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The Responsibility to Protect (R2P) take-off: A constructivist analysis of the R2P based on its application in the conflict in Libya and Syria

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ABSTRACT

The Responsibility to Protect (R2P) has been in the spotlight of International Relations discussions since its endorsement in the United Nations (UN) system in 2005. However, since the beginning of the armed conflicts in Libya and Syria in 2011, scholars and practitioners have been increasingly discussing the applicability of the R2P beyond theory, as the level of violence in these scenarios has pressured the UN to effectively apply protective measures due the significant threat of crimes against humanity, genocide, and war crimes. The R2P has been contested and has failed in providing assistance to Syria, and while in Libya the UN's main argument to intervene in the country was based on the R2P, it has been questioned whether the results in the aftermath of the R2P's implementation have been auspicious in Libya. Considering this scenario, many scholars have had a negative bias that has led to a detrimental instead of a candid analysis of the R2P. This study has taken into consideration this negative partiality therefore, the main question of this research is: *If the R2P has failed in Libya and/or Syria, does it mean that the R2P has failed in its overall?* The hypothesis of this study is that despite its setbacks, the R2P has contributed to strengthen a series of norms, instruments, and agendas that are interconnected under the same goal, to protect civilians and strengthen human rights norms. In order to respond its main question and test its hypothesis, this study has introduced the origins of the R2P and its reasoning, subsequently the R2P Report written by the International Commission on Intervention and State Sovereignty (ICISS) in 2001 was presented as well as the adaptation of the R2P text within the UN system. After a literature review of the R2P, the research adopted the premises of the constructivist theory as theoretical vein to analyze the R2P and its evolution within the UN. Therefore, arguments utilized to discuss the development of R2P in Libya and Syria are grounded in this theoretical background. Throughout this work, this study identified insights that are important to the R2P literature, to the normative contestation debate of the constructivist literature and to human rights scholars and practitioners. Furthermore, the study has come across reverberations of the R2P's advancements and failures at the UN. These effects corroborate the hypothesis that even though the R2P has failed in specific scenarios, it has strengthened the human protection rhetoric, and has pressured States to find alternative ways within the UN System to minimally guarantee what has been established by the R2P as the Independent Investigative Mechanisms of the Human Rights Council.

Keywords: Responsibility to Protect, Syria, Libya, Constructivism

RESUMO

A Responsabilidade de Proteger (R2P) tem estado em destaque em discussões no campo das Relações Internacionais desde a sua adoção no Sistema da Organização das Nações Unidas (ONU) em 2005. Porém, desde o início dos conflitos na Líbia e na Síria em 2011, pesquisadores e profissionais da área têm progressivamente debatido ainda mais a aplicabilidade da R2P além da teoria, uma vez que o nível de violência nesses cenários tem pressionado a ONU a aplicar mais efetivamente medidas de proteção diante das ameaças significativas de crimes contra humanidade, genocídio e crimes de guerra. A R2P tem sido contestada e falhou em fornecer assistência para a Síria, e enquanto na Líbia o principal argumento da ONU para intervir no país tenha sido com base na R2P, tem sido questionado se os resultados após a implementação da R2P têm sido auspiciosos na Líbia. Considerando esse cenário, muitos pesquisadores têm apresentado uma inclinação negativa que tem gerado uma análise desfavorável sobre a R2P, ao invés de franca. Esse estudo é desenvolvido levando em conta essa parcialidade negativa, logo, a principal pergunta dessa pesquisa é: Se a R2P falhou na Líbia e na Síria, isso significa que a R2P é uma falha total? A hipótese desse estudo é que apesar dos retrocessos, a R2P tem contribuído para reforçar uma série de normas, instrumentos, e agendas que são interconectados pelo mesmo objetivo, proteger civis e fortalecer as normas de direitos humanos. Para responder a principal pergunta do trabalho e testar a hipótese desse estudo, essa pesquisa introduziu as origens da R2P e a sua fundamentação, subsequentemente, o Relatório da R2P formulado pela *International Commission on Intervention and State Sovereignty* (ICISS) em 2001 foi apresentado junto as adaptações da norma para ser operacionalizada dentro do Sistema ONU. Após uma revisão de literatura, a pesquisa adotou as premissas da teoria construtivista como principal via teórica para analisar a R2P e a sua evolução dentro da ONU. Logo, os argumentos utilizados para entender o desenvolvimento da R2P na Líbia e na Síria são fundamentos a partir da abordagem teórica construtivista. Através desse trabalho, esse estudo identificou ângulos que são importantes para a literatura da R2P, para o debate sobre contestação normativa da literatura construtivista e para pesquisadores e profissionais dos direitos humanos. Além disso, essa pesquisa também se deparou com reverberações dos avanços e falhas da R2P na ONU. Esses efeitos corroboram a hipótese que embora a R2P tenha falhado em cenários específicos, ela foi capaz de fortalecer a retórica de proteção humana, e pressionar Estados a encontrarem caminhos alternativos dentro do Sistema ONU para garantir minimamente o que foi estabelecido pela R2P, como os Mecanismos de Investigação Independente do Conselho de Direitos Humanos.

Palavra-Chave: Responsabilidade de Proteger, Líbia, Síria, Construtivismo

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List of Abbreviations

ASEAN – Association of Southeast Asian Nations
AU – African Union
CAH – Crimes against humanity
CAT – United Nations Convention Against Torture
COI – Commission of Inquiry
CSCAP - Council for Security Cooperation in the Asia Pacific
HRC - Human Rights Council
HRW – Human Rights Watch
ICC – International Criminal Court
ICISS – International Commission on Intervention and State Sovereignty
ICRC – International Committee of the Red Cross
IHRL – International Human Rights Law
ISIL – Islamic State of Iran and the Levant
IDP – Internally Displaced Persons
IO – International Organization
IR – International Relations
MENA – Middle East and North of Africa
MSF – Médecins sans Frontières
NATO – North Atlantic Treaty Organization
OPCW – Organisation for the Prohibition of Chemical Weapons
R2P – Responsibility to Protect
UN – United Nations
UNGA – United Nations General Assembly
UNDHR – United Nations Declarations of Human Rights
UNMIS - UN Supervision Mission in Syria
UNSC – United Nations Security Council
U.S – United States of America

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1. Introduction

The Responsibility to Protect (R2P) is an international norm originally drafted in a report by the International Commission on Intervention and State Sovereignty (ICISS) in 2001, which affirms that:

- A. “State sovereignty implies responsibility and the primary responsibility for the protection of its people lies within the state itself.
- B. Where a population is suffering serious harm, as a result of an internal war, insurgency, repression, or State failure, and the State in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect”¹.

The ICISS report recommended that the R2P norm should be applied under the actual or apprehended crimes of genocide, crimes against humanity, war crimes, and ethnic cleansing, which are crimes that can be prosecuted by the International Criminal Court (ICC) according to the Court’s jurisdiction established in the Rome Statute². A shorter version of the ICISS report was embedded by the United Nations General Assembly (UNGA) at the 2005 World Summit³ and reaffirmed in the next year by the United Nations Security Council (UNSC) in Resolution 1674 about the protection of civilians⁴. Over ten years after the R2P embedment in the UNGA, the Assembly adopted Resolution 75/277 in 2021 that determines that the R2P must be included on the annual agenda of the UNGA and has formally requested the Secretary-General to report annually on the matter⁵. Nonetheless, it is important to point out that although several actors may invoke or utilize the R2P premises in their decision-making processes, including the UNGA, only the UNSC can take coercive measures, like a military action, based on it⁶. Hence, it lies within the Council the highest authority to either advance or to hold back the use of the R2P in practice.

¹ ICISS. *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty*, International Development Research Centre, December 2001.

² Ethnic cleansing is displayed as a standalone crime under the R2P doctrine however, ethnic cleansing has not been recognized as an independent crime in the Rome Statute. The ICC can conduct a trial for ethnic cleansing but as an element of genocide (for instance, direct killing that aims the total or partial annihilation of an ethnic group because of their ethnicity) or as a crime against humanity (for instance, forced transfer of people aiming to “cleanse” the territory).

³ UN General Assembly, 2005 World Summit Outcome, A/RES/60/1, Paragraphs 138 and 139, 24 October 2005.

⁴ UN Security Council, S/RES/1674, 28 April 2006.

⁵ UN General Assembly, A/RES/75/277, 18 May 2021.

⁶ Although several UN entities may invoke the R2P in its decisions, the United Nations Security Council is the only organ within the UN system that has the power to take a coercive measure to enforce the R2P, as in the approval of the use of force which might include military intervention based on Chapter VII of the United Nations Charter (1945).

The R2P report was launched in December 2001, only two months after the 09/11 attacks. The ‘War on Terror’ and the American invasion of Iraq in 2003 have demonstrated the issues of a unilateral intervention, and these actions have also hurt the arguments about legal, multilateral interventions led by United Nations (UN) (MOSES; BAHADOR; WRIGHT, 2011). But the unanimous adoption of the R2P by the UNGA in 2005 is an example that States of different sizes, history, values, and goals have reached a consensus that we, as an international community, must act to protect civilians under abhorrent threats. Since its embedment at the UN, the R2P has been invoked several times by UN entities like the Human Rights Council (HRC), the UNGA, and the UNSC, but also by other organizations like the African Union (AU)⁷ and the Council for Security Cooperation in the Asia Pacific (CSCAP)⁸. However, the norm has also been articulated by governments as an attempt to justify unilateral action. For instance, the Russian Minister of Foreign Affairs Sergey Lavrov has framed the Russian military intervention in Georgia based on the R2P in 2008 (EVANS, 2009). This justification was a misuse of the norm (ZIEGLER, 2016) as there is nothing in the R2P that supports a unilateral intervention, or any coercive action without the approval of the UNSC.

In 2011, civilians in Libya and Syria became a target of several attacks, initiated by their governments and the opposition, after the rise of protests during the Arab Spring. As a response to these attacks, the UNSC approved Resolution 1973 (2011) in Libya that authorized regional organizations or similar arrangements to act in cooperation with the UN. The resolution affirmed that based on the R2P, the Council decided to take all feasible steps to ensure the protection of civilians. This was the first time that the UNSC took a decision based on Chapter VII of the UN Charter (that allows the use of force) to impose the R2P. Subsequently, the North Atlantic Treaty Organization (NATO) conducted a military action in Libya and the country was referred to be investigated by the ICC. The ground-breaking action was not repeated in Syria as the UNSC has been in a stalemate to take a more coercive action regarding the Syrian conflict after several vetoes

⁷ The African Union (AU) has decided that it will set aside the principle of non-interference in a sovereign State in Africa when there are threats to peace and security aiming to re-establish legitimate order in the region. This position was formalized in July 2003 as an amendment of the AU Constitutive Acts. According to MURITHI (2016), the AU aimed to step away from non-interference to non-indifference.

⁸ In September 2011, the Council for Security Cooperation in the Asia-Pacific (CSCAP) published a memorandum (No. 18), on implementing the Responsibility to Protect in the Asia Pacific Region, including in the Association of Southeast Asian Nations (ASEAN) which have had an important role in enhancing civilian protection in the region.

by China and Russia together, or Russia alone. Although Libya has been intervened based on the R2P, both Libya and Syria are very unstable until today because of a continuous escalation and cessation of violence. Based on this perspective, it is questionable whether the R2P has been “successful” in Libya. Considering this controversy, this study aims to analyze and establish a critical review of the R2P based on these two case studies – Libya and Syria because of the contrasting response of the international community in each case.

1.1.Main Research Question

The main question of this research is “If the R2P has failed in Libya or Syria, does it mean that the R2P has failed in its overall?”⁹. Along with this question several points must be considered: What should be the proper concept of “failure” or “success” when discussing the R2P in international politics? Can a norm ever get ‘established’ in the international system? And if an ‘established’ norm fails, does it lose its legitimacy? If we contemplate whether the R2P has failed, does it mean that the foundations of the R2P as the Universal Declaration of Human Rights (UDHR) and the Genocide Convention have also failed or only the R2P itself? It is essential to evaluate the R2P considering these points because there is a general tendency to evaluate norms vis-à-vis “ideal” results without taking into account the hurdles inherent to the implementation of complex policies in the international system. Which means, if policies, instruments, norms have not achieved the “ideal result” they tend to be considered a complete failure, and not under development, with drawbacks.

1.2.Hypothesis

The R2P is part of a series of norms, instruments and landmarks that have strengthened the (a) protection of civilians of systematic violations of human rights and (b) the accountability for these crimes. For this reason, this research aims to test the hypothesis that even with setbacks, the R2P has contributed to these efforts because it helps the UN to foment what is minimally expected of political leaders regarding the protection of civilians and why and how the international community should respond. To test the hypothesis, conflicts under extreme violence were chosen as case studies because they challenge the R2P as an international norm. The hypothesis of this

⁹ Several studies have questioned the “success” of the R2P, and these studies are mainly a result of analyses of the armed conflicts in Libya and Syria since 2011. See MAHMOOD, 2010; HEHIR, 2013; MOSES, 2013; and KERSAVAGE, 2014.

research is grounded in the following premises: First, the R2P as an international norm undergoes several stages until its “full compliance”. The norm is currently in a stage called *normative contestation* based on the constructivist perspective of Martha Finnemore and Kathryn Sikkink in 1998 about the life cycle of norms. Second, in this contestation phase, the R2P is under a process of socialization in which States attempt to apply the norm in real scenarios through the UN and this process may generate a contestation that might lead to the success or failure of the norm on different occasions.

1.3.Methodology and case studies justification

The methodology of this study consists of qualitative research of one norm, the Responsibility to Protect, and two comparative case studies, the conflicts in Libya and Syria since 2011. The development of this study will consist mainly of official UN documents and reports, as well as the existing R2P literature. Also, the constructivist theory has been chosen as the theoretical framework within the field of International Relations (IR) to analyze the normative development of the R2P. Overall, IR theories provide a generic form to interpret the causes and effects of events and processes within international politics. Nonetheless, these theories might not offer a cogent explanation to understand the dynamics of every single conflict. For this reason, the constructivist theory offers a theoretical “starting point” to interpret the R2P development in the international system. Besides the limitations of the theory itself, there are other restraints to this research. First, the situation in Libya and Syria is still unstable including with escalation of violence going back and forward. Then until the finalization of this work, the situation can quickly change in both States. Second, significant changes can occur regarding the normative development of the R2P meanwhile. Nonetheless, any significant change will not have an adverse impact on the goal of this work which is to analyze whether the performance of the R2P in Libya and Syria has determined that the norm is a failure in its overall, so far. This will unlikely be affected by a single, detached event as the R2P analysis is embedded in a process.

The study of the R2P is of paramount importance to the field of International Relations, as previously debated, its (non) application creates precedents to the UN’s future responses in protecting people facing grave violations of human rights. The decision to approve or not a coercive action based on the R2P can be a matter of ‘to live or to die’ to millions of people

worldwide. In this sense, the study of the R2P is important to recognize the obstacles and gaps of the norm in practice in the international system. Furthermore, there have been substantial studies on the R2P, especially from a legal perspective however, there has been scarce research of the R2P based on a constructivist perspective utilizing Libya and Syria together as case studies and this study aims to contribute to this literature.

