

# The Responsibility to Protect: A Disputed Matter

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MARGHERITA BUSO, JUL 13 2020

The international system can be seen as that arena where the clash between the principle of state sovereignty and the protection of human rights occur. Traditionally, such concepts have been interpreted more as contrasting, rather than as complementary elements, since the general idea was that the implementation of one would have determined the weakening of the other. This tension was perpetrated throughout time and lately projected in the creation of the United Nations (UN), which aims for international peace and security among states. This institution can be seen as the accurate representation of such tension, as on the one hand the UN seeks for the maintenance of peaceful relations between states and human rights' protection; on the other hand, it embodies the main legal source of authority on the use of force (Badescu, C., 2012). However, recently, the introduction of the Responsibility to Protect (R2P) has challenged the 'natural order' of the international system by providing a different understanding of state sovereignty, including state accountability. By relying on the above-mentioned doctrine, the essay will argue that, even though there is a tension between state sovereignty and human rights' defence, it is possible to overcome it by interpreting sovereignty as the states' responsibility towards the protection of its own citizens, rather than merely as a tool for limitless power.

Through the use of liberal institutionalism, the essay will highlight the involvement of international bodies in supporting the defence of human rights and in promoting ideals like those of co-operation among states. It will then underline the shift that the concept of sovereignty underwent, by relying on the doctrine of the R2P, and its pivotal idea of sovereignty as responsibility, advocated by the former UN Secretary-General late Kofi A. Annan in 1999. Finally, it will provide a comparative analysis on the use or non-use of the R2P's doctrine. Firstly, by referring to NATO's intervention in Libya of 2011 following Gaddafi's violence against his own people, it will analyse the effectiveness of the doctrine as a tool to react to severe human rights' violations. Secondly, by focusing its attention on the current humanitarian crisis in Myanmar due to the Burmese government's actions against the Rohingya Muslims that generated a large-scale refugee crisis, it will examine the reasons behind the non-intervention of the United Nations Security Council (UNSC) there.

### **The relation between human right's protection and state sovereignty**

The relation between the protection of human rights and the principle of state sovereignty represents one of the most complex and discussed debates within the international system. This is because these above-mentioned concepts have been traditionally understood as incompatible, since their own nature has been presented as opposite. In this regard, the origin behind the principle of state sovereignty is traceable back to the Peace of Westphalia of 1648. This historical moment paved the way for the assertion of sovereign absolutist nation states, which did not acknowledge the existence of a superior power above them (Gross, L., 1948). However, this traditional idea of sovereignty as 'authority', that essentially means both the control within national borders and the population residing within it and external autonomy (Ayoob, M., 2002), started to represent a threat for the maintenance of international peace. This became evident during the first half of the twentieth century, when the outbreak of the World Wars led to unlimited atrocities due to the limitless power exercised by states. Consequently, in order to prevent the eruption of another global conflict, it was clear that the concept of sovereignty needed to be reinterpreted in such a way that fundamental human rights would be respected. Therefore, in the aftermath of the Second World War, the creation of the UN and its Charter represented a huge step forward in limiting the use of force between states. By advocating for the preservation of international peace and security, as affirmed in article 1.1 (UN Charter, 1945), not only does the

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Charter strive for the development of friendly relations among its members, but also for the co-operation between them, and for the defence of human rights, as stated in articles 1.2 and 1.3 (1945).

Through the promotion of ideals like those of mutual support and protection of human rights, an international body such as the UN started to gather general attention, as the community realised the relevance that international institutions can play within the system. The reasons behind this belief have a multiple nature, since these institutions can do both: helping to make states' commitments more credible and fulfilled, and to mitigate the level of uncertainty within the system by encouraging honesty and transparency during negotiations' processes (Keohane, 1998). In addition to this, according to Keohane and Martin (1995), institutions can also help preventing the outbreak of wars, because on one hand they provide support in the settlement of distributional conflicts, and on the other hand they guarantee nation states that profits will be equally divided over time.

However, the role that these institutions play in helping to solve conflicts has been repeatedly challenged by the presence of sovereign states, whose sovereignty's integrity has been protected by the UN Charter itself, as affirmed in articles 2.4 and 2.7 (1945). In this regard, the maintenance of sovereignty's wholeness has been strengthened by the introduction of the principle of non-interference within the internal matters of another state. Such principle represents the main reason behind the failures in addressing humanitarian crises, that a far-reaching organisation like the UN committed throughout time. As a matter of fact, not only has been the above-mentioned tension prolonged over time, but also it has been directly contained within the UN Charter, whose position towards it was unclear. This is due to the fact that, even if state sovereignty has to be preserved, the Charter recognises that there might be some circumstances in which sovereignty can be breached since serious violations of human rights or any threat to the peace occurred. In those cases, it is the duty of the UNSC to acknowledge if those violations took place and how the international community should respond, as declared in articles 39 and 41 of the Charter (1945). Nonetheless, the position that the UN took throughout time towards humanitarian emergencies has been long debated, since it appeared that in many occasions either was state sovereignty's integrity preferred to save human lives, or that the response of the UNSC turned out to happen too late and to be too little.

