive violations of human rights, is difficult and varies and depends on the point of view chosen. This would be negative because the major challenges in the field of international policy and the structure of the United Nations still persist, and they are unlikely to be resolved in the near future. They prevent the realization of our hope which consists in giving a decisive and effective answer to all situations revitalizing the responsibility to protect. So there would always be the risk that massive atrocities as we have already testified are repeated.

The very rapid evolution of the Responsibility to Protect for several years from an idea to a generally acceptable standard and to the regular agenda of the United Nations clearly demonstrates that there is a general will and broad support within the international community to put an end to the atrocities. It seems very illogical to wait for the settlement of the obstacles in this matter by it in this short time. Several steps must be reviewed. In this respect, it is observed that it is evolving every year from both conceptual and operational and institutional viewpoints. Today we are talking about responsible protection. This means that not only do we have the responsibility to intervene in order to protect people, but also when adopting and implementing measures to that end, we must act responsibly and conform to the principles and purposes so that the population is better protected.

We have seen that in some cases the United Nations is confronted with obstacles in the implementation of the responsibility to protect, so I suggest a new doctrine or a development of the doctrine of the responsibility to protect which may mitigate the consequences of failure. I call it the “international responsibility to protect”. This doctrine is a combination of the responsibility to protect and the rules International responsibility in order to clarify that doctrine or theory; we must go back a little bit. On the one hand, we have already seen that the principle of the responsibility to protect is based on a multilateral decision that every State is required to protect its citizens from genocide, war crimes, ethnic cleansing and Crimes against humanity. On the other hand, if the state cannot or does not want to protect its citizens, then the international community has the right to intervene and if necessary by force of arms. Thus, the principle of the responsibility of the authorities is like a change in the United Nations to deal with the humanitarian crises of the century and the where, if each state assumes responsibility for its own citizens, the international community is also responsible for assisting the State in its citizens, but if it is unable State to defend its religion or become the is of violence against the national population, and the international community must act in a timely by decisive manner, using chapter VII of the United Nations Charter, normally by taking a range of peaceful measures or using force.

If the United Nations decides to intervene in internal affairs in accordance with Chapter VII of the Charter, the Security Council must examine the conflict, and if the conflict is found to be a form of peace and security, the Council decides to intervene in its secretariat, after the peaceful measures, which are contained in chapter VI and VII, and to be a situation of human rights, which would threaten

peace and security. The United Nations charter conferred on the Security Council the power to examine any international dispute if it would extend peace and security. The main competence of the Security Council is for the maintenance of peace and security; it has extensive powers in those areas, so that it can intervene to protect populations under chapter VI of the Charter under the title: "Pacific Settlement of Disputes" is in art. 33 to 38, and that rule under the provisions of Chapter VII under the heading of "Action with Respect to Threats to the Peace, Breaches of the Peace and Acts of Aggression", art. 39, art. 5.

Through concepts and principles such as human security and Responsibility to Protect, the international community has tried in recent years to place man at the center of attention. The goal is that all the activities of States and other actors in the international community would serve the interests of people and the development of societies. However, it does not seem logical that people are the object of all efforts, while they themselves do not play a significant role in these efforts. While international law promotes democratic values for domestic law, on the international scene, which today is an important part of everyone's life, people have little impact on regulations. Of course, it would not be a question of changing the place of individuals in the order of the subjects of international law, but of seeking ways in which they could participate and influence more actively the development of norms and rights within the international community. International community so that international decisions better reflect their hopes and needs. This is the challenge of international law in the 21st century and the answer it gives it, will determine the effectiveness of the implementation of standards like Responsibility to Protect.

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## Notes

Note 1. For 100 days, between 7 April and 4 July 1994, nearly one million men, women and children were killed in Rwanda, a country of 7 million inhabitants. International organizations have found the horrific reality of this genocide as early as November 1994 when the establishment of an international criminal court was decided to judge its perpetrators. After the accident of the presidential plane on April sixth, 1994, Hutu radicals assumed control over the government, rebuked the Tutsi for the death of the president, and began the butcher. Radical Hutu pioneers and casual outfitted civilian army bunches called “Interahamwe” propelled a battle of gigantic eradication against the Tutsi. The Hutu fanatics were made up from the base up, from regular folks to those in the largest amount of government. This structure gave the Hutu fanatics total power in coordinating the destruction.