The conflicts in Libya and Syria since 2011 will be used as case studies to test the hypothesis because the international responses in these two cases are seemingly ambiguous. This work aims to address them, and its impact on the R2P. In Libya, the UNSC approved the use of force in the country based on the Chapter VII of the UN Charter. In the same resolution, the UNSC referred the country to the ICC and all these actions have been based on the R2P. The conflict in Syria started in the same year, but its response was very different. Since the beginning of the war, Russia or/and China as permanent members of UNSC, have vetoed every resolution to approve the use of force in Syria, including France's attempt to refer Syria to the ICC through the UNSC. The conflict in Syria is catastrophic and it has been denominated as the worst humanitarian crisis since World War II¹⁰. The two cases represent a contrast, with the "success" of the R2P in Libya and its 'failure' in Syria. Although there is an extended debate whether the R2P has been truly successful in Libya¹¹, there is no doubt that the international community has failed in Syria. Even if the R2P would be furtherly utilized to justify an action in Syria, it would not change the suffering that millions of Syrians have experienced until this moment.

This research will be organized as follows: In Chapter 1, it is introduced the context in which the R2P was developed by presenting the concept of "new wars" and mass-killings in the post-Cold War period. These mass-killings are essential to understand the change in the nature of international security and the following dilemma between respecting State sovereignty and acting under serious violations of human rights. In Chapter 2, the R2P report by the ICISS is introduced.

¹⁰ Human Rights Council (HRC), Statement by the High Commissioner at the High-Level Panel Discussion on the Situation of Human Rights in the Syrian Arab Republic, 6-23 June 2017.

¹¹ The extended debate in the IR literature that questions the R2P "success" in Libya has two main arguments. First, regarding NATO's tactics in Libya and how this has facilitated the fall of Gaddafi in the country (See BACHMAN, 2015) - in this discussion, scholars consider NATO's approach in Libya overly focused on regime change (See DOYLE, 2016). Second, NATO's intervention to enforce the R2P did not bring political stability to Libya or has helped to establish sustainable peace in the long term (See BODUSZYŃSKI, 2015 to have a better understanding of the Libyan issues in the post-2011 intervention).

Subsequently, the shorter version of the R2P adopted by the UN is presented. In conclusion, the difference between the terminologies that are frequently used to refer to the R2P are clarified. At the end of the chapter, the R2P literature is reviewed. In Chapter 3, it is presented the methodology and justification of the research and the constructivist theory is introduced as the theoretical framework of this research. In Chapter 4, the (non) application of the R2P in Libya and Syria are addressed as case studies to better evaluate the normative development of the R2P. To conclude, in Chapter 5, a profound analysis of the R2P is developed based on the cases studies and the theoretical framework.

2. International Security in a Post-Cold War World

2.1. *New wars* and the new nature of international security

The increase of conflicts with characteristics of *new wars*¹² after the end of the Cold War is essential to understanding the complexity and the dilemmas around the R2P especially regarding State sovereignty and mass-killings. In this sense, the *new wars* are introduced to contextualize the scenario in which the norm has been drawn and to present the issues in the international protection to civilians. The Cold War was a period of arms race and proxy wars¹³ which means, tension without direct attack, between the United States and the Soviet Union (URSS) which lasted from the end of World War II in 1945 until the disintegration of the URSS in 1991. Conflicts with *new wars* characteristics have always existed, however, in the post-Cold War period, this type of organized violence became more frequent and evident to IR scholars (CILLIERS, MASON; 1999, NEWMAN; 2004, KALDOR; 2012)¹⁴. They feature civil armed conflicts with the involvement of a series of transnational connections so complex that it becomes very difficult to clearly distinguish whether the conflict is internal or external (KALDOR, 2012). For this reason, *new wars* must be understood within the context of globalization, an intensification of the global interconnectedness in politics, economy, and social life. Paradoxically, these new types of conflicts can be defined as localized wars in a globalized form.

¹² The term '*new wars*' has been widely utilized as a well-known terminology in the International Relations field, nonetheless, there is a debate whether the term is appropriate since conflicts before and during the Cold War already presented a few characteristics of the conflicts here called *new wars*.

¹³ According to MUMFORD (2013), proxy wars have been defined as an "indirect engagement in a conflict by third parties wishing to influence its strategic outcome". In this sense, the main goal of a proxy war would be to fulfill the objectives of a third party.

¹⁴ According to NEWMAN (2004), among wars that had the characteristics of *new wars* in the 1990s were armed conflicts in Burundi, Sierra Leone, Chechnya, Somalia, Afghanistan, Nigeria, Liberia, Congo, and Angola.

The main differences between traditional warfare and *new wars* are regarding their methods and goals in which it can be perceived the loss of State's monopoly to organized violence (WILLIAMS, 2010). The *new wars* are correlated to the decay of States' formal security capacities and involve multiple fighting units such as regular armed forces, paramilitary groups, self-defense units, foreign mercenaries, and foreign troops. Furthermore, the use of child soldiers in civil wars during the 1990s were commonplace (KALDOR, 2012). For instance, in 1989, Charles Taylor, a former government official from Liberia (who became president in 1997), founded the National Patriotic Front of Liberia (NPFL) financed by former Libyan President Muammar al-Gaddafi. In the same year, Charles Taylor led the NPFL to invade Sierra Leone with 30% of its troops being composed of child soldiers (KALDOR, 2012). This example illustrates the transnational connections of the post-Cold War conflicts, as a government official of Liberia invades Sierra Leone being funded by Libya using child soldiers.

Moreover, the social and economic context of *new wars* often feature failed States¹⁵ (NEWMAN, 2004), in which there is a complete collapse or partial failure of the formal economy. For this reason, the first difference between traditional wars and *new wars* is the finance system, *new wars* are financed through a decentralized and globalized war economy with the involvement of different segments of the population (DUFFIELD, 2001). As KEEN (2012) has described, students, teachers, and even aid workers were part of the illegal exploitation of diamonds in Sierra Leone in 1995. However, they were not the only ones, the control of natural resources is a key goal of many parties in these conflicts which might even include civilians. The economy that is

¹⁵ The definition of a 'failed State' is complex, although the term was widely employed to define what happened to Somalia in the early 1990s where the whole national State ceased to exist (EINSIEDEL; 2005, CALL, 2008), scholars have used different definitions of State failure depending on what they have defined as a State, consequently, there is no agreement in the literature. This work defines what constitutes a State based on the 1933 Montevideo Convention on the Rights and Duties of States: (1) a defined territory, (2) a permanent population, (3) an effective government, and (4) the capacity to enter formal relations with other States. But it also considers the definition of WEBER (1964) which is a corporate group that monopolizes the legitimate use of force over a territory. Following this rationale, this work delineates that the main characteristic of a State failure is the ceasing of an effective government. However, State failure is not a static concept (CHESTERMAN, IGNATIEFF, THAKUER; 2005) because the loss of the State's monopolization of the use of force is just the starting point. The common argument utilized by different authors that have attempted to define State failure is that besides losing the monopolization of the use of force, the 'failed State' is tormented by a continuum of crises (regarding extreme poverty, climate issues, terrorism, etc.) that keeps impeding it of dealing with its domestic issues because it no longer possesses a centralized government with institutions seen as legitimated and consequently, is no longer the group that monopolizes the use of force.

developed during a war can become so intense that the parts involved can even sustain the conflict only to maintain the economy behind the war (KEEN, 2012).

The second difference between traditional wars and *new wars* are their methods that have changed traditional warfare to strategies of guerilla and counterinsurgency. In guerillas, the strategies consist of conquering the territory through political control of the population and not through military advance, as it has been common in traditional warfare. Also, this tactic is based on counterinsurgency, as it aims to control the population by getting rid of anyone of a different identity (KALDOR, 2012). Furthermore, in *new wars*, ethnic and religious differences are predominantly more important than political ideology (NEWMAN, 2004). The third difference between traditional wars and *new wars* are the objectives as the political control of these *new wars* are articulated through traditional identities, such as nationality or religion in the context of an increasingly cultural dissonance (KALDOR, 2012). The exacerbated nationalism has been used as a tool by political leaders in these new types of conflicts (FINNEMORE, 2004; KALDOR, 2012; FUKUYAMA, 2018). For instance, in 2001, the UN Panel of Experts reported that Ugandan commanders had been arming and training militias from the *Hema* ethnic group in the Democratic Republic of Congo¹⁶. In what is a typical pattern of 1990s conflicts, a regional power supporting an ethnic faction in another State. Not so common is the fact that the Ugandan commanders were also training the *Lendu* militias that were fighting the *Hema* group. The scenario in Uganda illustrates how belligerent parties seek to maintain the conflict for several different reasons, and how they utilize identity as a tool of manipulation.

However, matters of identity have also been a feature of traditional wars, as we have seen in World War II. The catch of *new wars* is that they feature the manipulation of identity matters at the local level with an involvement of global actors in the conflict. For instance, during the Bosnian War between 1992-1995, Sarajevo was divided between a Serb-controlled and a Bosnian part mostly composed by Muslims. In this context, there were local inhabitants as Bosnians and Serbs but also foreigners such as the UN Peacekeepers and humanitarian agencies (KALDOR, 2012), therefore there is an increasing presence of global actors in “local issues”.

¹⁶ UN Security Council. Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, 12 April 2001

Although the examples of Sierra Leone and Uganda illustrate the dynamics of *new wars*, there are two conflicts during the post-Cold War period that are essential to understanding the context of *new wars*. The armed conflicts of Afghanistan and Iraq with the American invasion after the 09/11 attacks. Although very different countries, they possess one main similarity, they were portrayed by the United States as key States in a global conflict, a ‘War on Terror’. KALDOR (2012) claims that the United States has posited itself not as a nation but as a cause with a mission to save the world. Even though the American discourses aligns to traditional wars, the results were very different. In both scenarios, it became very clear that conventional military force cannot rebuild States. Also, overthrowing regimes is not the same as building democracies (KALDOR, 2012). The examples in Afghanistan and Iraq are important to understand how the traditional narrative and perspective of armed conflicts no longer fits the current dynamics of warfare.

The end of the Cold War had a direct impact in security studies and IR theories. During the Cold War, Realism was a dominant theory in the field IR, nonetheless, the realist theory did not predict the disintegration of the URSS and the end of the Cold War¹⁷. Furthermore, Realism had portrayed States as the only actors in their international political analysis¹⁸, however the 09/11 attacks were a clear illustration of how a non-State actor can impact international politics. The nature of security studies has also changed because the importance of non-State actors has been recognized and the debate on civilian protection has increased. Therefore, the focus of international security studies and practice shifted from State security towards human security.

2.2. Mass killings after the end of the Cold War

Among the post-Cold War conflicts, the mass killings in Rwanda (1994) and Bosnia-Herzegovina (1995) represent bitter examples of how a localized conflict can quickly escalate to genocide and ethnic cleansing. These conflicts are essential to understanding the dilemmas regarding State sovereignty because during these massacres the UN had active missions in both States, but it was unable to intervene mainly due the legal limitations attributed to the sovereignty

¹⁷ See GADDIS (1992).

¹⁸ See JERVIS (1978). Jervis’ view is an example of how the analyses of international politics concentrated on the State itself as well as the relations between States.

of the States in question. The disastrous result has pressured the UN to consolidate a better response to save civilians suffering serious violations of human rights in their States.

In Rwanda more than 80% of the population belongs to an ethnic group called *Hutu* however, another ethnic group, *Tutsi*, dominated the country until 1959 when *Hutus* overthrew the *Tutsi* monarchy making several *Tutsis* flee to neighboring countries. Nonetheless, *Tutsis* exiles formed the Rwanda Patriotic Front (RPF), invaded Rwanda in 1990 and a peace agreement was initiated (POWER, 2002). In December 1993, the UN Assistance Mission in Rwanda (UNAMIR)¹⁹ was established. However, the mandate of the mission was to investigate and to monitor, which means, the UN peacekeepers could not use force in the country. On 6 April 1994, a plane carrying the President of Rwanda, Juvenal Habyarimana, and the President of Burundi, Cyprien Ntaryamira was shot down and crashed. This event is considered the main turning point to the escalation of violence in Rwanda. While *Hutus* blamed the RPF for killing the president, *Tutsis* denied it. A *Hutu* extremist radio, *Radio Mille Collines*, played a key role in this conflict, and following the 1994 crash, the radio started to promote an inflaming propaganda against the *Tutsis*. In the next twenty-four hours following the plane crash, over 1,000 *Tutsis* were killed (POWER, 2002). Three months before the genocide began, the UNAMIR general, Roméo Dallaire, sent a fax to the UN headquarters in New York after receiving meticulous information about an extermination plan to kill *Tutsis*²⁰. On 22 June 1994, the UNSC authorized the mission to be updated²¹ based on the Chapter VII of the UN Charter, which means the UN was allowed to use force in Rwanda. However, the approval came too late, 800,000 people had been murdered in the meanwhile. The Rwandan genocide was the fastest killing spree of the 20th century (POWER, 2002).

Another example of mass-killings in the post-Cold War occurred in the Balkans. Yugoslavia was a federation of six republics: Bosnia-Herzegovina, Croatia, Macedonia, Montenegro, Serbia, and Slovenia besides two autonomous regions within Serbia, which were Kosovo and Vojvodina. In 1991, the disintegration of Yugoslavia with the end of the Cold War led to the independence of Slovenia, Croatia, and Macedonia. However, the State fragmentation revived enrooted tensions

¹⁹ UN Security Council, Resolution S/RES/872, 5 October 1993.

²⁰ United States Holocaust Memorial Museum, Code Cable by Roméo Dallaire to the United Nations Department of Peacekeeping (DPKO), 11 January 1994.

²¹ UN Security Council, Resolution S/RES/929, 22 June 1994.

within the region and when Bosnia-Herzegovina called for independence through a referendum in 1992, the tension escalated. Besides the ethnic differences, the region was also marked by different religions from Orthodox Christianity, Catholicism, and Islam. As Serbs and Croats were against this emancipation, the Bosnian War was initiated (1992-1995) as well as campaigns of ethnic cleansing started to annihilate certain groups within the population. Just like Rwanda, it was a genocide inside of a civil war.

In 1993, the UN mission organized the ‘safe areas in Srebrenica’²² as a region protected by the UN peacekeepers which ended up being an inefficient practice to protect civilians and the UN watched the massacre of Srebrenica in 1995 with over 8,000 people killed led by Bosnian Serb commander Ratko Mladić²³. Furthermore, in 1998, the tension escalated once more in the Balkans as an Albanian separatist group, the Kosovo Liberation Army (KLA), fought for the independence of Kosovo from Yugoslavia. As the president of Yugoslavia, Slobodan Milošević did not act in accordance with the peace agreements, NATO attacked Kosovo in March 1999.