## **The development of a common responsibility to protect**

In the 1990s this became even more obvious once two serious humanitarian crises, the Rwandan genocide and the ethnic cleansing in former Yugoslavia, arose due to reasons of ethnicity, by undermining the credibility of the UN as an international institution that seeks to protect human rights. Among the responses of the community, one voice stood out from the others: the one of the former UN Secretary-General late Kofi A. Annan, who advocated for the reinterpretation of the concept of state sovereignty. Not only did he promote the idea that state sovereignty has to be understood as a tool at the service of people and not the other way around, but also that the UN Charter has been created with the goal of defending human beings and their fundamental rights and not those who abuse them (The Economist, 1999). He then affirmed that, consequently, also the idea of national interest should be revised, by starting to consider it more as a collective interest (The Economist, 1999).

Even though his intervention was sound, the reaction from the community was loud and quite predictable. Particularly, the response from states including China and Russia, that are considered as the most 'conservative' among the UNSC permanent members in the framework of state sovereignty's integrity (Claes, J., 2012), turned out to be quite sharp. Nonetheless, Annan continued insisting on the idea that the episodes of Rwanda and Srebrenica should have reawakened a common responsibility among the community (Annan, K., A., 2000, cited in Badescu, C., 2012, p. 6). Thus, through the promotion of this kind of ideals, a new international doctrine started to be developed: the R2P.

First conceived in 2001, and officially coming into force in 2005, the R2P has been defined by Thakur and Weiss (2009) as one of the most revolutionary normative developments of our time. Articulated in three pillars, that is responsibility to prevent, react and rebuild, this doctrine represents an innovation for the international system, since it adds to the traditional concept of state sovereignty another connotation, the one of responsibility. Such a responsibility relies in the first place within the state, which is accountable for the protection of its own citizens (ICISS Report, 2001). However, if the state fails in doing so, then the responsibility is in the hands of the international

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community, which through the approval of the UNSC can intervene if cases of “large scale loss of lives” and “large scale ethnic cleansing” (ICISS Report, 2001, p.XII) take place.

## The R2P: a criticised doctrine

Throughout time the R2P's doctrine has been subjected to many criticisms, one of them being against the universality of human rights advocated by the document, which might be seen as the mere interpretation of Western ideals (Badescu, C., 2012). However, Asian cultures emphasise principles like those of freedom and tolerance, which can be usually associated with Western liberal democracy's values (Sen, 1997 cited in Subramaniam, S., 2000). Additionally, there seems to be a common consent between Western and Asian practices regarding one of the most important of international laws, the one concerned with the treatment of cases of torture, genocide and slavery. Another critique that has been moved to the R2P is related to the idea of sovereign equality. In fact, some countries might be considered as 'more equal' than others. Specifically, the UNSC so-called 'big 5', that is: Russia, China, the US, the UK and France, through the use of their veto power not only make the possibility of an intervention within their national borders impossible, but can also hinder humanitarian assistance in countries where it is needed, only to preserve their own interests there (Ayoob, M., 2002).

However, it has to be said that the R2P's doctrine specifies that the primary responsibility to protect relies within the state itself, and not with the international community. Precisely, the general idea is that sovereignty and military intervention should be seen as counterbalancing factors, where the latter should be intended only as the last resort to be used. Consequently, the essential element that allows the balance between the two follows the R2P's intention to focus on the durability of the former. Now that all these elements have been introduced, the essay will proceed with its analysis on the use or non-use of the R2P in the cases of Libya and Myanmar.

## Was NATO's intervention in Libya a milestone in the history of the R2P?

Even though the establishment of the R2P has to be traced back to 2005, the first time in which not only was such a doctrine advocated, but also and most importantly enacted was during the Libyan crisis of 2011. In this regard, NATO's intervention in Libya has long been questioned by the international community, as whether it succeeded in defending the lives of Libyans or if, on the contrary, it resulted in the death of more civilians by attacking those cities under Gaddafi's forces (Nuruzzaman, M., 2013).