Note 2. In July 1995, in one of the most exceedingly worst slaughters in Europe after the Second World War, Bosnian Serb civilian army under the order of General Ratko Mladic’ killed around 8000 Bosnian in the region of the Bosnian town of Srebrenica. Joined with the decimation in genocide in 1994, the massacre came to symbolize the disappointment of the international community to forestall or stop the most frightful atrocities submitted against civilians.

Note 3. The law of Geneva consists the original Geneva Convention of 1864, which eventually developed into the much more far-reaching four Geneva Conventions of 1949, while, Central to the law of The Hague are rules governing the means and methods of warfare, most of them codified by the 1907 Hague Peace Conference.

Note 4. The date of birth of modern International Humanitarian Law (IHL) is typically put in the post-Solferino making of the Red Cross Movement, and specifically the formation of the Geneva International Committee of the Red Cross devoted to advancing the consideration of injured or wiped out military faculty. “Since these occasions, in the 1860s, very nearly 150 years have passed. Universal society, the idea and the act of war, the assemblage of worldwide compassionate law, the reasonable issues postured for its shifting topics-every one of these angles have experienced huge, if not major changes. The historical backdrop of modern IHL has been clarified various occasions, furthermore, there would be no noteworthy preferred standpoint to be picked up in adding a further commitment to the various compositions”. Nevertheless, not very many composed works have endeavored to set out synoptically the primary periods of development of this assemblage of law, each described by an arrangement of basic crucial understandings, issues and operational standards inside the applicable IHL. In the event that such a viewpoint is embraced, it might be conceivable to reveal some insight into the way in which IHL has been seen and stratified in contrasting social and legal settings keeping in mind the end goal to address altogether extraordinary down to practical needs and aspirations. For regardless of whether there is a conspicuous coherence ever of, there are likewise crucial flights and separate improvements in specific stages. In this way, for instance, the early stage saw states deliver, translate and manage IHL basically as an issue of municipal military law, arranged in the worldwide circle for the most part through model standards, where lacunae and sub regulations established a notable element (1864-1899); the following stage saw the advancement of a framework where the transcendence of sway, as affected by the well known Lotus principle of state opportunity, “had a tendency to beat the Martens Clause and to improve the centrality of military necessities, i.e., a framework where the assumption laid on the pugnacious” opportunity of activity (1899-1946). A further stage created in which IHL ended up based on the idea of compassionate assurance of the casualties of war through the presentation of extremely point by point and non-derogable tenets, consequently limiting the opportunity of state act, even in non-international armed conflicts.

Note 5. Pursuant to Commentary on art. 41 (1) Article 41 sets out the particular consequences of breaches of the kind and gravity referred to in article 40. It consists of three paragraphs. The first two prescribe special legal obligations of States faced with the commission of “serious breaches” in the sense of article 40, the third takes the form of a saving clause. (b) States are under a positive duty to cooperate in order to bring to an end serious breach in the sense of article 40. Because of the diversity of circumstances which could possibly be involved, the provision does not prescribe in detail what form this cooperation should take. Cooperation could be organized in the framework of a competent international organization, in particular the United Nations. However, paragraph 1 also envisages the

possibility of non-institutionalized cooperation. (3) Neither does paragraph 1 prescribe what measures States should take in order to bring to an end serious breach in the sense of article 40. Such cooperation must be through lawful means, the choice of which will depend on the circumstances of the given situation. It is, however, made clear that the obligation to cooperate applies to States whether or not they are individually affected by the serious breach. What is called for in the face of serious breaches is a joint and coordinated effort by all States to counteract the effects of these breaches. It may be open to question whether general international law at present prescribes a positive duty of cooperation, and paragraph 1 in that respect may reflect the progressive development of international law. Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, A/56/10 art 41 at 114 Commentary (Yearbook of International Law Commission, Vol. II, Part II, 2001).