In both conflicts, mass murders were a deliberate choice of political leaders to maintain their power (SIKKINK, 2017). Also, civil wars are one of the most significant risk factors for genocide and have a strong correlation with repression (POE; TATE, 1994). However, the UN missions in Rwanda and Yugoslavia did not have a mandate that allowed the use of force when violence was at its peak. In this sense, the original mandates authorized by the UNSC were inefficient to quickly respond to the escalation of violence. The UN could not change the mandate without the approval of the UNSC because these States in question are sovereign. These are important illustrations of how State sovereignty might delay or hinder international human protection. The obstacles in protecting civilians under serious violations of human rights in a sovereign State have been discussed at the UN since early debates within the organization. In 1953, in a UNGA debate on sovereignty and human rights, India argued that the violations of human rights that Indians had been suffering in South Africa should not be obscured under the sovereignty doctrine (BHAGAVAN, 2012). In addition, India affirmed that these violations were a matter of

²² UN Security Council, Resolution S/RES/819, 16 April 1993

²³ The massacre was recognized and tried by the ad-doc tribunal at the International Criminal Tribunal for the Former Yugoslavia, January 2015.

international concern that should be resolved through the UN. This was the first time that it was specifically addressed at the UN that these violations should not be covered by State sovereignty (SIKKINK, 2017).

The matter is, State sovereignty may indeed hinder the international community from protecting civilians inside a country, but it is also a cornerstone of international politics. The principle that all States are sovereign is a fundamental element of the United Nations Charter (Article 2.1)²⁴. Moreover, as States have overwhelmingly unequal power and resources, the recognition of equal worth represents the primary defense of several weak states against powerful actors (BELLAMY, 2009). In this sense, sovereignty represents a defense of external attacks, but what if the danger is inside the State? Paradoxically, governments are the main protectors of human rights but also the main violators (SIKKINK, 2017). The mass-killings during the *new wars* have illustrated a straightforward reality, while violent conflicts are escalating, many civilians quickly flee to neighboring States, but whoever stays in the country might not be saved by the international community. As will be furtherly discussed, after these conflicts, the debate over State sovereignty is re-ignited at the UN as the international community seeks a consensus on how to quickly, efficiently act in similar situations in the future.

2.3.Sovereignty as Responsibility

The idea of ‘Sovereignty as Responsibility’ is debated by DENG and COHEN (1998) on how both refugees and internally displaced persons (IDPs) are forcibly displaced because of violence and persecution, however since the IDPs continue inside the State, they are under its jurisdiction therefore excluded from international protection. The protection of IDPs is complex because according to the sovereignty principle, the IDPs are under the responsibility of the State. For this reason, DENG and COHEN (1998) suggest that sovereignty should be treated as a responsibility. Since the primary responsibility to protect the population lies within the State, then the corollary of ‘sovereignty as responsibility’ is accountability (BELLAMY, 2009). The State is accountable at the national and international level as it must safeguard individuals’ rights and safety within its

²⁴ The Article 2 (1) – (5) of the United Nations Charter (1945) determinates that “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations”.

territory. Which means that the principle of traditional sovereignty must not surpass the inalienable human rights entitled to everyone because this entitlement exists regardless of who is the head of State, and if the State is independent and sovereign.

This re-interpretation of State sovereignty is correlated with the broadening view of human security. Previously, the term ‘security’ was mainly linked to security between States, as a mechanism to avoid interstate conflicts, and such view is clearly stated in the Article 2.7 of the United Nations Charter: “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state (...)”. In 1994, the Human Development Report by the United Nations Development Programme (UNDP) defined that security must be focused on the individual and its freedoms²⁵. Consequently, international efforts have deepened and strengthened accountability regarding genocide, war crimes, and crimes against humanity but focusing on individual protection (HAMPSON, 2010). In this sense, sovereignty is no longer interpreted in the traditional Westphalian²⁶ vision of supreme authority within a territory, but as a concept based on human security which implies wider responsibilities (HILPOLD, 2012). The concept of Sovereignty as Responsibility was adopted by the former Secretary-General Kofi Annan as the theoretical background of Annan’s request to States to develop a way of reconciling the principle of State sovereignty and human protection. The challenge was accepted by the Canadian Government, which established the International Commission of Intervention and State Sovereignty (ICISS) in 2000. After several roundtables and consultations inside the countries of the five permanent members of the UNSC, the commission launched the report The Responsibility to Protect in 2001.

3. The Responsibility to Protect (R2P)

3.1. The ICISS Report

In 2001, the International Commission of Intervention and State Sovereignty (ICISS) developed the report Responsibility to Protect (R2P), in which it was stated the following basic principles:

“A. State sovereignty implies responsibility and the primary responsibility for the

²⁵ United Nations Development Programme (UNDP), Human Development Report 1994, 16 March 1994.

²⁶ The Westphalian vision refers to the Treaty of Westphalia (1648), an agreement that ended the Thirty Years’ War (1618-1648) in Europe. The treaty determined that each State, independent of its size or power, is sovereign over its territory and its domestic politics. This treaty marks the principle of non-interference in States which has been the dominant rule in international politics and has been reflected in the design of the United Nations Charter in 1945.

protection of its people lies within the state itself.

B. Where a population is suffering serious harm, as a result of an internal war, insurgency, repression, or State failure, and the State in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect” (ICISS, 2001).

The foundations of the R2P lies in the responsibility of the UNSC to maintain international peace according to Article 24 of the United Nations Charter²⁷. Also, under the UDHR, covenants, treaties, and international humanitarian law (ICISS, 2001). The principle is formed by three pillars: prevention, reaction, and reconstruction.

The Responsibility to Prevent

The Responsibility to Prevent is defined as the most important pillar of the R2P because if effectively implemented, it may rule out the need to apply its following pillars, the Responsibility to React and the Responsibility to Rebuild. The ICISS categorizes the mechanisms to prevention in two branches: the root cause prevention and direct cause prevention. This profound perspective regarding prevention recognizes that the fragility in the structure of the State as a flawed democracy, unequal rights, poverty, corruption, social inequality can serve as a breeding ground to the development of violent conflicts (LAWLER, 2010)²⁸.

Furthermore, democracy and accountable governments with strong institutions and equal opportunities for all individuals empower the Rule of Law (FUKUYAMA, 2012), ensuring a strong political development, in which the State will be able to properly address the issues concerning its domestic affairs and avoid future conflicts. The root cause preventive measures are subdivided into four dimensions: political, economic, legal, and military, as follows:

²⁷ The Article 24 of the United Nations Charter (1945) affirms that “In order to ensure prompt and effective action by the United Nations, its members confer on the Security Council primary responsibility for the maintenance of international peace and security and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf”.

²⁸ See GALTUNG (1996). An analysis of the root causes was widely addressed by Johan Galtung in his definition of *Positive and Negative Peace*. In this perspective, an armed conflict is a manifestation of *Negative Peace*, while *Positive Peace* would be characterized by an absence of war. However, a State under positive peace encompasses a structure with several issues such as social inequality, endemic poverty, corruption, impunity in the criminal justice system, etc., that can contribute to the escalation of tension and lead to an armed conflict. Therefore, we must develop measures to create lasting and sustainable peace.

Table 1.1. Measures to the root cause prevention (addressing structural issues)

<i>Political Dimension</i>	<i>Economic Dimension</i>	<i>Legal Dimension</i>	<i>Military Dimension</i>
Capacity-building	Development assistance and cooperation to address inequities in the distribution of resources and opportunity	Supporting efforts to strengthen the Rule of Law	Enhancing education and training of military forces
Constitutional power-sharing	Promotion of economic growth	Protecting the integrity and independence of the Judiciary	Re-integrating ex-combatants
Confidence-building between different communities and groups	Better terms of trade and permitting greater access to external markets for developing economies	Promoting honesty and accountability in law enforcement	Encouraging efforts to ensure security services are accountable for their actions and operate within the law
Support for press freedom and the Rule of Law	Encouragement of economic reform	Enhancing protection for vulnerable groups (especially minorities)	Arms control, disarmament, and non-proliferation regimes (including the control of small arms and light weapons)
Promotion of civil society and other Similar initiatives that promote human security	Technical assistance to strengthening regulatory measures and institutions	Providing support to local institutions and organizations working to advance human rights	Prohibition of landmines

Table based on the Chapter III – The Responsibility to Prevent of the 2001 ICISS Report

Both root cause and directive/preventive toolboxes consist of the same dimensions and might contain similar measures. However, in the box above, the goal is to address the root causes or structural issues within a country by stimulating what is considered as positive aspects that may prevent the escalation of violence and cease domestic tension. Among these measures are constitutional power-sharing that may avoid communal violence generated by the domination of certain ethnic groups over domestic politics, as it happened in Rwanda for instance. Better terms of economic trade as well the Rule of Law are also defined as features that may avoid the escalation of tension towards an armed conflict.

On the other hand, in the direct or preventive toolbox below, the measures are classified as either ‘positive inducements’ or ‘further coercive measures’, but they all aim to guarantee a more immediate response to the escalation of tension. Nonetheless, the measures of the military dimension are very limited because any extended military action would be considered a direct intervention in the domestic affairs of a State. For instance, the deployment of a preventive force is usually supported by a UN’s resolution based on Chapter VI of the UN Charter, that aims to monitor the local situation but cannot use force. These types of forces were deployed by the UN

in both Rwanda and Yugoslavia, as mentioned in the previous chapter. Furthermore, the ICISS (2001) has defined international sanctions as one of the most compelling measures to weaken parties or the State itself when they are targeting the civilian population.

Table 1.2. Measures to the direct prevention or preventive “Toolbox” (addressing an on-going situation)

<i>Political Dimension</i>	<i>Economic Dimension</i>	<i>Legal Dimension</i>	<i>Military Dimension</i>
(As a positive inducement) Direct involvement of the the UN Secretary-General	(As a positive inducement) Promises of new funding of investment, or the promise of more favorable terms	(As a positive inducement) Mediation, arbitration, or adjudication – though in case of domestic dispute these options may not be readily available or acceptable to all parties	(As a positive inducement) Stand-off reconnaissance or a consensual preventive deployment
Fact-finding mission	(Further coercive measures) Threats of trade or financial sanctions	The deployment of monitors to observe compliance with human rights standards and help reassure communities or groups feeling at risk	
Dialogue, problem-solving workshops and Group of Friends	Withdrawal or investment		
(Further coercive measures) Threat or application of political sanctions	Threats to withdraw IMF or World Bank support		
Diplomatic isolation	Curtailment of aid or other assistance		
Suspension of the organization Membership		(Further coercive measures) Threat to apply or international legal sanctions	
Travel and assets restriction on targeted persons			
Naming and shaming			

Table based on the Chapter III – The Responsibility to Prevent of the 2001 ICISS Report

There is a reluctance of many States to accept the preventive measures because they fear that the “internationalization” of the issue through the UN will necessarily lead to further “international interference” (ICISS, 2001). Also, the Commission considered the need to have a fund for directive measures inside the UN because when tension is escalating it takes a long time and a lot of pleading to engage parties to financially invest in preventive measures. In 1997, the Carnegie Commission on Preventing Deadly Conflict estimated that the maximum commitment to conflict prevention would cost less than half the price of intervention and rebuilding²⁹.

²⁹ Carnegie Commission on Preventing Deadly Conflict. Preventing Deadly Conflict: Final Report with Executive Summary: International Peace and Security, 1997.

The Responsibility to React

Even though the ICISS (2001) delineated the Responsibility to Prevent as the most important pillar, the ICISS report dedicated most of its analysis to the reaction pillar because it is the most controversial element in the document. If preventive measures fail, then the Commission recommends the application of a few non-military tactics. The idea is to impede the State's capacity to continue to target the civilian population by ceasing their resources and allies. These tactics may be carried out in the military dimension (with an arms embargo and by ending military cooperation); the economic dimension (financial sanctions, restrictions on income-generating activities such as oil, diamonds and drugs, restriction on access to petroleum products, aviation ban); and the in political/diplomatic dimension (restriction on diplomatic representation, restriction on travel, suspension of membership or expulsion from international or regional bodies, refusal to admit a country to membership of a body). Nonetheless, even though sanctions are less costly and risky, they may take years until it reaches the desired effect (BELLAMY, 2009), and until they do, they might directly affect the civilian population, increasing their hardships within the State (ICISS, 2001). In the last case, if all the previous measures fail, then a military intervention must be considered. The Commission has determined six criteria for military intervention: Right authority, just cause, right intention, last resort, proportional means, and reasonable prospects.

According to the ICISS report (2001), the **right authority** lies within the UNSC to decide whether the international community should or should not use force against a State to guarantee the protection of civilians in the territory. The Chapter VII of the United Nations Charter establishes the UNSC as the legitimate organ that can approve or veto a military intervention regarding an international security threat. If the UNSC fails to approve a military intervention, there are a few options. The UNGA can seek support for military intervention in an *Emergency Special Session* under the established "Uniting for Peace" procedure³⁰. According to the ICISS (2001), even though the UNGA do not possess the power to approve military action, if the majority of States support it then it leverages the legitimacy of the intervention. Which means the UNGA

³⁰ The "Uniting for Peace" procedure refers to Resolution 377 (V) of the UNGA (1950) which determined that when the UNSC fails to act because of the lack of unanimity among the five permanent members, then the UNGA must consider the matter immediately and issue recommendations about it.

procedure increases the political pressure to act in the State in question. Furthermore, the Commission affirms that the **just cause** to justify a military intervention for human protection can be attributed to:

- A. large scale loss of life, actual or apprehended, with genocidal intent or not, which is either the product of deliberate State action or State neglect or inability to act; or
- B. large scale “ethnic cleansing”, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror, or rape” (ICISS, 2001).

The ICISS (2001) cites *actual* and *apprehended* because it indicates that military action is also legitimate as an anticipatory measure grounded in accurate and clear evidence of an intent to commit a large-scale killing, otherwise the international community would only be able to take action once a killing spree has been initiated³¹. However, the report did not indicate specifically how many people must have been affected or killed to be considered “large scale”, then this largely depends on the interpretation of the UNSC.

The ICISS (2001) also determinates that the intervention must be conducted because of the **right intention**, that is, to halt or avert human suffering. In this sense, overthrowing regimes is not a legitimate goal even though a military action can disable the regime’s capacity to continue systematic violence against its own people and this can end up toppling the regime. To ensure that any action will be undertaken based on the right intention, collective action is necessary. Although the intervention can be led by candid motives, these can be mixed with several other interests, but these other interests do not disqualify the fact that there is a systematic killing occurring and the international community must protect these civilians (IBID, 2001). Besides this, the military intervention should be the **last resort**, which means other measures must have been explored. Even though there are exceptions, this trial-and-error process might take too long, then an analysis of a case-by-case scenario is essential (ICISS, 2001). Especially because when a genocide is initiated it will either end by direct intervention in the territory or the partial or total annihilation of the victims (BELLAMY, 2009). The report also highlights the importance of **proportional means**.