Specifically, NATO's involvement within the crisis was the outcome of the escalation of violence that arose since February 2011, after revolts against Gaddafi's regime broke out. The response from the Libyan leader was not long in coming, in fact by referring to those who were opposing his regime as 'cockroaches', Gaddafi warned the population that “any Libyan who takes arms against Libya will be executed” (Bellamy, A.,J., 2011, p. 265). Such a statement rang a bell in the mind of the international community, who still remembered the dehumanizing propaganda against the Hutus spread during the Rwandan genocide in 1994 and produced a quick and powerful reply from both: regional organisations and the UN itself. As a matter of fact, firstly the condemnation by the Arab League and the African Union (AU), and secondly the UNSC's choice to appeal to its Chapter VII powers by approving *Resolution 1970* on 26 February, were an exceptionally united reaction from the community, especially from countries such as China and Russia, which did not exercise their veto power.

However, despite the *Resolution's* impositions of arms embargo, travel ban and asset freeze, the violence kept being perpetrated and reinforced against those 'cockroaches' at the point of Gaddafi's warning his opponents to stop, otherwise he would have showed no mercy to them (Kirkpatrick and Fahim cited in Saba, A., Akbarzadeh, S., 2018). As a result, after having recognised the systematic violation of human rights carried out by Libyan authorities, on 17 March the UNSC decided to pass *Resolution 1973*, which authorised states “to take all necessary measures...to protect civilians and civilian populated areas under threat of attack” (UNSC,1973, 2011, p. 3). Such an action has been interpreted by its supporters as a great achievement for the R2P's doctrine realisation. In this respect, the former UN Secretary-General Ban Ki-moon affirmed that *Resolution 1973* was the example of a community who was finally fulfilling its duty to defend civilians from the violence that their state was inflicting them (Hehir, A. 2013), as suggested by the R2P.

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The first military interventions came respectively from the US, the UK and France. However, on 24 March NATO agreed to guide the operation, by coordinating the actions of 18 states, four of which non-members of its organisation. At the beginning of its intercession, NATO had three main goals, that were to control the arms embargo, to guard the no fly-zone, and last, to defend civilians (Daalder, I., H., Stavridis, J., G., 2012). Nevertheless, since the rebels revealed their incapacity to protect many of their positions and, consequently, the civilians living there, NATO had to revise its strategy, this time by focusing its attention on changing the regime that ruled Libya. However, such an action triggered different reactions from the community, and when on October 2011 Gaddafi was killed and his regime overthrown, the responses to NATO's intervention were many and differentiate.

From the point of view of those who fostered the R2P's doctrine, and consequently, the military intervention conducted in the light of human rights' protection, NATO's action in Libya has been hailed as nothing less than a success (Daalder, I., V., Stavridis, J., G., 2012). From this perspective, not only was NATO's intervention effective in saving the lives of many civilians, by leading an air campaign of unprecedented precision; but also it was victorious in the way in which an international institution such as NATO managed to coordinate a multinational military alliance, that this time involved also Arab states (Barry, B., 2011). In addition to this, NATO's diverse, but at the same time united, coalition proved that the alliance was still a fundamental source of stability.

However, on the other hand, such an action has been strongly condemned by another part of the community, whose criticisms can mainly be summarised in three points. Firstly, the misuse of the R2P in the rapid resort of military force. Secondly, the war crimes and crimes against humanity committed by NATO that led to the death of many casualties, between 2,000 and 30,000. Lastly, the problem of post-NATO's action in Libya, where the third pillar of the R2P, that is the responsibility to rebuild, seemed to be forgotten (Nuruzzaman, M., 2013), by leaving the country in a condition of serious precarity. In relation to the last point, not only have Western interventions been accused of abusing what was stated in *Resolution 1973*, but also such actions determined the beginning of other problems related to the use of the R2P in time ahead. Thus, the misuse of such a doctrine might have caused a collapse for future humanitarian emergencies' outcomes, since the approval from great powers, like Russia and China, might be lacking if they should decide to invoke their veto power to maintain state sovereignty's integrity and to avoid post-intervention disastrous consequences. Additionally, the abuse of *Resolution 1973* has also caused a reinforcement of suspect from non-Western countries, which believe that the R2P is only another cover for a Western neo-imperial dominance (Nuruzzaman, M., 2013).

## The Rohingya crisis: a story of non-intervention

Related to the critiques that have been moved to the use of the R2P's doctrine in the past, the current humanitarian crisis experienced by the Rohingya minority in Myanmar represents the perfect example of a state where, even though, the responsibility to intervene should be upheld by the international community, this is not happening also as a consequence of the failure of NATO's intervention in Libya. As a result of the violence perpetrated by the Burmese government against this minority, the ongoing humanitarian emergency in Myanmar has been defined by the UN itself as a typical example of "ethnic cleansing", (Office of the United Nations High Commissioner for Human Rights, 2017 cited in Beyrer and Kamarulzaman, 2017, p. 1571), which has provoked the exodus of more than 671.000 Rohingya from Rakhine State since August 2017 (Human Rights Watch).