Note 6. Article 48 completes “the rule contained in article 42. It deals with the invocation of responsibility by States other than the injured State acting in the collective interest. A State which is entitled to invoke responsibility under article 48 is acting not in its individual capacity by reason of having suffered injury, but in its capacity as a member of a group of States to which the obligation is owed, or indeed as a member of the international community as a whole. The distinction is underlined by the phrase ‘any State other than an injured State’ in paragraph 1 of article 48”. Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, A/56/10 art 48 at 126 Commentary (Yearbook of International Law Commission, Vol. II, Part II, 2001).

Note 7. U.N Charter, art. 41 & 42.

Note 8. Art. 1 expresses the fundamental standard basic the articles in general, or, in other words violation of international law by a State involves international responsibility. An internationally wrongful act of a State may comprise in at least one act or omissions or a blend of both. Regardless of whether there has been a globally improper act depends, first, on the prerequisites of the commitment which is said to have been violated and, furthermore, on the system conditions for such a demonstration, which are set out in Part One. The expression “international responsibility” includes the new legal relations which emerge under international law by reason of the internationally wrongful act of a State. Commentary on art. 1, 32.

Note 9. Phosphates in Morocco (1938), P.C.I.J. Judgment 14 June Series A/B, No. 74, at 10, 28.

Note 10. Case concerning Corfu Channel, Merits (1949), Judgment 9 April I.C.J., at 4, 23.

Note 11. Case concerning Interpretation of Peace Treaties with Bulgaria (Hungary and Romania, Second Phase) (1950), Advisory Opinion, 30 Mars, I.C.J. 221.

Note 12. Case concerning the difference between New Zealand and France regarding the interpretation or application of two agreements concluded on 9 July 1986 between the two States and which related to the problems arising from the Rainbow Warrior affair (1990), Vol. XX (Sales No. E/F.93. V.3), UNRIIAA. 251 par .75.

Note 13. Draft articles on Responsibility of States for Internationally Wrongful Acts, Art. 12 .

Note 14. To be particular, the important thing concept is that breaching a primary obligation gives upward thrust, straight away through operation of the law of state obligation, to a secondary obligation or collection of such obligations (cessation, reparation ... ). The articles specify the default rules that decide while a breach happens and, in widespread, the content material of the resulting secondary obligations. Of their very last form in addition they specify what other states may do to invoke obligation, by claiming cessation or reparation or, in default, via taking countermeasures.

Note 15. Treatment of Polish Nationals and Other Persons of Polish Origin and Speech in the Danzig Territory, Advisory Opinion (1932) , Series A/B No. 44, 3 February, P.C.I.J. 24.

Note 16. Case Concerning Pulp Mills on the River Uruguay (Argentina v. Uruguay) (2010), Judgment, 20 April, I.C.J. paras. 77-79.

Note 17. Draft articles on Responsibility of States for Internationally Wrongful Acts, Art 20-25.

Note 18. As per article 26, conditions prohibiting illegitimacy can't legitimize or excuse a breach of a State's obligations under a peremptory rule of general international law. Article 26 does not address the earlier issue whether there has been such a violation in some random case. This has specific significance to specific articles in chapter V. One State can't administer another from the obligation to consent to an peremptory norm, e.g. in relation to genocide or torture, regardless of whether by treaty or something else. However, in applying some peremptory norms the assent of a specific State might be pertinent. For instance, a State may legitimately agree to a foreign military presence on its region for a legal reason. Deciding in which assent has been legitimately given is again an issue for different rules of international law and not for the secondary rules of State responsibility. *See*, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, A/56/10 art 26 at 85 Commentary (Yearbook of International Law Commission, Vol. II, Part II, 2001).

Note 19. Yearbook of International law. Commission, Vol. II, Part II at 95-96, UN Doc. A/CN.4/SER.A/1976/Add.1 (1977).

Note 20. Case of Barcelona Traction, Light and Power Co., Ltd. (Belgium v. Spain) (1970), I.C.J. 32.

Note 21. Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, A/56/10 art 48 at 126-127 Commentary (Yearbook of International Law Commission, Vol. II, Part II, 2001).

Note 22. Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, A/56/10 art 29 at 88 Commentary (Yearbook of International Law Commission, Vol. II, Part II, 2001).

Note 23. Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) (2007), Judgment, 26 February, I.C.J. 196.

Note 24. Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) (1996), Judgment, 11 July, I.C.J. at 616.