³¹ To conduct a large-scale killing as in the case of a genocide, it is necessary to plan the logistics of the killing, to acquire weapons or to build an infrastructure that will be used during the crimes. For instance, the large number of machetes used in the Rwanda genocide as well as the poison used in the gas chambers during the Holocaust were acquired as part of a detailed plan to exterminate a group. The ICISS Report urges that it is legitimate to act before the killing spree has been initiated based on the early signs that can be apprehended during the planning and preparation stage.

The ICISS (2001) determinates that the scale, duration, and intensity of the military intervention should be the minimum possible. At last, it must consider what are the **reasonable prospects** as the military intervention must have a chance of success. The intervention cannot trigger worst suffering and it cannot lead to a greater conflict.

The Responsibility to Rebuild

Once a military intervention has been held, it is necessary to plan out how the interveners will exit the country. The interveners must be cautious not to leave too soon because the conflict might re-start. On the other hand, they should not stay too long otherwise the country will have difficulties in controlling its domestic dynamics on its own. The process of peacebuilding involves a complex reconciliation, not only at a high-level but also within the population. According to the ICISS (2001), this process might include the creation or strengthening of national institutions, monitoring of elections as well as creating conditions for development. The entire process envisages sustainable peace however it faces the challenge of maintaining funds and resources to follow-up the peacebuilding activities. Furthermore, the re-creation of the justice system and police seek the strengthening of the Rule of Law which are essential elements of a State. This system must also ensure the safe return of refugees, as there is a tendency of revenge of the group that was being attacked towards the perpetrators. One of the most important programmes in peacebuilding is the DDR - Disarmament, Demobilization and Reintegration which consists of disarming the population, disintegrating the armed groups, and reintegrating them back into society.

All the measures to provide security must be grounded in economic growth such as the re-creation of markets and development, as this is a vital part of the reconstruction of the State. However, according to the ICISS (2001), the presence of international forces can cause a sudden influx of large sums within the country which can have a distorting economic effect and create unrealistic expectations on the population because this sum influx does not reflect the development of the economy. Nonetheless, the responsibility to protect the community must be restored back to the State to guarantee the legitimacy of the intervention.

3.2. The R2P within the UN system

The R2P was unanimously adopted by the UNGA at the 2005 World Summit. In the final document (A/RES/63/308)³² it was declared that:

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

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

The UN has endorsed the main idea of the R2P but did not adopt the full report. This is very important, because several scholars in the International Relations field are inclined to analyze the R2P based only on its report. Nonetheless, it is necessary to comprehend that we can only expect from the UN what the organization has directly compromised to. In 2006, the UNSC re-affirmed³³ the provisions in paragraphs 138 and 139 adopted by the UNGA (2005). In the next year, the

³² UN General Assembly, A/RES/60/1. 2005 World Summit Outcome. 24 October 2005.

³³ UN Security Council, S/RES/1674, 2006.

Secretary-General Ban Ki-Moon designated a Special Adviser on the Responsibility to Protect³⁴ to work in the Office on Genocide Prevention and the Responsibility to Protect.

In 2009, the report “Implementing the Responsibility to Protect” was released to operationalize the norm within the UN system. This document introduces a three-pillar strategy to implement the R2P according to existing UN mechanisms, instruments, and norm. The idea is to mainstream the R2P into all UN bodies and practice. The report re-affirms the protection responsibility of the State, how we must guarantee international assistance and capacity-building and how we must ensure a timely and decisive response.

1) Pillar I: The protection responsibility of State

The first pillar affirms that the main responsibility to protect individuals lies foremost within the State itself. For this reason, the respect for human rights is posited as an element of responsible sovereignty. Subsequently, States are called upon to support and cooperate with the UN human rights mechanisms and to work domestically and internationally to advance the mandate of the UN High Commissioner for Human Rights, the Human Rights Council and the Special Rapporteurs as well as the human rights treaty bodies. The pillar highlights that the Universal Periodic Review (UPR) mechanism³⁵ can be a significant instrument to advance human rights and indirectly advance the R2P. Besides this, it invites States to ratify human rights treaties, including the Rome Statute to strengthen the work of the ICC and criminal accountability. At the national level, the report highlights that States need to address breaches of fundamental human rights and integrate the provisions of international human rights treaties within its domestic law.

2) Pillar II: International assistance and capacity-building

The second pillar consists of a direct or indirect assistance to the State to fulfill its responsibility to protect. For instance, if political leadership is weak or uncertain on how to safeguard this protection, this could be a critical pillar. The assistance can be provided in many different forms as the establishment of truth commissions, as well as transitional justice and accountability

³⁴ UN Security Council, S/2007/721, 2007.

³⁵ The Universal Periodic Review (UPR) was created in 2005 and it is the first international human rights mechanism that reviews the human rights records from all UN Members every four years. The UPR functions within the Human Rights Council and works with local authorities to enhance each country’s respect to fundamental human rights.

mechanisms. Thus, the States would be able to address past human rights violations and create a national agenda for institutional reform. Within this scenario, the UN calls upon a greater involvement of the Peacebuilding Commission to help States fulfill their responsibility to protect. The main idea of the second pillar is to strengthen protection capacities to contribute to conflict prevention. Nonetheless, this pillar can only be carried out with the cooperation and desire of the State. Which means, if the leaders in the government are the ones committing the crimes or giving the order to be committed, then this pillar is inefficient in these scenarios.

3) Pillar III: Timely and decisive response

The report recognizes the need to take a timely and decisive response especially when the lives of civilians are at risk. For this reason, the Secretary-General urges the five permanent members to not employ the veto under indicators of crimes against humanity, genocide, and war crimes.

As reviewed above, the 2009 report “Implementing the Responsibility to Protect” seeks to operationalize the R2P within the UN system by strengthening the existing human rights mechanisms. The UN considered the whole ICISS report but adapted it to the UN system. For instance, States are called upon to integrate the provisions of human rights treaties within its domestic law, but it also highlights that each State must address the breaches of fundamental human rights within its own territory while considering its structural issues. This is a fundamental element of the ICISS report which is to tackle on structural issues and strength early warning. Which means the UN indicates how to properly address social, political, economic issues to avoid them to be compounded in the roots of an armed conflict.

Besides operationalizing the R2P, the report raises important reflections. It asks to even stable societies to consider whether they are vulnerable to another Holocaust or Rwanda. Seeds of intolerance, exclusion can create root and develop into something horrific, anywhere. In this sense, the UN demonstrates that the R2P has not been adopted to target fragile countries because stable, developed countries can also have large-scale crimes as a result of enrooted grievances. The report concludes that, the UN is willing to help States fulfill their obligation, under these three pillars. However, if the State is committing the crimes or being negligent, and rejects international help, then other coercive measures must be explored to save civilians. Although the creation and

implementation of the R2P at the UN system is ground-breaking, considering that the norm challenges the sovereignty of States, the five permanent members of the UNSC did not follow the Secretary-General's urge to not veto an intervention in dramatic scenarios where the lives of civilians are at risk, or they are already being attacked.

Although this work has focused on the application of the R2P by the UNSC, and its reverberations on the UN system as a whole, it is important to point out that the R2P has had a significant impact on the African Union (AU). In 2003, the AU made amendments to its Constitutive Acts that gave the organization the right to intervene when there are threats to legitimate order, aiming to restore peace and stability in the African country in question. But this must be followed under the recommendation of the AU Peace and Security Council³⁶. This makes the AU the first regional organization to set aside the non-interference principle in case of systematic slaughters in the region (ADIGBUO, 2019). The AU's movement strengthens the legitimacy of the R2P in the international community and helps the UN to move forward the normative.

3.3. Is the R2P a concept, a principle, a norm, or a doctrine?

The R2P had been referred to as a concept, a principle, a norm, or a doctrine³⁷. Each of these terms have been utilized throughout the evolution of the R2P in the international system. The R2P as a concept mainly implies an idea that is still being debatable, even though, a principle, a norm and even a doctrine can be debated and changed as well. The main difference between them and the concept is that the actors involved are still setting the minimum consensus about an idea (BELLAMY, 2009). The R2P can be seen as a concept during the debate and development of the ICISS report, where scholars and Head of States met to discuss the premises of the R2P. At the

³⁶ AFRICAN UNION. Protocol on the Amendments to the Constitutive Act of the African Union, 11 July 2003.

³⁷ Different scholars have defined the R2P as initially a concept that was further developed after the UN's adoption and operationalization of the R2P (See BOTTLE, 2015; EVANS, 2015). Nonetheless, non-governmental organizations that work for the R2P implementation have used different terminologies. While the Asia-Pacific Centre for the Responsibility to Protect frequently refers to the R2P as a principle (2009), the Global Centre for the Responsibility to Protect has described it as a norm (2021). On the other hand, legal scholars that evaluate the R2P have described it as a doctrine (See DOYLE, 2016; HUNT, JACOB, GALLAGHER; 2020). Considering that this work is developed based on the theoretical perspective of FINNEMORE and SIKKINK (1998) on the life cycle of international norms, the R2P is here seen as a norm, or a code of conduct – as we *ought* to protect civilians under greater threats.

2005 World Summit, the R2P was unanimously embraced by the UNGA and acquired a new status of shared understanding between the UN Member States, therefore, the R2P became part of the UN blueprint. As part of the UN system, the R2P becomes a principle, understood as a fundamental truth that has reached a shared understanding. According to BELLAMY (2009), the differentiation between the R2P as a concept and a principle is important. As a concept, the R2P is subordinated to the traditional principles of State sovereignty however, as a principle, the R2P could challenge and defy the meaning of sovereignty itself. It may also incite and guide institutional reform inside the UN regarding traditional State sovereignty. Furthermore, the R2P can be considered a norm after the launch of its operationalization in 2009 (BELLAMY, 2009). After this, the Secretary-General established an R2P Office within the UN Headquarters to carry out the work plan of the responsibility to protect, levelling up the status of the R2P. As a norm, the R2P is mainstream in several UN entities, as the UNGA and the HRC.

In the implementation document, the 2009 report of the Secretary-General ‘Implementing the Responsibility to Protect’, it is declared that the R2P foundation lies within existing international law, the UN Charter and its endorsement by both the UNSC and the UNGA³⁸. In the legal field, the R2P has been defined as a doctrine by several legal scholars and jurists. In this case, the R2P would comprise and re-affirm key principles from the four Geneva Conventions (1949) and the additional protocols (1977 and 2005) regarding international humanitarian law in armed conflict as well as the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the two 1966 Covenants relating to civil, political, social, economic, and cultural rights and the 1998 Statute of Rome. Nonetheless, since this work is developed within the International Relations field, this study will follow the typical terminology of the R2P as norm. But it considers that it is also correct to define it as a doctrine based on International Law.

4. R2P literature review

As presented in the previous section, the R2P has been defined and articulated in distinct ways by several actors, and these different interpretations have led to a vigorous debate in the literature. Members of the ICISS, Special Advisors on the R2P at the UN, and scholars have analyzed its development after being embedded by the UN, considering its challenges, setbacks, and

³⁸ UN General Assembly, Implementing the responsibility to protect, 12 January 2009.

advancements. But this constant change in the terminologies used to refer to the R2P demonstrates that there is a disagreement of scholars to even define what the R2P is. Therefore, depending on who is defining it, and under what terms it is being defined, different concepts may be attributed to the R2P force, and this ambiguity is clearly seen in the R2P literature. For instance, several scholars have correlated R2P with ‘humanitarian intervention’³⁹ but WEISS (2007), a member of the ICISS, has underscored that this association is not accurate⁴⁰. Humanitarian implies impartiality and a decision to act based on the R2P has a political strain. This is important because enforcing the R2P may include the establishment of a military intervention which does not aim to provide aid, does not have humanitarian goals. Since the ICISS report delineates that the main goal of enforcing the R2P is to save civilians, it can be inferred that the norm has essentially an altruistic characteristic what may have influenced scholars to associate it with humanitarianism. But following this correlation between the R2P and humanitarianism gives the R2P more tasks than it is supposed to have.

Nonetheless, while the terminologies to refer to the R2P have been ambiguously used, the R2P literature has converged on evaluating how the pillars of ICISS report have been adopted by the UN, and how certain recommendations have dwindled in its implementation. The first point is regarding the prevention pillar. The operationalization of the R2P in 2009 by the former Secretary-General, Ban Ki Moon has embraced how States can cooperate with the HRC to improve the work of its mechanisms. In this sense, the document constitutes a roadmap to adopt the preventive pillar described in the ICISS report. This has been an accomplishment because it is well-established in the Peace Studies literature that to invest in preventing measures is the cheapest (CARNEGIE COMMISSION, 1997) and most efficient way (GALTUNG, 1996) of preventing crimes against humanity, war crimes and genocide. Among the main tools of the UN in the preventive action and even crisis management is the mediation strategies, but it is not guarantee of success. The parties may still opt for no-deal or purposively complicate any settlement. BABBITT (2014) has portrayed

³⁹ See GILLIGAN, 2013; CAIRNS, 2014; HENDERSON, 2020.

⁴⁰ This is a relevant point because this work has been initiated with the introduction of *news wars* and conflicts in the 1990s, and during this time, the number of humanitarian interventions have increased (MOORE, 1998) as crises became more convoluted (compounding endemic poverty, hunger, lack of health assistance, etc.). Different organizations (as the ICRC and MSF) have augmented their mandate to fulfilling these shortcomings with humanitarian aid or assistance. Although the UN also carries out humanitarian tasks, these do not have the specific mandate of protecting civilians or impairing a regime that is systematically attacking civilians. Consequently, if it is not impartial, it is not humanitarian.

the case of Syria to exemplify how when there is no willingness to reach an agreement, the whole peace process may just get stuck into mediation. The point is, when do we stop preventing the escalation of violence, and coerce the State to fulfill its responsibility? Until what point should a crisis just be managed, and not directly intervened? The UN has not settled what is the threshold to start applying coercive actions, an argument raised not only by SERRANO and WEISS (2014) but also by WELSH (2016). Since the UN has been superficial in defining what is the edge that must push us to act, it is not surprising that scholars are muddled by how the R2P can actually contribute to protecting civilians. The UN has not defined what is the turning point from the prevention pillar to the reaction pillar, and this is a problem in the R2P operationalization. WELSH (2016) argues that the duration of preventive measures must be cautiously considered when responding to a crisis. That is because if these measures are unsuccessfully applied for too long, it may facilitate an abrupt escalation of violence as it has been ascribed in Rwanda, when 1,000 were murdered in a single day in 1994, marking the beginning of the genocide (POWER, 2002). Considering this matter, WEISS (2007) indicates that to pose the prevention pillar as ‘the most important element’ of the R2P obscures the real goal which is to ‘react better’. Following this rationale, the prevention and reconstruction pillars were added to the R2P report to ‘cushion’ the impact of addressing military interventions. If it was a tactic or not, it worked, as former Special Adviser of the Secretary-General on R2P (2008-2012), LUCK (2009), has appointed that the focus on prevention has been one of the reasons the 2005 World Summit document was unanimously endorsed.