However, this situation does not represent an unexpected turn of events in the Rohingya's history, being such a minority subjected to discrimination due to its ethnicity, religion and language throughout time. Such a condition has been exacerbated even more by the government's decision to strip them of their citizenship in 1982, through an Act which identified the Rohingya as illegal migrants coming from Bangladesh (Ibrahim, H., Nordin, R., 2015). Additionally, by excluding the Rohingya from the counting of the 2014 census, the Burmese government refused to acknowledge them as people. Due to these above-mentioned reasons, over time this minority has been subjected to many waves of violence carried out directly by the state. Particularly, the latest case that dates back to 2012 and 2013 has led to what the UN has described as "the world's fastest growing refugee crisis" (BBC News, April 2018). In fact, due to such a discrimination the Rohingya are forced to flee Myanmar and look for shelter in neighbouring countries such as Malaysia, Bangladesh and Thailand. However, these countries are embracing a 'help-along policy' through which those refugees arriving by sea are equipped with supplies and then sent to a third country. This kind of

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action has produced a sort of a 'ping-pong' effect among the states (Ahsan Ullah, A., K., M., 2016), and consequently the condition in which the Rohingya are finding themselves is anything but stable.

To aggravate the situation, the responses that the international community is providing seem to be too poor and too ineffective. In fact, as stated before, as a result of the wide-spread violence perpetrated by the government, the international community should be addressing the crisis by upholding a common responsibility to protect the fundamental rights of the Rohingya. Nevertheless, this is not the case, since the reaction of international institutions towards it is almost non-existent.

Particularly, the UNSC should be that organ able to make a difference, since by relying on its Chapter VII powers it could enact an intervention within Myanmar's boundaries, however this is not happening for different reasons. Firstly, the failure in effectively responding to the Libyan crisis by the international community has seriously jeopardised the use of the R2P's doctrine as a solution for future humanitarian emergencies. This is exactly the case of Myanmar, where even though on March 2017 the UN Human Rights Council has approved a fact-finding mission following human rights' violations carried out by military forces (BBC News, September 2018), during June the Burmese government denied the entry to those UN officials that were taking part in the investigations by suggesting the community to not interfere within its internal matters. Secondly, the idea of maintaining Myanmar's state sovereignty's integrity can be interpreted again as another consequence of the R2P's misuse in Libya, which generated a feeling of scepticism among non-Western nations. In fact, these, now more than ever, want to preserve their sovereignty, since it seems to represent the only defensive devise that weak states can exercise against the powerful ones (Ayoob, M. 2002). Related to this concept, conservative countries such as China and Russia have been taken the lead in state sovereignty's integrity protection. Specifically, China is a great supporter of the principle of non-interference and peaceful coexistence intended as legal tools for the defence against humanitarian interventions (Bhalla, M., 2005). However, in relation to the case of Myanmar, China's foreign policy can be said to be driven more by national interests and needs, rather than by sovereignty's protection. In fact, if a concrete solution to solve the Rohingya's crisis has not been taken yet by the UNSC, this is also and especially due to China's possible invocation of its veto power. Even though officially such an action would be exercised in the light of Myanmar's sovereignty integrity's defence, in reality, China's opposition to any possible interference within Myanmar internal matters would be essentially based on the preservation of its own interest there. In fact, with Myanmar being one of the most important among Chinese trade partners (Szurlej, C., 2016), it seems utopian that the R2P's doctrine would ever been enacted through the approval of the UNSC in the case of the Rohingya crisis.

## Conclusion

In conclusion, the traditionally inherent tension between the principle of state sovereignty and human rights' protection continues to be relevant within the international system. However, through the adoption of a pivotal tool such as the R2P, the community demonstrated the intent of finding a balance, so that a coexistence between the two does not represent only a utopia. As affirmed above the R2P does not interpret state sovereignty as the enemy to defeat, on the contrary it bases its premises on the importance of the durability of this. That being said, it also acknowledges the relevance of the defence of human beings and their fundamental rights when and if their own state fails in this attempt. Nonetheless, the R2P advocates for the use of force only as the last resort, the primary responsibility and pillar of the doctrine being the one of prevention. However, its misuse during the Libyan crisis might have threatened its adoption in the case of Myanmar. On the other hand, it has to be said that even though this doctrine is still subjected to criticisms, this does not necessarily imply that the promoted ideal itself is wrong, since defending people should always be the primary responsibility of every state.

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