Note 25. International Commission on Intervention and State Sovereignty, the Responsibility to Protect VIII (2001).

Note 26. Report of the High-level Panel on Threats, Challenges and Change, UN Doc. A/59/565, 57.

Note 27. The Prosecutor v. Charles Taylor, Case No.: SCSL-03-01-T, 18 May 2012, 346-654.

Note 28. There is as of now no concurred meaning of universal jurisdiction among states. Be that as it may, researchers, scholars, and a few states for the most part characterize all inclusive ward as the absence of typical jurisdictional connections to the endorsing state. The nonattendance of confirmation of a prescriptive link is legitimized by universal jurisdiction's underlying rationale, which rises above the interests of states. In the first place, the grave or grievous nature of specific crimes under international law, for example, Piracy, atrocities, and war crimes are broadly accepted to be at universal jurisdiction's core. Second, in light of this fact such crimes are so genuine, preventing the impunity of them is a worry of each state.

Note 29. Rome Statute of the International Criminal Court art. 25, July 17, 1998, U.N. Doc. A/CONF.183/9 [hereinafter ICC Statute]; Statute of the International Criminal Tribunal for the Former Yugoslavia art. 7, May 25, 1993, S.C. Res. 827, U.N. Doc. S/RES/827 [hereinafter ICTY Statute]; Statute of the International Criminal Tribunal for Rwanda art.6, Nov. 8, 1994, S.C. Res. 955, U.N. Doc. S/RES/955 [hereinafter ICTR Statute].

Note 30. Art. 14 of protocol II to the Convention on conventional weapons, as amended; Rome Statute of the International Criminal Court, *Id* art. 8 and art. 25; Art. 15 and 22 of the second Protocol to The Hague Convention on the Protection of cultural property.

Note 31. Rome Statute of the International Criminal Court, art. 25 (3).

Note 32. Prosecutor v. Tadic, IT-94-1-A-bis, Judgment, 15 July 1999 at para. 185-233, 235.

Note 33. Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, A/56/10 art 4 at 42 Commentary (Yearbook of International Law Commission, Vol. II, Part II, 2001).

Note 34. Art. 86 Para. 1 of Additional Protocol II the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed specifies that "The High Contracting Parties and the Parties to the conflict shall repress grave breaches, and take measures necessary to suppress all other breaches, of the Conventions or of this Protocol which result from a failure to act when under a duty to do so".

Note 35. Rome Statute of the International Criminal Court, Art. 7 (2) (a).

Note 36. Art. 49 of the Convention (I); Art. 50 of Convention (II); Art. 129 of Convention (III); Art. 146 of the Convention (IV); Art. 28 of the Hague Convention for the protection of Cultural property; Art. 15 of its Protocol II.

Note 37. Rome Statute of the International Criminal Court, Art. 25 (3) (a).

Note 38. In this respect, ICJ has pointed out "Immunity from criminal jurisdiction and individual criminal responsibility is quite separate concepts. While jurisdictional immunity is procedural in nature,

criminal responsibility is a question of substantive law. Jurisdictional immunity may well bar prosecution for a certain period or for certain offences; it cannot exonerate the person to whom it applies from all criminal responsibility". Case concerning Arrest Warrant of 11 April, 2000 (Democratic Republic of the Congo v. Belgium) (2002), Judgment, 14 February, I.C.J. at 25 Para. 60.

Note 39. Rome Statute of the International Criminal Court art. 98 (1), July 17, 1998, U.N. Doc. A/CONF.183/9.

Note 40. Case Application of the Convention on the Prevention and Punishment of Genocide, at 108 para. 156, 114 para. 167-168.

Note 41. Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, A/56/10 art 41 at 115-116 Commentary (Yearbook of International Law Commission, Vol. II, Part II, 2001).

Note 42. Prosecutor v. Furundzija (1998), IT-95-17/1-T, 58-61, 10 December at paras 151-157.

Note 43. International Commission on Intervention and State Sovereignty, the Responsibility to Protect VIII (2001), 13.

Note 44. World Summit Outcome (2005), G.A. Res. 60/1, 16 September, U.N. Doc. A/RES/60/1 at 138.