Although the UN does not clearly define by whom and under what circumstances the reconstruction phase must be carried out, there has been appointed in the literature a connection between the R2P and the ICC, and the accountability provided by the Court is regarded as a crucial element of reconstruction. MENNECKE (2014) has affirmed that the R2P embodies the same logic of the ICC – an international response to grave violations of human rights where local authorities have failed to respond. In this sense, once a violent crisis has escalated, the invocation of the R2P would constitute the first step in the international response but the accountability for these crimes can be only enforced by a third party, as the ICC. The point is, fight against impunity is an essential part of the reconstruction pillar. For this reason, KERSTEN (2018) has portrayed that the R2P (as the normative) and the ICC (as the Court) can together, put forward a global law order, fostering

a new model of international criminal accountability (RISSE; ROPPE; SIKKINK, 2013). Nonetheless, KERANEN (2016) has pointed out that there is a void in the literature analyzing the adoption of the ‘responsibility to rebuild’ and this is a result of the UN’s lack of compromise to rebuilding in the R2P operationalization. SCHNABEL (2012) has also affirmed that the reconstruction phase possesses a smaller set of obligations than the prevention and reaction pillar. But in 2005, the UN Peacebuilding Commission (PBC) was established, which could be the most appropriate institution to take over the reconstruction role after a R2P-intervention. Nonetheless, the Commission has never claimed any connection with the R2P norm. Following this rationale, what is happening today in Libya is a very dysfunctional attempt of state-building, resulted from the UN’s vagueness on how we are supposed to rebuild a country after systematic violence (KERANEN, 2016).

However, even with a few gaps, the R2P was steadily adopted by the international community. WEISS (2011) has highlighted how fast the R2P started to be utilized in international decisions and diplomatic speeches. But this adoption did not come only from States and NGOs, WELSH (2016) has affirmed that after the embedment of the norm at the UN, representatives of civil society in Kenya and Sudan have demanded States to adhere to the R2P. Furthermore, BELLAMY (2015) has demonstrated that in 2015, in nine of the ten crises the UNSC tackled, had been based specifically on the R2P. The tools utilized in these actions ranged from diplomacy, inquiries to investigate human rights violations, to military force and peacekeeping operations. Although the R2P was quickly incorporated into the international arena, its application is far from automatic (SERRANO and WEISS, 2014). A norm can usually enter the international fabric either through the compliance of a Convention in which States can compromise directly to it or as it has been in the case of the R2P, through an international organization that enables the norm to be ‘socialized’ in its discussions. There is a major difference between those two forms, without a Convention there is no legal obligation to act if the R2P is not applied (SMYSER, 2003). However, as WEISS (2016) has delineated, even if there is not a formal penalization for not fulfilling the R2P, the expectations on political leaders to act have been increased.

These discussions presented above have been very important to advance the debate regarding the nature of the R2P, and if the norm has been effectively institutionalized at the UN. But this

work aims to focus on debating what is the R2P today, and as a corollary, what are its impacts on human rights, but more specifically on the protection of civilians and accountability for crimes against humanity, war crimes, and genocide. SERRANO and WEISS (2014), BELLAMY (2015) and WELSH (2016) affirm that the R2P is currently at a stage of normative contestation, but PAPE (2012) believes that this contestation could only be mitigated if the threshold is crossed. Which means if we properly defined what is the tipping point that should push us to carry out a coercive action (as a military intervention, for instance). The perspective of normative contestation is attributed to the life-cycle model of international norms delineated by FINNEMORE and SIKKINK (1998), which consists of three phases: norm emergence (in which norm entrepreneurs promote their ideas to States and stimulate the adoption of the norm by the international system); norm cascade (after the endorsement of the norm, it is initiated the try-and-errors phase and norms are changed in the international system); and norm internalization (when the application of the norm becomes habitual). However, WELSH (2016) has pointed out that advocates of the R2P have defended the norm so vehemently that they tend to attribute the advancements and setbacks of the R2P during its normative contestation as *inherently* ‘good’ and ‘progressive’. Welsh’s perception is very important to the study of the R2P, because although there is an agreement that the R2P is going through the stage of normative contestation, it cannot be overlooked the fact that meanwhile around 551,000 people have died in Syria since 2011⁴¹ even if this can lead to a more effective application of the norm, this attains to a failure to save these people.

This research aims to further analyze what it means to be under a normative contestation to the R2P, and by breaking down Welsh’s perception that this contestation is not necessarily ‘good’ and ‘progressive’. Indeed, normative contestations that hamper the international community to immediately act under grave violations of human rights cannot be considered ‘good’. But whether this may lead to a further progression can be debatable. For this reason, this work explores this niche to contribute to the literature by bringing a more profound analysis of the R2P normative contestation.

⁴¹ Human Rights Watch (HRW), Rights Trends in Syria, 2018. Available at <https://www.hrw.org/world-report/2019/country-chapters/syria>

5. Methodology and Theoretical Framework

5.1. Methodology

This study is developed through qualitative research of one norm, the Responsibility to Protect, and two case studies, the conflicts in Libya and Syria. The data collected for this study relies on international documents by the United Nations and other international organizations as well as, reports, documents and studies of NGOs. The study of the R2P is of paramount importance to international relations, because the R2P represents an attempt to put into practice what we have established in international human rights law and international humanitarian law. If we have struggled in our history to build minimum consensus about what human rights are, it is not surprising that the application of these norms in real scenarios has been very challenging. But the R2P has a direct impact on the lives of millions of civilians, its (non) application may constitute a matter of “to live or to die” to many people, there is why it is essential to continue studying why and how we are failing to protect them, but above all, we must evaluate whether, in all these failures, there have been important achievements. There have been substantial studies on the R2P, especially from the legal perspective. However, there has been scarce research of the R2P based on a constructivist perspective utilizing Libya and Syria together as case studies and this research aims to add to this literature.

The conflicts in Libya and Syria since 2011 have been chosen as the case studies to test the hypothesis because the international responses to each conflict were very different, then the contrast of each response is interesting to analyze the R2P. However, both Gaddafi and Assad have been connected to polemical facts and events, but only what has been proved was included in this work. In Libya, the UNSC approved NATO to intervene in the country based on Chapter VII of the UN Charter. Also, Libya has been referred to the ICC and all these actions have been based on the R2P. Although the conflict in Syria started in the same year, the responses to this conflict were very different. As permanent members of UNSC, Russia or China have vetoed every resolution to approve the use of force in Syria, and France has tried to refer Syria to the ICC through the UNSC which was also vetoed. The case in Syria is very delicate to R2P power because the conflict has been denominated as the worst humanitarian crisis since World War II by the UN Office of the

High Commissioner for Human Rights (OHCHR). The two cases are contrasts of the international responses based on the R2P, with the “success” of the R2P in Libya and its ‘failure’ in Syria.⁴²

There are several issues in defining the success or failure of the R2P. For instance, the application of military intervention can have an enormous impact in the State, and although it may halt violence, it does not necessarily bring stability in the long term⁴³. In this sense, the R2P can be regarded as a ‘success’ in its coercive response, nonetheless, its impact on the long term can adversely affect the State, and this could be constituted as an overall failure. One of the main issues is that these definitions can be subjective, therefore, it must be debated what accurately means “success” and “failure” when discussing the implementation of the R2P norm. Since the main goal of the R2P is to protect civilians trapped in an armed conflict, then, this work evaluates the R2P based on the norm premise settled by the UN which is specifically focused on to halt violence and save civilians. Following this rationale, the R2P has succeed if the UNSC has either applied the use of force or settled a military intervention based on the R2P. On the other hand, the R2P has failed when the UNSC has not been able to apply or approve any coercive measures to respond the conflict and/ or has not approved a military intervention.

5.2.Theoretical Framework

International relations theories provide theoretical lenses that aim to rationalize why and how events and processes occur within the international system. Among traditional international relations theories are realism, liberalism, and constructivism. While all theories have contributed significantly to the study of international relations, this work has adopted the constructivist perspective to analyze the R2P and the case studies of Libya and Syria. However, before addressing the main ideas of constructivism it is necessary to briefly justify why the other traditional theories are not suited for this study by presenting their main premises especially because this helps clarify why constructivism has been chosen.

One of the most important features of realism⁴⁴ is that it proposes that since the international

⁴² See PARIS (2014) and WELSH (2016) to a more detailed analysis of the contrasting response of the UN comparing Libya and Syria in 2011.

⁴³ See PAPE (2012) and WELSH (2016).

⁴⁴ The base of realism’s thought includes an array of philosophers, from Niccolò Machiavelli and Thomas Hobbes to

system does not have a supranational government that can regulate the States, we have an *international anarchy*. This would be a permanent characteristic of the system that cannot be changed. In this anarchy, states seek to survive, and they can support each other as an alliance to reach this goal (*cooperation as self-help*)⁴⁵. Nonetheless, realism is an overly State-centric theory, as it concentrates its political analysis on the State⁴⁶. In this sense, what happens inside a State is not relevant and the dynamics that occur in the international realm are a reflection of States' interests which are stable and the rational choice of statesmen⁴⁷. Nonetheless, as seen in Chapter 2, in the introduction of *new wars* and mass-killings in the post-Cold War, the actions of non-State actors have played an important part in international dynamics. Which means since realism overlooks the actions of non-state actors, its theoretical base is insufficient to develop a candid evaluation of the changing scenario in international politics. If realists do not address the actions of non-State actors, they do not consider their interests as well. They also assume that States' interests at the international level are obvious (FINNEMORE, 1996), pre-given, because they essentially seek survival. Realism relies on premises that are static, immutable, as the *international anarchy*. In this perspective, States are the only agents in the international system and their interests are the central reason that motivate action and behavior. The incapacity to predict the end of the Cold War⁴⁸ as well as the following international dynamics after the Soviet Union's disintegration has made realism lose its dominance in international relations.

On the other hand, liberalism is grounded on democracy and the role of institutions. In this sense, the liberal theory has focused on the international scenario after the end of World War II, with the creation of the UN and the institutionalization of norms as well as the creation of the World Trade Organization and World Bank to sustain an open, market-based international economic system. The main argument of liberalism is that institutions, norms, and an open market create an auspicious environment to sustain international peace⁴⁹ but they have also intensified the

Kenneth Waltz in neorealism. While this study acknowledges the complexity and nuances of different authors within realist and liberal theories, this section has focused on summarizing their common premises.

⁴⁵ See WALTZ, 1979.

⁴⁶ See JERVIS, 1978. Jervis' perspective is an example of how the analysis of politics according to the realist theory is concentrated on the relations between states as the only actors in the international system.

⁴⁷ See MORGENTHAU, 1985.

⁴⁸ See GADDIS, 1992.

⁴⁹ Based on Kant's cosmopolitan ideas in the Perpetual Peace from 1795, the international market has been correlated to peace because war adversely affects the economy.

interdependence among states. Following this rationale, Keohane and Nye have contributed to the liberal theory by emphasizing that this complex interdependence could be a source of conflict (KEOHANE and NYE, 1977) and they have also recognized the emerging role of non-State actors (KEOHANE AND NYE, 1971). In this sense, unlikely realists, some liberals have addressed the importance of other actors in the international system, as individuals, non-state actors, and international organizations. But the liberal theory has been criticized for its overly utopian perspective regarding global governance and its limitation in explaining behavior change in the international scenario as well as how different interests are raised.

Finally, it is worth adding the perspective of crises theory. But to even define what crises are is very difficult, as it may amount to distinct meanings to different actors. EVANS and NEWMAM (1998) introduces a crisis as a deviation from what it considered 'normal' and consequently, induces a response to the re-establishment of that is seen as the 'normalcy', the order. In this sense, the crises in Rwanda and Yugoslavia have pushed actors to define what a crisis is regarding the protection of civilians, and how we can respond to it, by creating the R2P. Which means under specific deviations as crimes against humanity, war crimes and genocide, we have designed not only a policy but an institutionalized response, the R2P.

Constructivist theory

The introduction of constructivism in International Relations is recognized by the work of Nicholas Onuf in *World of our Making: Rules and Rule in Social Theory and International Relations* (1989)⁵⁰. Subsequently, many authors have added different insights and perspectives to the theory, as in *Anarchy is what States make of it* by Alexander Wendt in 1992 and *Constructivism as an interdisciplinary approach* by Friedrich Kratochwill in 2001. Although constructivists may differ in several aspects, their common premise is that the world is socially constructed through intersubjective interaction between agents and the structure⁵¹. The agents are States and non-State actors, and the structure would be the environment we create through our actions. For instance, realism assumes that there is an *international anarchy* inherent to the international system because

⁵⁰ Several aspects of Onuf's work have been based on the field of Sociology as the work of Habermas in the Theory of Communicative Speech from 1981 and Anthony Giddens in the Structuration Theory from 1984.

⁵¹ See RISSE-KAPPEN (1997) and KRATOCHWIL (2001).

there is no supranational government, however, according to constructivists it is possible that we have this anarchy, but it is not pre-given, we have created, and we can change it.

One of the main differences between constructivism and the other traditional theories is its focus on how States' interests are raised and changed in different historical contexts through social interaction. The constructivist approach also consider that non-State actors play an important part in the international dynamics, which means not only States' interests are relevant in political analyses. However, even if scholars consider that other actors' motivations and interests influence the international dynamics, they often assimilate that regarding the R2P, only States can invoke, apply or constrain the norm because it is carried out within the UN. In this perspective, the UN, as an international organization, has been created because States want it to fulfill a specific function with a well-defined mandate. But is the United Nations as functional as it has been assumed in these perspectives? Then, why it has provided dysfunctional responses in different scenarios in the past? These are initial questions that demonstrate that the way IOs behave has not been explored by traditional IR theories and disregarding this complex behavior of IOs hamper a broader analysis of the R2P that ends up being simplified as either applied or not applied based on States' interests.

BARNETT and FINNEMORE (2004) provide an alternative approach to analyze IOs in general, including the United Nations. In this analysis, IOs are inherently bureaucracies created by States with a specific function. However, in this creation, States grant IOs the authority to fulfill a primary mission. If we have given consent to IOs to have authority that means that the sovereignty granted to States is not the only basis of authority in the international system, as it is often framed. While exercising this authority, the UN behaves in ways that were unanticipated by States when they created it. The UN has been able to advance concepts like peacekeeping and human security that do not belong to the UN Charter, the document that gave the UN its function. Furthermore, the UN utilizes its knowledge to create different ways to enforce its rules – monitoring compliance, creating mechanisms of transparency, and manipulating what information comes out⁵². Based on this, the UN orient how and why actors should behave. This dense normative network defines what is the expected behavior within the international system and political discourses are a relevant way

⁵² See JOACHIM et al (2007) to a more detailed analysis of how IOs utilize their authority and legitimacy to mobilize their available resources.

to inform us how important it is to actors to demonstrate that they fit into what is expected.

Discourses are an informative tool to analyze how political leaders attempt to justify their speeches and acts to fit in what has been established as minimally acceptable. Constructivists have utilized the analysis of discourse from Jürgen Habermas in his theory of communicative speech (1981), as Habermas reflects on a specific type of validity in a claim that one aims to justify. Based on Habermas' work, ONUF (1989) affirms that social reality starts with an action, but an act has its origin in the discourse. There is an intention in the discourse which indicates what actors want to show according to what is expected from them in the international system. For instance, in May 1994 during the Rwanda genocide, the U.S. Department of State refrained to use the word 'genocide' to refer to the conflict in Rwanda in press conferences. A National Security memorandum from the United States⁵³ concluded that 'the genocide label' had been avoided because the word *genocide* carries a heavyweight, as it is a serious crime that can be subjected to international prosecution. Furthermore, if the United States recognized that there was a genocide happening, they would have been pressured to act. In this sense, the United States wanted to fit its discourse in what is minimally "acceptable" in the international realm which is not to neglect a response to a large-scale crime. KRATOCHWILL (2001) posits that social communication and intersubjectivity are central to the analysis of decision-making. The details in the justification that political leaders use demonstrates the importance of what has been defined as minimally acceptable in the international system.

But can political discourses be an empty source of analysis if actors violate human rights, but continue to affirm that they do not? Political discourses are only one of the sources to perceive what States are recognizing as legitimate in the international system. At times, States have also committed to agreements that they did not intend to comply⁵⁴. Which means they do not only purposively adjust their discourses, but they also commit to them. HATHAWAY (2002) found out

⁵³ U.S. National Security Archive from The Department of State, May 21, 1994, Available at <https://nsarchive2.gwu.edu/NSAEBB/NSAEBB53/rw052194.pdf>

⁵⁴ See SIMONS (2009) and SIKKINK (2011) for a more detailed analysis of how leaders commit to agreements that originally, they did not intend to comply. The most striking example of this is when former General Augusto Pinochet from Chile was arrested in the United Kingdom in 1998 for the crimes committed during the Chilean dictatorship (1973-1990). In 1988, Chile ratified the Convention against Torture (CAT), but Pinochet did not consider that he, himself, could be arrested or prosecuted by torture, even after ratifying an international treaty regarding it.

that countries that had ratified the UN Convention Against Torture – CAT from 1985, had significantly higher practices of torture than countries that had not ratified the Convention. Following this study, VREELAND (2008) addressed how dictatorships that practice torture are more likely to ratify the CAT (1985). In this sense, although a dictatorship has ratified a convention it does not necessarily lead to a behavior change within its domestic politics. Then why would a country ratify a treaty if it does not have normative commitment? SIMMONS (2009) has proposed that States aim to glean praise, avoid criticism, and gain the immediate political benefit from formally committing to an agreement. In reality, at the time of ratification, States were not able to assess the risks of these commitments in the long term because the ways that they are pressured to comply, change. This changes because the principles within these human rights treaties are normatively connected within a machinery, the UN, that keeps creating international shared tasks, agendas, campaigns, mechanisms that curtail political actions. This curtailment does not seem like a State's interest.

Why are States adopting these political discourses and committing to these agreements while they are sovereign to decide what they want to do? Because IOs are able to create interests throughout their workplan and they are able to persuade States to perceive these as their interests. This is not a common perception of interests and IOs. Political analyses often regard IOs as vessels to bring into life the interests of powerful States. This is not only about the United Nations, but another IO that is also important to the R2P analysis is often defined as biased and controlled by powerful States. The International Criminal Court (ICC) is also evaluated as under powerful States' control especially because the permanent members of the UNSC can refer a case to the ICC. However, both the UN and the ICC have been granted authority and consequently have the autonomy in their decision-making processes to fulfill the mandate. For instance, the United States is a permanent member of the UNSC, but it has not ratified the Rome Statute, and consequently is not a member of the ICC. Paradoxically, because the United States is a member of the UNSC, they can refer a case to the ICC in a UNSC resolution, even though they are not a member of the Court. In 2019, the United States revoked the visa of ICC's prosecutor⁵⁵, Fatou Bensouda, after Bensouda

⁵⁵ The New York Times, U.S. Revokes Visa of I.C.C. Prosecutor Pursuing Afghan War Crimes. 5 April 2019. Available at <https://www.nytimes.com/2019/04/05/world/europe/us-icc-prosecutor-afghanistan.html>.

authorized an investigation of war crimes in Afghanistan in 2003⁵⁶, which can end up investigating American militaries that acted in the region at the time. Then, the ICC actions are not in line with the American interests. Does the ICC have autonomy? Unquestionably, limited autonomy, but that's certainly not what the United States was planning when they referred Libya to the ICC in 2011 through the UNSC, an act that has re-affirmed the legitimacy and authority of the ICC.

But framing IOs as bureaucracies also mean that IOs become *obsessed* in following their impersonal rules, what can make them inefficient at times (BARNETT; FINNEMORE, 1994). According to WEBER (1978), bureaucracies are the most efficient way to administrate complex tasks because they are perceived as legitimate. However, by following these rules, IOs have given dysfunctional responses at times. The most significant example in the case of the UN has been the genocide in Rwanda in 1994. The UN had a mission in the country based on Chapter VI of the UN Charter which means, the mission could not use force in Rwanda. As violence escalated up in the country, the UN did not quickly update its mission to Chapter VII, which could use force. This happened because the UN decided to follow its rules as the organization needed the approval of the UNSC to change the mandate of the mission. It is indeed contradictory, the UN must follow its rules to execute its work plan but following these rules may hamper the achievements of tasks required to fulfill the organization's primary function. However, without these impersonal rules, the UN would not have the legitimacy to put into practice its authority. Which means being a bureaucratic system, full of impersonal rules has given the UN legitimacy that the organization has utilized to disseminate a model of social organization based on human rights norms.

The premise of a world that is socially constructed embraces constant changes in the international system, including of interests, motivations and even the emergence of new agents because what matters change. For this reason, the constructivist approach is more easily adapted to the changing scenario of international politics. However, while recognizing that every theory provides a general reading, the constructivist theory is utilized in this work as a conceptual base to

⁵⁶ In 2016, the ICC's Office of the Prosecutor recognized that there was a reasonable basis to believe the USA had committed torture in Afghanistan in 2003, following, the report: International Criminal Court, Report on Preliminary Examination Activities 2016. The Office of the Prosecutor, 14 November 2016. Available at https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE_ENG.pdf.

understand the R2P as well as the chosen case studies.

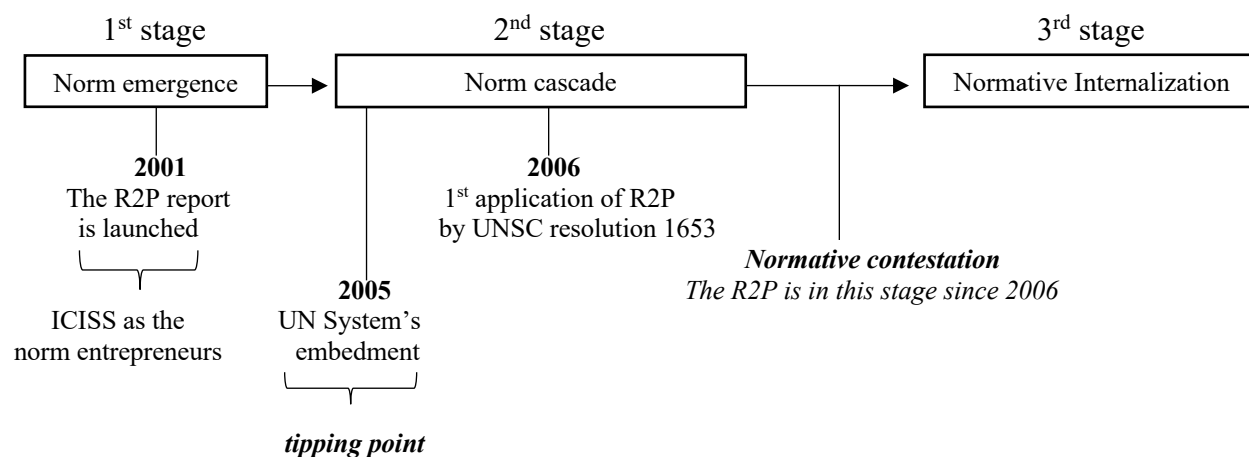
Reading the R2P through the constructivist theory

In the constructivist perspective, norms are central because they inform agents how they are supposed to act in the international system, they also justify, legitimate, and enable the change in actions (KRATOCHWILL, 2001). Nonetheless, how norms mature within an IO is crucial to understand the challenges and advances of the R2P itself. FINNEMORE and SIKKINK (1998) have proposed that norms evolve in a patterned life cycle which consists of:

1. Norm emergence
2. Norm cascade
3. Norm internalization

The first stage in the life cycle of a norm is its emergence, when norm entrepreneurs persuade actors to embrace the norm. The bridge between the first and second stage is called the “tipping point”, which is when a significant number of actors adopt the norm. This is the critical moment because this characterizes the perception of the norm as legitimated, it is the recognition that we should officially adopt a certain behavior regarding an issue. The second stage consists of a norm cascade. Even if actors have agreed on how to act under certain circumstances, we can only know how this works once it is put into practice. This can only be applied under real scenarios, we contest a norm during the socialization of actors, which can lead to setbacks or advances of the norm. Also, the actors that have not previously agreed with it, are pressured for conformity in the international realm. Finally, the last stage is the norm internalization. In this stage, a norm is no longer at the center of public debate. FINNEMORE and SIKKINK (1998) refer to this stage as habit. Based on SIMMONS (2009), this stage can either be achieved if the norm becomes a custom, or if it is institutionalized at the local level as a result of a convention’s ratification. Following this rationale, this work believes that the R2P can be read in the following way:

Figure 1.1. The development of the R2P in the international system



In the above framework, the R2P emerged with the ICISS report in 2001 and it was articulated by the ICISS as its norm entrepreneurs. The norm reached its tipping point with the unanimous embedding of the R2P at the UN system. Since a contestation process is unfolded in a context (WIENER and PUETTER, 2009), the R2P normative contestation has been occurring since 2006, when the UNSC applied the R2P norm for the first time through resolution 1653 in the Democratic Republic of Congo and Burundi. In this contestation stage, there are advancements of the norm (intervention in Libya) and setbacks (non-intervention in Syria).

6. Case Studies – Libya and Syria

The case studies chosen to evaluate the R2P are the armed conflicts in Libya and Syria since 2011. Although the uprisings in both countries have had roots in the Arab Spring, and the governments have directly targeted or attacked civilians, the UNSC's decision in each case was very different. Nonetheless, it is essential to contextualize this decision-making process based on a very brief historical background of Libya and Syria before the Arab Spring. Considering that both countries have been either ruled by a single leader (Muammar al-Gaddafi)⁵⁷ or by a single family in single political party (the Assads in the Ba'ath Party) since its independence⁵⁸, then, the introduction is initiated in the independence landmark. In the case of Syria, after the disintegration

⁵⁷ See JOHN (2009) to grasp the theory and practice of Gaddafi after its coup in 1969.

⁵⁸ See SEALE (1989); DRYSDALE and HINNEBUSCH (1992) to a more detailed analysis of the formation of the Ba'ath Party in Syria and the evolution of the Assads.

of the Ottoman Empire (1299-1922) following the end of World War I (1914-1918), and of Libya since the end of World War II (1939-1945).

The historical backgrounds of these countries are essential to the R2P analysis. When a “crisis” strikes, actors will consider underlying factors that are destabilizing the “order” in the country. For instance, social, economic, and political circumstances are considered in the decision-making processes of the R2P at the UN⁵⁹. This is a very important point because the goal of the R2P is not to re-establish order, but members of UNSC consider these factors to evaluate the “reasonable prospects” of their decisions. In the case of Syria and Libya, the escalation of a “crisis” amounts to March 2011, when mass protests arose in the Middle East and North of Africa as a series of anti-government upheavals that advocated pro-democracy changes. The protests that started in Tunisia quickly spread to Bahrain, Egypt, Libya, Syria, Yemen, and at a lower intensity to Algeria, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Mauritania, Morocco, Oman, Palestine, Saudi Arabia, Sudan, and Western Sahara (occupied by Morocco). This was the least democratic region of the entire world (PILLAR, 2011; CANNISTRARO, 2011) and the socially constructed identity framed in the protests, of Arabs living with similar issues, had a central role in this domino effect. The fall of Hosni Mubarak (Egypt), Muammar al-Gaddafi (Libya), Zine el Abidine Ben Ali (Tunisia), and Ali Abdullah Saleh (Yemen) inflamed the hopes of protestors from other countries. The idea was that since they shared common issues, they could also reach the same results. However, each country had particularities that have influenced the response of their regimes as well as of the international community’s (LYNCH; ADAY; FREELON, 2014).

6.1. Case study: Libya

Contextualization of Libya before the Arab Spring

The country that is today named Libya was so-called Tripolitania vilayet (composed by the sub-provinces Fezzan, Cyrenaica, and Tripoli) during the Ottoman Empire’s rule (1551-1911). At the Italo-Turkish war (1911-1912), the Kingdom of Italy declared war against the Ottoman Empire and conquered the Tripolitania territory, re-named Libya in 1934. However, in 1940 Italy joined

⁵⁹ The main goal of the UNSC is to maintain international peace and security (Article 24 of the UN Charter). However, to carry out its mandate, the Council takes political decisions which means, the Council considers the reasonable prospects of any coercive measure. Nonetheless, the UNSC’s functioning has also been affected by stalemate caused by the vetoed of a few UNSC Member States. See WOOD (1998) and BAILEY; DAWS (1998) to a more profound analysis of the nature of the UNSC, its political procedures and consequently, the interpretation of its resolutions.

the Triple Alliance (formed by Germany and the Austria-Hungarian Empire) that was defeated at the end of World War II (1939-1945) by the Triple Entente (formed by France, Great Britain, and the Russian Empire). On 21 November 1949, the UNGA established that Libya should become independent by no later than January 1952⁶⁰. Nonetheless, JOHN (2012) argues that this unification did not lead to national cohesion. Different tribes from Fezzan, Cyrenaica and Tripoli did not perceive themselves as Libyans, they still defined themselves based on their tribe/clan. This social/religious fragmentation since Libya's independence is an essential point when analyzing how and why protests arose in Libya at the Arab Spring in 2011. As the United Kingdom of Libya, the country became a constitutional monarchy under King Idris⁶¹, who was part of the Senussi tribe in Cyrenaica. While King Idris did not have much legitimacy outside of Cyrenaica, the protests in 2011 against Gaddafi were initiated in Cyrenaica, where tribes and clans did not associate themselves to the regime of Gaddafi. The thing is, Libya lacks a cohesive national identity, what have made different leaders very susceptible to insurgencies and instability (JOHN, 2009; 2012).

Under a very fragile monarchy, Libya discovered oil reserves that transformed its economy and politics. The per capita income in the country increased from \$35 in 1951, from the lowest of Arab countries, to over \$1,000 in 1967. However, most of the Libyan population was still struggling and reproached the conservative politics of the King Idris. Its anachronic politics was challenged by the modernization that came with the economic improvement in Libya (JOHN, 2012). This allowed the ascension of a populist and revolutionary rhetoric that opposed King Idris' ruling (JOHN, 2012; VANDEWALLE, 2012).