Note 45. A more secure world: our shared responsibility (2004), G.A. Res. 59/565, 203, U.N. Doc. A/59/565.

Note 46. Case concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda) (2005), Judgment, 19 December, I.C.J. at 231 paras. 178.

Note 47. Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory opinion, 1951, I.C.J 23 (May 28).

Note 48. Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), at 120-122 paras 183-189. The bit of the judgment transacting with the commitments to inhibit and to punish genocide establishes its gist, these being the main obligations of which Serbia had been found in violation. It is not difficult to foresee that, adjacent to the numerous significant purposes of law which emerged for this situation, this is the part of the judgment which will be all the more deliberately analyzed by all states.

Note 49. During the Korean case, the General Assembly took note of the failure of the Security Council in its resolution 377 (V) of 3 November 1950, the so-called "Uniting for Peace", according to which "in all cases where there appears to be a threat to peace, a breach of the peace or an act of aggression and where, because unanimity could not be achieved among its members, the Security Council fails to fulfill its main responsibility in the maintenance of international peace and security, the Assembly General shall immediately examine the matter in order to transmit to the members appropriate recommendations on the measures to be taken (...) including the use of armed force. It was the opposition of the former USSR to the action of the Security Council which led the US Secretary of State to initiate this resolution which took its name "Dean Acheson". But it was a great opportunity for

the Assembly to grant itself a direct competence in the field of collective security, which is not enshrined in the Charter and therefore works the way to competition with the Security Council.

Note 50. International Commission on Intervention and State Sovereignty, the Responsibility to Protect VIII (2001), 53.

Note 51. International Commission on Intervention and State Sovereignty, the Responsibility to Protect VIII (2001), 47.

Note 52. International Commission on Intervention and State Sovereignty, the Responsibility to Protect VIII (2001), 50.

Note 53. Case concerning Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America) (1992), Order, 19 April, I.C.J. at 12 para 28.

Note 54. Report of the Secretary-General on the Sudan (2004), S.C. Res. 1564, 18 September, U.N. Doc. S/RES/1564.

Note 55. Peace and security in Africa (2011), S.C. Res. 1670, 26 February, U.N. Doc. S/RES/1670.

Note 56. The utilization of the veto that upsets the quest for humanitarian purposes viewed as an illegitimate utilization of the veto. In such manner, the General Assembly criticized the Security Council and its failure to react sufficiently to the Syrian emergency. While not legitimately official, such feedback can have trenchant good and political power.

Note 57. ECOWAS has the objective of maintaining regional peace and security in its region. The development of its treaty structure exhibits its response to a progression of dangers and threats to provincial peace and security—a reaction component that has been generally praised by the international community. Nevertheless, after a rebellion in Liberia and a common difficulty, ECOWAS set up a Ceasefire Monitoring Group (ECOMOG) aiming at re stabilize that State. So, in 1993 its constitutive instrument was reexamined making a structure of “regional peace and security observation system and peace-keeping forces”.

Note 58. The issues emerged when the Security Council neglected to embrace the Secretary General’s report because of worries of U.S. endorsement. The Abidjan Accord came apart on the grounds that the RUF rebels declined to incapacitate and Sierra Leone’s national armed force come up short on the ability to authorize consistence with the Accord. Consequently, on May 25, 1997, revolt officers assumed control government structures and penitentiaries in the capital of Freetown and discharged Major Johnny Paul Koromah, the pioneer of the RUF who was detained for earlier endeavored coup. Koromah pronounced himself as the head of government and suspended the constitution. President Kabbah had just been in power for fourteen months previously being constrained into outcast in neighboring Guinea. The primary legitimizations advanced by ECOWAS and the Nigerian government for the utilization of force were: the right to self-defense, the intrigue by President Kabbah looking for ECOWAS help, the outrages carried out by junta troops against Sierra Leonean nationals, the threat to international peace and security in the area caused by the stream of Sierra Leonean exiles to