On 1 September 1969, the Libyan Free Unionist Officers, a group composed by army officers overthrew King Idris monarchy and constituted the Revolutionary Command Council (RCC) which exercised legislative and executive power within Libya. Subsequently, Muammar al-Gaddafi, a captain in the army, was promoted to colonel and head of the RCC. In this position,

⁶⁰ UN General Assembly, A/RES/289, 21 November 1949.

⁶¹ The Libyan Constitution from 1951 established a hereditary monarchy of the male successors of Sayyid Muahammad Idris al-Mahdi al-Sanusi, ancestor of Prophet Muhammad through his daughter, Fatima. The descendants consisted of the Senussi tribe from the North of Africa. King Idris was the final leader of the clan, which fought the Italian settlement in the country in 1911. For this reason, King Idris was exiled in Egypt from 1922 until 1951 while Libya was under Mussolini's leadership.

Gaddafi became the Head of State in Libya. The Libyan people were expecting a political modernization without the privileges and corruption of the former government especially because most of the RCC revolutionaries came from middle class and less prestigious tribes, Gaddafi himself came from a Bedouin tribe. In this sense, their populist rhetoric coincided with the economic rise (VANDEWALLE, 2012).

Although the beginning of the regime was marked by sentiments of Arab unity, Gaddafi was further known for two reasons. First, his ‘political’ theory, the Libyan leader published in 1975 the Green Book in which he created a political system that was supposed to solve the flaws of Capitalism and Communism. According to this theory, Libya would be a direct democracy, led by the people’s committee which was superior to the representative democracy of several capitalist countries like the United States and the United Kingdom. In practice, Gaddafi’s system was ultra-hierarchical with him and his allies at the top of the hierarchy (JOHN, 2012). Second, Gaddafi’s regime sponsored several terrorist acts, guerillas movements and many ‘revolutions’ outside of Libya that had a discourse against the West. For instance, as seen in Chapter 2, ‘International Security in a Post-Cold War World’, in the section about *new wars*, it is cited that Gaddafi financed Charles Taylor, a Liberian politician to invade Sierra Leone in 1989. While insurgent groups were often sponsored by Gaddafi, the Libyan army was underfunded. The Libyan leader strategically invested resources and training in elite units composed by tribal allies to the regime instead of the national army to avoid a possible coup against him (KAYE; WEHREY, 2011). Nonetheless, the regime became known for its infamous but indirect sponsorship, Gaddafi was also suspected of ordering different terrorist attacks in the West in the 1980s, as the explosion of Pan-Am flight 103 (killing 259 people) in Lockerbie, Scotland in 1988 and UTA flight 772 from Congo to Paris, exploded in Niger (killing 171) in 1989. The involvement of a Libyan Intelligence Officer (Abu Agela Mas’ud Kheir Al-Marimi) behind these attacks raised the suspicion over Gaddafi’s connivance⁶². The association of Gaddafi to these actions are based on his own stance, as he frequently came into public to praise these attacks, strangling Libya’s relationship with Western countries.

⁶² The United States Department of Justice published a note at its Office of Public Affairs in December 2020 confirming that the Libyan Intelligent Officer, Abu Agela Mas’ud Kheir Al-Marimi, was charged for the terrorist attacks in Lockerbie, Scotland in 1988. Available at <https://www.justice.gov/opa/pr/former-senior-libyan-intelligence-officer-and-bomb-maker-muamar-qaddafi-regime-charged>.

The Arab Spring in Libya and the fall of Gaddafi

On 15 February 2011, protests inspired by the Arab Spring arose in several cities of Eastern Libya, among them Benghazi which is localized in the region of Cyrenaica, where Gaddafi lacked legitimacy. The government's response was violent, and hundreds of civilians were killed in the following weeks. Although it was reported that Gaddafi's forces were firing at Libyan civilians in peaceful protests⁶³, the support of the army to the regime was not cohesive. At the time of the uprising, Gaddafi had been training select security units and not the whole national army (WEHREY, 2011, VANDEWALLE, 2012).

On 25 February 2011, the HRC spell out Libya for gross and systematic violence against civilians, committed by the highest level of the Libyan government, including extrajudicial killings, arbitrary arrest, murder, torture that could amount to crimes against humanity. The HRC report not only pointed out that Libya should protect its civilians, but based on its findings, the Council decided to dispatch an Independent Commission of Inquiry in Libya (COI-Libya) to investigate all alleged violations of international human rights law, and to possibly identify all the perpetrators⁶⁴.

On the same day, the UNSC was already discussing the escalating violence in Libya at its 6490th meeting. The Special Adviser on the Prevention of Genocide and the Responsibility to Protect reminded Libya and the international community of the responsibility to protect the Libyan people. At the same meeting, Libya's representative at the UN, Abdel Rahman Shalgam, denounced the crimes committed by the Libyan regime and Gaddafi's intention to kill anyone against him. The last sentence of Shalgam at the UN was: "Libya was established by a resolution of the United Nations. Please, United Nations, save Libya"⁶⁵. Shalgam's pledge, as the former Minister of Foreign Affairs of Libya pleading for assistance from the UNSC had a direct effect on the Council's response, at that moment, the veil of sovereignty immunity *vanished* (MURTHY, 2018). In the 2009 document on "Implementing the Responsibility to Protect", one of the main points in the operationalization of the R2P at the UN was that the organization should focus in helping the

⁶³ Human Rights Watch (HRW), Libya: Security Forces Kill 84 Over Three Days, 18 February 2011. Available at <https://www.hrw.org/news/2011/02/18/libya-security-forces-kill-84-over-three-days>.

⁶⁴ Human Rights Council (HRC), A/HRC/S-15/1, 15th session, 25 February 2011.

⁶⁵ UN Security Council, S/PV.6490, 6490th meeting, 25 February 2011.

State fulfill its responsibility. In the case of Libya, a representative of the Libyan State was pleading help from the international community and accusing Gaddafi of threatening Libyans. On the following day, 26 February 2011, the UNSC issued Resolution 1970 based on Chapter VII of the UN Charter (allowing the use of force)⁶⁶ that established an arms embargo, assets freeze, and travel ban on Gaddafi, his family members and other Libyan officials. Furthermore, the Council decided to refer Libya to the ICC to investigate the events occurred in the country since 15 February 2011⁶⁷. This was the first time that the UNSC, in the same resolution, approved an action based on Chapter VII of the UN Charter based on the R2P.

Following the continuing use of violence in Libya, the UNSC issued Resolution 1973⁶⁸ in March 2011. The resolution, based on the Chapter VII of the UN Charter, demanded a ceasefire, no fly zone, reenforced the arms embargo, ban of flights and assets freeze. Like the Resolution 1970, the UNSC recalled Libya of its responsibility to protect its population, nonetheless, in this resolution the UNSC authorized a regional organization or arrangement to take all the necessary means to enforce the proposed measures, without a direct foreign intervention in the country. After international pressure, Gaddafi reiterated that he would have no pity, no mercy with Libyans that were against him. On 17 March 2011, Gaddafi gave a polemical speech as he called the opposition ‘cockroaches’ and affirmed that ‘any Libyan who takes arms against Libya would be executed’ (BELLAMY, 2011).

The Resolution 1973, allowing a coercive action led by a regional organization or arrangement, was crucial to NATO’s response in Libya. On 22 March 2011, NATO initiated its mission, the NATO Unified Protector in Libya which enforced the arms embargo and the no-fly zone, but it also attacked Gaddafi’s forces justifying its actions according to its mandate of protecting civilians. Meanwhile, the COI-Libya initiated its inspection on-site however, the situation was extremely unstable, what complicated an effective investigation. For this reason, the Commission concluded in June 2011 that it needed further investigation to identify exactly which crimes had been

⁶⁶ UN Security Council, S/RES/1970, 26 February 2011.

⁶⁷ The UNSC determined a few reservations regarding Libya’s referral to the ICC, for instance, officials and personnel from other States in Libya were excluded from the ICC’s jurisdiction.

⁶⁸ UN Security Council, S/RES/1973, 17 March 2011.

committed and who were the perpetrators⁶⁹. Amid several attacks by NATO, Gaddafi was cornered by the opposition, and rebels killed the Libyan leader on 20 October 2011⁷⁰. Following Gaddafi's death, NATO's mission in Libya ended on 31 October 2011⁷¹. The COI-Libya issued its final report on 8 March 2012 and concluded that systematic crimes had been committed by Gaddafi's regime as acts of enforced disappearance, murder, torture against the civilian population, which constituted crimes against humanity and war crimes⁷².

Table 1.3. The development of the Libyan conflict since 2011 and the UNSC response

<i>Escalation of violence</i>	<i>Classification of the conflict according to the ICRC</i>	<i>Crimes committed in the country confirmed by the commission of inquiry*</i>	<i>Use of Chemical Weapons</i>	<i>Crimes under the R2P's umbrella</i>	<i>Non-coercive measures</i>	<i>Coercive measures**</i>	<i>UNSC Resolutions R2P-based</i>
February 2011	Non-international conflict since March 2011 International Humanitarian Law is applicable	Torture and other ill-forms of treatment Unlawful killings Sexual violence Arbitrary detention and enforced disappearances Use of prohibited weapons Cluster munitions and Landmines Use of child soldiers Pillaging	N/A	CAH War crimes	Establishment of Commission of Inquiry in March 2011	Arms embargo Assets freeze Travel ban Ceasefire	S/RES/1970 (2011) S/RES/1973 (2011) S/RES/2016 (2011) S/RES/2040 (2012) S/RES/2095 (2013)

* Report of the International Commission of Inquiry on Libya by the HRC (A/HRC/19/68), 28 January 2014

** Coercive measures are defined as decisions taken by the United Nations Security Council based on Chapter VII of the UN Charter, allowing the use of force.

Libya has been under a peace process after the fall of the Gaddafi's regime. In 2011, the international community recognized the main opposition group to Gaddafi, the National Transition Council (NTC) as the interim government. Based on parliamentary elections held in 2012, the UN helped to establish the Government of National Accord (GNA) in 2015, based in Tripoli and led by Prime Minister Fayez al-Serraj. The UN has been focused on helping Libya to legitimate a centralized government that is able to reconstruct state unity. For this reason, the UN established the United Nations Support Mission for Libya (UNSMIL), a special political mission that is still

⁶⁹ Human Rights Council (HRC), A/HRC/17/44, International Commission of Inquiry in Libya, 1 June 2011.

⁷⁰ Human Rights Watch (HRW), Report Death of a Dictator, 16 October 2012.

⁷¹ North Atlantic Treaty Organization (NATO), NATO and Libya, June 2015.

⁷² Human Rights Council (HRC), A/HRC/19/68, International Commission of Inquiry in Libya, 8 March 2012.

carrying out its mandate to support a political dialogue led by Libyans as well as national reconciliation⁷³. Nonetheless, another administration has been formed in parallel by Khalifa Haftar in Benghazi in Mid-May 2014⁷⁴. Haftar was a former Libyan General, among the militaries that organized a *coup d'état* in Libya in 1969 and helped Gaddafi to seize power. But after breaking with Gaddafi, Haftar moved to the United States and came to Libya in 2014. Haftar currently controls the remnants of the Libyan army (the Libyan National Army-LNA) as well as militias from Cyrenaica but has failed to take control over Tripoli.

The mistrust between different clans and tribes is still very much embedded in the social and political dynamics of Libya. Armed groups in the country continue to define themselves by local affiliation which constitutes an enormous obstacle to state building. A functional government was never restored in Libya and the UN has struggled to advance the peace process in the country. This is one of the main arguments offered by scholars who believe that the R2P application in Libya was not successful, that the country is not stable and has been suffering with recurring cycles of violence. However, this is a misleading approach because first, in the R2P operationalization at the UN, the organization never affirmed that the R2P must bring stability and sustainable peace to a country. Second, establishing sustainable peace as the corollary of a coercive action based on the R2P gives the norm more commitments than it has. For this reason, this work evaluates that the R2P has been successful in Libya based on the approval of Resolution 1970 by the UNSC that authorized a regional arrangement to take coercive action and consequently, authorized NATO's intervention in Libya from 22 March 2011 until 31 October 2011. Considering that the goal of the R2P is to protect civilians when the State is unable to, or the State itself is committing the attacks, the R2P application can be considered successful in Libya because:

- (1) NATO succeeded in dismantling Gaddafi's continuous attacks against civilians based on the approval of Resolution 1970 by the UNSC based on Chapter VII of the UN Charter, and consequently authorized regional arrangements, as NATO, to take over the collective use of force in Libya. In this sense, NATO was able to halt the on-going violence. At the 2005 World Summit document, it was clear that if the State itself is committing the crimes, it lays within the UN the responsibility to protect the population. Therefore, targeting the regime that is carrying out systematic attacks against civilians are among one of the measures that must be taken to reenforce the responsibility to protect, and consequently, this can lead to a regime's deposal.

⁷³ UN Security Council, S/RES/2009, 16 September 2011.

⁷⁴ Human Rights Council (HRC), A/HRC/28/51, 12 January 2015.

- (2) The 1970 Resolution has also been able to refer Libya to the ICC to guarantee accountability for the crimes committed in Libya in 2011.

Although the adoption of the R2P by the UN in 2005 by the UNGA and in 2006 by the UNSC, as well as its operationalization in 2009 do not directly address accountability for these crimes, the ICISS report introduced that to fight impunity is an essential part of the reconstruction pillar, and to prevent these crimes of re-escalating. Therefore, the R2P application in Libya was not only successful because the approval of Resolution 1970 fulfills the main goal of the R2P at the UN – to enforce the responsibility to protect civilians by stopping the escalation of violence, but it was also a decision that attempted to guarantee accountability for these crimes and better connect the UN with the ICC. In the R2P literature review, PAPE (2012) affirmed that the UN had not settled a threshold for when the organization should take a coercive action based on the R2P, but in Libya, the UN has created precedents that can be used in the future to establish this threshold and avoid the vagueness around the R2P application. At last, the R2P application in Libya amounts to a faster crisis response to halt systematic violence when compared to the UN response to violence committed during the 1990s in Yugoslavia and Rwanda, therefore, the UN has carried out a more timely and decisive response as it was proposed at the R2P creation.

6.2. Case study: Syria

Contextualization of Syria before the Arab Spring

After the end of World War I (1914-1918), the Ottoman Empire (1299-1922) was disintegrated, and the Sykes-Picot agreement (1916) between France and Great Britain determined the division of the Middle East. The colonial rule only added up to the grievances of the emergence of Israel that challenged an Arab union and the social fragmentation within the Syrian society, nurtured by the Ottoman Empire's rule (SAOULI, 2018). The region formerly known as the Greater Syria (so-called *Bilad al-Sham*) was divided between France (controlling Syria and Lebanon) and Great Britain (controlling Palestine, Jordan). Furthermore, the Treaty of Lausanne (1923) aggravated the tension with the full disintegration of Kurdistan into four territories added to Syria, Iraq, Turkey, and Iran.