neighboring nations, and the counteractive action of the execution of atrocities by the junta. These reasons are a significant takeoff from the avocations utilized in the Liberian intervention in that fuse of these humanitarian aspect of the contention is essential, while the requirement for harmony and reclamation of request isn't. Moreover, the last avocation insights of a preemptive safeguard of human rights, which has surely not picked up acknowledgment in the international community. Extra criticisms of the legitimacy of this intervention incorporate the way that Kabbah had just been ousted from the country, making the legitimacy of his demand for outside mediation more questionable than Does'n Liberian government, and the way that the Security Council. The principle legitimizations advanced by ECOWAS and the Nigerian government for the utilization of power were: the right to self-defense, the intrigue by President Kabbah looking for ECOWAS help, the atrocities carried out by junta troops against Sierra Leonean population, the risk the threat to international peace and security in the country caused by the stream of Sierra Leonean displaced people to neighboring countries, and the aversion of the execution of atrocities by the junta. These reasons are a significant takeoff from the legitimizations utilized in the Liberian intervention in that fuse of the humanitarian parts of the contention is essential, while the requirement for harmony and reclamation of request isn't. Moreover, the last legitimization insights of a preemptive defense of human rights, which has positively not picked up acknowledgment in the universal network. Extra reactions of the lawfulness of this intercession incorporate the way that Kabbah had just been removed from the country, making the authenticity of his demand for outside intervention more indeterminate than Does'n Liberian government, and the way that the Security Council.

Note 59. Following a US State Department-supported investigation in which more than 1,100 dark African evacuees from Darfur were met in exile camps along the Chad/Darfur frontier, US Secretary of State Colin Powell pronounced, on 9 September 2004, that "in light of a predictable and broad example of barbarities—killings, assaults, consuming of towns—submitted by the Janjaweed and government [of Sudan] powers against non-Arab villagers" [Massaleit, Zaghawa and Fur], the State Department had reasoned that "decimation has been submitted—and massacre may in any case be happen ring". Subsequently, the US alluded the issue to the United Nations and approached it to attempt "an out and out and liberated examination". Acting under Chapter VII of the United Nations Charter, the UN Security Council, on 18 September 2004, embraced Resolution 1564 which approached UN Secretary General Kofi Annan to quickly set up an international commission of inquiry in respond to examine reports of violations of international humanitarian law and human rights law in the region of Darfur by all gatherings, to decide additionally regardless of whether demonstrations of genocide have happened. In October 2004, Secretary General Kofi Annan named the former president of the UN's International Criminal Tribunal for the former Yugoslavia (ICTY) Antonio Cassese as chairperson of the Commission of Inquiry. Annan asked that the members of the Commission furnish him with a report of their discoveries inside three months' time. Dissimilar to the United States Atrocities Documentation Project (ADP), which was restricted to leading its investigation in exile camps in Chad, the COI led a

far more extensive investigation that incorporated the three cases of Darfur (counting towns, towns, and displaced people camps); Khartoum, the capital of Sudan; refugee camps in Chad; Eritrea (with the end goal to meet with agents of two dissident gatherings—the Sudanese Liberation Movement/Army [SLM/A] and the Justice and Equality Movement [JEM]); and Addis Ababa (with the end goal to meet with authorities of the African Union). The International Commission team completed its investigation in November and December 2004 and January 2005. Far beyond deciding if demonstrations of genocide had been executed, the Commission's order included three other real assignments: "to explore reports of infringement of worldwide compassionate law and human rights law in Darfur by all gatherings; to personality the culprits of violations of universal philanthropic law and human rights law; and to recommend methods for guaranteeing that those in charge of such breaches are considered responsible".

Note 60. In March 2005, the Security Council chose to broaden the mandate of UNAMIS. That month oneself, following the signature of the Comprehensive Peace Agreement between Sudan and the SPLM/A, the Security Council chose to build up the UN Mission in Sudan ("UNMIS"). UNMIS would comprise of military personnel and a civilian component. By establishing UNMIS, the Security Council noticed the demand of the parties to the Agreement to build up a peace support mission. It chosen that the errands of the new mission would, inter alia, be to screen and confirm the usage of the truce assertion; to aid the foundation of the disarmament, demobilization, and reintegration program; to advance Was comprehension of the harmony procedure; and, most essentially maybe, to give direction and technical assistance to the parties to the Comprehensive Peace Agreement, in collaboration with other international performing actors, to help the arrangements for and lead of races and referenda accommodated by the Agreement.

Note 61. Resolution of the Security Council on the Sudan (2006), S.C. Res. 1706, U.N. Doc. S/RES/1706 at 3 par. 1.

Note 62. Russia, China, and Qatar abstained from voting, on the other hand 12 countries voted in favor.

Note 63. Resolution of the Security Council on the Sudan (2007), S.C. Res. 1769, a.ii, 31 July, U.N. Doc. S/RES/1769, 5 para. 15.

Note 64. For instance, more than ninety vehicles have been commandeered at gunpoint from the mission or NGOs in 2008 in Darfur. Peacekeepers have additionally been trapped and slaughtered by rebel groups. In June 2008, a detachment of peacekeepers was held prisoner for over five hours by one of the chipped rebel groups. Additionally, the absence of utility helicopters implied that peacekeepers needed to go along perilous and new courses by street making them helpless against assaults and snare by revolutionary groups. These assaults against UNAMID peacekeepers have influenced their capacity to play out a portion of the elements of protecting civilians, making conditions that will permit conveyance of humanitarian aid and deliberate return of IDPS and guaranteeing sturdy harmony, security, peace and dependability in Darfur.

Note 65. Draft resolution, S/2011/612 (2011), prmb1, 4 October, U.N. Doc. S/2011/612.

Note 66. Resolution of the Security Council on the Syria, at prmb1.

Note 67. This resolution received 137 votes in favor, 12 votes against and 17 abstentions. *See*, Resolution of the General Assembly on the Syria (2012), A/RES/66/253, 16 February, U.N. Doc. A/RES/66/253 at para. 6.

Note 68. Allowable regional organization act are not generally “enforcement action” under the competence of the Security Council. For instance, when the Security Council is veto halted concerning its capacity to make decisions to approve implementation action, admissible provincial military activities under Article 52 are neither one of the enforcements actions nor under the competence of the Security Council, at any rate until the point that the Council can act and really settle on measures under Chapter VII of the Charter. At the point when the Council is veto-stopped, it can’t settle on measures to offer impact to its choices or to choose “activity required to complete” its choices, and it can’t choose to use a regional arrangement for implementation action according its competence inside the importance of Article 53. In perspective of the above-mentioned, it is apparent that NATO’s actions` in Kosovo were reasonable under Article 52 and were not impermissible under Article 53 of the Charter.

Note 69. Resolution of the Security Council on the Peace and security in Africa (2011), S.C. Res. 1970, U.N. Doc. S/RES/1970 (Feb 26).

Note 70. Resolution of the Security Council on the Peace and security in Africa (2011), 155 at 2.

Note 71. Art. 27. of the Statute of the ICC provides: “This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence”.

Note 72. Resolution of the Security Council on the Peace and security in Africa, at 2-3 para. 6.

Note 73. The Security Council, under the auspices of Chapter VII of the UN Charter, adopted resolution 1973 March 17, 2011, by 10 votes for (South Africa, Bosnia and Herzegovina, the Colombia, the United States, the France, Gabon, the Lebanon, Nigeria, the Portugal and the United Kingdom) and 5 abstentions (the Russia, China, the Germany, the Brazil and the India).

Note 74. Resolution of the Security Council on Lybia, at 1.

Note 75. On 19 March 2011, France propelled air strikes against a segment of tanks of the Libyan armed force drawing nearer Benghazi. This denoted the start of what was destined to be called “operation Unified Protector” going under the order and control of NATO. Several States (the United States (USA), the United Kingdom (UK), Belgium, Canada, Denmark, Italy, the Netherlands, Norway, Spain, Qatar and United Arab Emirates) took part in the military intervention that endured over 7 months and formally finished on 31 October, after the collapse of the Gaddafi regime. As per NATO, the action comprised of in excess of 26 000 air fights, which harmed or obliterated more than 6000 targets. Moreover, as will be talked about later, a few members of the alliance gave military help to the Libyan renegades, inter alia by sending a restricted measure of forces on the ground. More than a half

year after the finish of this military intervention, the quantity of exploited people and victims stays vague. As per a Human Rights Watch report, “the quantity of non military personnel passings showed up far lower than asserted by the Gaddafi government, however higher than recognized by NATO”. Altogether, the conflict without a doubt brought about a huge number of unfortunate casualties, chiefly because of conflicts among legislative and revolt authorities, and caused significant material harm.

Note 76. UN Security Council, “Security Council Approves ‘No-Fly Zone’ over Libya, Authorizing ‘All Necessary Measures’ to Protect Civilians, by Vote of 10 in Favor with 5 Abstentions” (Press Statement, SC/10200, 17 March 2011).

Note 77. Different States openly admonished the Gaddafi regime by saying that “there is no legitimacy in Libya today but [that] of the NTC, and that Gaddafi, by “brutally assaulting his own people, has irreversibly lost all claims to legitimacy”.<sup>6</sup> It was also stated that the NTC had shown its commitment to a “more open and democratic Libya [...] in stark contrast to Gaddafi whose brutality against the Libyan people has stripped him of all legitimacy”. There was consequently an unmistakable conflict between the previous government which, as indicated by cases made both inside and remotely, was a risk and threat to its population, and a contending demand that the NTC was the more genuine conversationalist for the sake of the general population of Libya.

Note 78. Security Council 5854<sup>th</sup> meeting (2008), S/PV.5845, U.N. Doc. S/PV.5845;

Note 79. Resolution of the Security Council on the Côte d'Ivoire (2011), 30 March, S.C. Res. 1975, U.N. Doc. S/RES/1975 at 2 para. 1.

Note 80. Resolution of the Security Council on Côte d'Ivoire(2004), S.C. Res. 1528, 27 February, U.N. Doc. S/RES/1528, para. 5.

Note 81. The Population in Burma have endured a reiteration of human rights maltreatment since the military coup d' état in 1962 which finished popularity democratic rule. The U.N. authorities called an international action and human rights advocates have escalated to the onset of R2P conjuring in light of Violations by the military junta, including: its vicious crackdown on peaceful demonstrators in the 2007 Saffron Revolution, its hapless reaction to Cyclone Nargis in 2008, and, most as of late, its mistreatment of the minority Muslim Rohingya. Somewhere in the range of 1996 and 2007, military forces demolished or uprooted 3,600 towns and executed violations against humankind as a way to ingrain fear in the regular citizen populace. The military has additionally reliably slaughtered regular folks to quell political action and serene exhibits, executing a “shoot on sight” strategy in the ethnic minority regions of eastern Myanmar.

Note 82. The ICTY has adopted four elements: the existence of a political purpose or an ideology aimed at persecuting or weakening a community, the commission of a very large criminal act, the implementation of important public or private means, the involvement of high-level political and/or military authorities. *See, Prosecutor v. Blaskic* (2000), Case No. IT-95-14, Judgment, 3 Mars at 67 para. 203.

Note 83. The participation of the State in the orchestration of the abuses was not adopted as a constituent element of the crime against humanity by the TPI. However, State policy can be seen as a means of proof used to admit a generalized or systematic policy. *See, Prosecutor v. Blaskic*, 69 para.206.

Note 84. S.C. Draft Res. (2007), 12 January, U.N. Doc. S/2007/14.

Note 85. The Pre-Trial Chamber III stated “On 6 September 2018, Pre-Trial Chamber I issued its Decision on the ‘Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute’ 1” (the “Jurisdiction Decision”) finding that the Court may assert jurisdiction pursuant to article 12(2)(a) of the Statute if at least one element of a crime within the jurisdiction of the Court or part of such crime is committed on the territory of a State Party to the Statute.(...) On 12 June 2019, the Prosecutor informed the Presidency, pursuant to Regulation 45 of the Regulations, of her intention, pursuant to article 15(3) of the Statute, to submit a request for judicial authorization to commence an investigation into the Situation in Bangladesh/Myanmar. (...) The procedure for initiating an investigation upon the Prosecutor’s own initiative is regulated by article 15 of the Statute. This provision subjects the Prosecutor’s power to open an investigation proprio motu to the judicial scrutiny of the Pre-Trial Chamber.<sup>14</sup> Article 15(3) provides that, “[i]f the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she shall submit to the Pre-Trial Chamber a request for authorization of an investigation, together with any supporting material collected”.

Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar (2019), Pre-Trial Chamber III, 14 November, ICC No: ICC-01/19 at pars. 1, 2, 11.