In 1924, Syria officially became a territory under the French administration and gained independence in 1946. Since its independence until 1970, Syria had 25 Prime Ministers that either

resigned or were overthrown by military rebellions. The Ba'ath Party, established in 1947, also organized a *coup d'état* in 1963, but was not able to maintain political and economic stability in the country (SAOULI, 2018). But in 1971, Hafez al-Assad, associated with the Ba'ath Party, organized a coup, and became the first non-Sunni President in the modern history of Syria. Assad belonged to a religious minority called Alawite, a Shia sect of Islam in Syria⁷⁵. For the first time since the independence in 1946, Syria did not have such tumultuous politics as seen in the previous years.

During his regime, Hafez established the People's Assembly (as a legislative branch) and the National Progressive Front (a coalition of political parties). Although these initiatives may suggest a democratic inclusion, both of them could only operate under Ba'ath control. Therefore, they were highly monopolized by the regime. To avoid another coup, Hafez controlled the army and intelligence agencies and relied on its Alawite network that has dominated most of the government positions in the country. One of the main discourses of the Party was that it aimed to overcome sectarianism (SAOULI, 2018). In this rationale, minorities would be "threatened" by the Sunni majority, for this reason, Alawites, Druzes and Christians directly supported the regime. The Alawites, more specifically, have dominated the army which have had a symbiosis with the Party. Nonetheless, the regime had a significant opposition. In 1978, Hafez entered in a civil war against the Muslim Brotherhood⁷⁶, the conflict ended with a massacre in 1982 in the city of Hama, with the victory of Assad. A Sunni uprising did not repeat in Syria, even though Sunnis represent the majority of the Syrian population. One of the main reasons for this is that the opposition of Assad is not a monolithic group, therefore, the ideology behind this uprising did not resonate with many Muslims (SAOULI, 2018).

Hafez planned to maintain the Assad family ruling Syria after him. For this reason, his son, Bassel al-Assad was supposed to take over his lead, but he died in 1994. Following Hafez's death in 2000, his other son, Bashar al-Assad, took over presidency after his father. Within the first

⁷⁵ According to Minority Rights, there are several religious groups (and sub-groups) in Syria. Within Islam, 75% are Sunni, 2% Shia, and 12% Alawite (which is a sect within Shia Islam). Regarding other religions, about 10% are Christians, 3-4% are Druzes and 1% Yezidis. Available at <https://minorityrights.org/country/syria/>.

⁷⁶ The Muslim Brotherhood is a Sunni transnational organization that started as an Egyptian movement aiming to educate the youth based on traditional Sunni beliefs (MERIBOUTE, 2013). See ANANI (2016) to have a more detailed analysis of the Muslim Brotherhood as a religious group with a social aim but with a political stream.

months of Bashar's government, there was a sort of political openness in Syria, with amnesties to political prisoners, license to private newspapers, and permission of political forums. This openness led to an ascension of civil society in the country that quickly suffered a backlash of the government with the imprisonment of pro-democracy activists. In the following years, the Syrian regime did conduct a few economical, monetary and administrative reforms but without a concrete political reform, maintaining the model of one-state Party, and the domination of Syrian politics in the hands of the same family since 1963 (LESCH, 2012). Bashar was pathing a very unique type of government, as according to PERTHES (2004), he was attempting to 'modernize authoritarianism'.

The Arab Spring in Syria and Syria's Civil war.

The origins of the uprising in Syria are complex, since 2011 the country has been in a war until Bashar al-Assad recent 'victory'⁷⁷. Nonetheless, although the conflict has been frequently associated with the underlying tension between different sects of Islam (Sunni, Shia and Alawite), there is a specific point that several scholars have mentioned regarding the Syrian uprising. FEIERABEND (2019) describes the Syrian conflict as a climate conflict. That is because from 2007 until 2010, the Fertile Crescent in Syria experienced the worst drought recorded in modern history. The lack of sustainable policies to manage poor natural resources has made Syria less capable to deal with the increase of droughts' severity and length. Henceforth, families that relied on farming had to migrate to other cities in search of work. However, the cities lacked the capacity to absorb the 1.5 million people that were displaced (KELLEY et al, 2015). Therefore, poverty, unemployment, and displacement exacerbated the severe conditions of living in the country. For this reason, when the Arab Spring protests arose in neighboring countries, the outrage regarding the entire political, social, and economic context along with the poor standards of living resonated with millions of Syrians. The ideas spread throughout the MENA region resonated with peripheral areas in Syria under a deeper socio-economic hardship, such as Deera, Latakia, Idlib, Tartus and

⁷⁷ The media has frequently reported Assad's victory in Syria, but it is still very premature to affirm this. This has been highly linked to the regime's reclaim of cities like Aleppo and its force in Damascus. But it has also been connected to Syria's recent election held in May 2021 - which has been accused of being rigged, after the victory of Bashar al-Assad. In 2021, after 10 years of armed conflict, Syria is shattered, and ISIL is still active and represents an alarming threat in the North of the country. See articles about Assad's recent victory available at BBC News (27 May 2021) <https://www.bbc.com/news/world-middle-east-57277336> and the New York Times (11 October 2021) <https://www.nytimes.com/2021/10/11/world/middleeast/al-assad-syria.html>.

Hama. Nonetheless, they have mainly resonated with Sunnis that perceived the Assad regime as sectarian (SAOULI, 2018). In the case of Syria, it is likely that the climate hardship along with domestic grievances triggered the population to pressure the Assad regime.

In early 2011, groups on the internet were stirring up a revolution by aligning Syria with other Arab countries (ADAY, FREELON and LYNCH, 2014). The initial protestors perceived Syria as part of an Arab bloc, and based on the fall of Egypt's leader, Hosni Mubarak and Tunisia's leader, Zine el-Abidine Ben Ali, Syrians expected the Syrian regime to succumb as well. Nonetheless, in 2012, the underlying narrative in the Syrian protests changed from an Arab identity towards sectarianism (LEENDERS AND HEYDEMANN, 2012). If Syrians expected the regime to fall, Assad did not even expect that Syria would be influenced by the uprisings in Egypt and Tunisia. As a matter of fact, Syria was very different from these two other countries. There were no specific leaders to mobilize masses to protest, the Syrian civil society was controlled by the regime and Western NGOs did not have a lot of access to Syria (HINNEBUSCH and IMADY, 2018). Furthermore, unlikely Egypt, the Syrian army and the Assad regime have been strongly tied. Based on this connection, the Assad regime purposely utilized the army-party symbiosis against the opposition while instrumentalizing sectarianism in the country (LESCH, 2013).

As violence escalated in Syria, the League of Arab States (LAS) suspended Syria's membership from the organization following several economic and political sanctions⁷⁸ in November 2011. However, only on 14 July 2012, the Syrian conflict was "officially" defined as a civil war, when the International Committee of the Red Cross (ICRC) formalized it as non-international (internal) armed conflict which has a legal impact, since International Humanitarian Law (IHL) became applicable in the Syrian conflict⁷⁹. Which means the parties in Syria became subjected to international prosecution for war crimes committed during the conflict, for instance. The crimes committed in Syria in early 2011 were similar to the ones in Libya, enforced disappearances,

⁷⁸ United Nations News, 12 November 2011. Available at <https://news.un.org/en/story/2011/11/394812-ban-welcomes-decision-arab-league-suspend-syria>.

⁷⁹ In times of war, International Humanitarian Law (IHL) encodes the rules regarding the protection of civilians on the Fourth Geneva Convention from 1949, as well as the 1977 and 2005 additional protocols. Since the International Committee of the Red Cross (ICRC) acts as the guardian of the Geneva Conventions, when the ICRC specifies that a certain conflict is a civil war, it means that any future prosecutions of the involved parties are under IHL, and may constitute war crimes, for instance.

arbitrary detention, murder, torture, constituting systematic attacks against the civilian population. But the death toll was higher than in Libya, and the international response was very slow (HUMAN RIGHTS WATCH, 2011). In August 2011, the International Independent Commission of Inquiry in the Syrian Arab Republic (COI-Syria) was established within the Human Rights Council (HRC) with a mandate to investigate all alleged violations of international human rights law since March 2011 in Syria⁸⁰. However, other UN entities and bodies continued to pressure the Syrian government and other parties to respect international human rights law, including IHL. In February 2012, the UN and the LAS appointed former Secretary-General, Kofi Annan, as the Joint Special Envoy in Syria⁸¹. Subsequently, in April 2012, the UNSC established a UN Supervision Mission in Syria (UNSMIS) in which Annan drew a six-point plan and outlined the *Geneva Communiqué* that proposed a ceasefire and specific principles as well as guidelines to a Syrian-led political transition. But the human rights violations in Syria became more barbaric and systematic when in 2013, the use of chemical weapons were reported in the country.

The Syrian government itself requested the UN to officially establish an investigation of allegedly use of chemical weapons by terrorist groups in Khan al-Asal in March 2013 (EDWARDS and CACCIATORI, 2018). For this reason, the UN Secretary-General, Ban Ki-Moon, decided to establish the UN Mission to Investigate Allegations of the Use of Chemical Weapons in Syria⁸². In June 2013, COI-Syria reported that there were ‘reasonable grounds to believe that chemical agents have been used as weapons’ but ‘the precise agents, delivery systems or perpetrators could not be identified’⁸³. At this point, the UN and the international community knew that chemical weapons were being used in Syria but could not elucidate by whom, especially because in September 2013, Human Rights Watch (HRW) denounced the use of chemical weapons in August 2013 against the opposition-controlled suburbs of Damascus, Eastern and Western Ghouta. The attacks occurred mainly against civilians, including children, and the HRW analyzed the physical remnants of the weapons system used, the medical symptoms of the victims as well as the

⁸⁰ Office of the High Commissioner for Human Rights (OHCHR), Human Rights Council, S-17/1, 22 August 2011.

⁸¹ UN General Assembly, A/RES/66/253, 21 November 2011.

⁸² This decision was based on UNGA’s Resolution 42/37 C (1987) and UNSC’s Resolution 620 (1988) that requests the Secretary-General to carry out investigations of reports indicating the possible use of chemical weapons.

⁸³ Human Rights Council (HRC), A/HRC/23/58, Report on the Independent International Commission of Inquiry for the Syrian Arab Republic, 18 July 2013.

witnesses' statements⁸⁴. In September 2013, the UNSC endorsed the decision of the Organization for the Prohibition of Chemical Weapons (OPCW) to account, inspect control, and eliminate chemical weapons in Syria⁸⁵ but only in 2015, the UN and OPCW established a joint mission to oversee the elimination of chemical weapons and a joint investigative mission to discover its perpetrators (UN-OPCW JIM)⁸⁶. The fact-finding mission concluded in 2017 that chlorine and sarin were used by the Syrian government, and sulfur mustard by terrorist groups⁸⁷.

Since 2011, the UNSC have met several times to decide how to proceed in Syria. But any coercive action based on the Chapter VII of the UN Charter has been vetoed. Not even the chemical weapons were able to shift the position of the Council. From 2011 until 2020, China and Russia had jointly vetoed 10 resolutions, including an attempt to refer Syria to ICC in 2014 and Russia alone has vetoed other 6 resolutions regarding Syria⁸⁸. Most of the resolutions that were vetoed have recalled that the primary responsibility to protect its populations lies with Syria, and furtherly attempt to take a decision based on Chapter VII of the UN Charter. On the other hand, since 2011, the HRC has issued 37 resolutions condemning the crimes committed in Syria, and most of these decisions were based on the R2P⁸⁹. Currently, the UN's work in Syria is based on the *Geneva Communiqué* (2012)⁹⁰ and the Resolution 2254 (2015) as the main guidance in the talks between the UN and Syrian parts, and current UN Secretary-General, Antonio Gutierrez, affirms that the solution in Syria must be arranged by a negotiated political settlement. The UN has been working with the Syrian authorities and opposition towards a political transition.

Although sectarianism is one of the main features of the tension in Syria, the opposition to Assad are not only Sunnis that want the end of an Alawite regime. The opposition to the Syrian

⁸⁴ Human Rights Watch (HRW), Report Attacks on Ghouta, 10 September 2013.

⁸⁵ The UNSC approved Resolution 2118 (2013) that endorsed the OPCW's decision (EC-M-33/DEC.1).

⁸⁶ UN Security Council. S/RES/2235, 7 August 2015.

⁸⁷ UN Security Council. Report of the Organization for the Prohibition of Chemical Weapons- UN Joint Investigative Mechanism (OPCW-UN-JIM). S/2017/904, 26 October 2017.

⁸⁸ The following UN Security Council Resolutions were vetoed: S/2011/612 (2011), S/2012/77 (2012), S/2012/538 (2012), S/2014/348 (2014), S/2016/846 (2016), S/2016/1026 (2016), S/2017/172 (2017), S/2017/315 (2017), S/2017/884 (2017), S/2017/962 (2017), S/2017/970 (2017), S/2018/321 (2018), S/2019/756 (2019), S/2019/961 (2019), S/2020/654 (2020), S/2020/667 (2020).

⁸⁹ Compilation organized by the HRC in 2021.

⁹⁰ UN Security Council and UN General Assembly, Final Report Geneva Communiqué, A/66/865-S/2012/522, 6 July 2012.

regime is not monolithic. But the opponents can be roughly divided into two groups, the first is the group that want Assad's deposal (composed by international or regional actors, and Syrians from different groups – Muslims, Christians, etc.) and the second group is formed by Sunni *jihadists*⁹¹, or terrorist groups. The number of parties in the conflict is way higher, but they are not necessarily on the ground. These groups usually finance one (or more) of the three main parties in Syria – the Assad regime, the opposition, or the terrorist groups. This characterizes the Syrian conflict as a proxy war, as actors have sponsored third parties to defend their interests in Syria (PHILLIPS; VALBJORN, 2018). The presence of terrorist groups in the region further aggravates the conflict. The political vacuum in the region have facilitated the activities of terrorist groups like *Al-Qaeda* and its corollaries, the *Islamic State of Iraq and the Levant* (ISIL) and *Al-Nusra Front*. Both ISIL and Al-Nusra Front surged after in Iraq after the 2003 American invasion. Although all groups aim to establish a caliphate, they have different strategic and ideologies what have made them even attack each other because of disagreements.

In addition to the non-intervention in Syria, the UNSC's stalemate also contributed to non-accountability for the crimes that have been committed in the Syrian civil war since 2011. But an unprecedented action by the UNGA changed this. The deadlock of the Security Council was so significant that the General Assembly condemned the violence that was being committed in Syria as well as the UNSC's inaction (Resolution A/66/253 and Resolution A/66/253B from 2012). On 21 December 2016, the Assembly established a mechanism⁹² to assist in the investigation and prosecution of persons responsible for the crimes in Syria. The *International, Impartial and Independent Mechanism to Assist in the investigation and the Prosecution of Persons Responsible for the Most Serious Crimes Under International Law Committed in the Syrian Arab Republic since March 2011* is also called IIIM-Syria. The IIIM-Syria is not a Court, but it collects and analyses proofs to assist future criminal proceedings that can be carry out by a national, regional, or international court. The IIIM-Syria relies on evidence collected by different UN entities, joint-investigative mechanisms (as the OPCW for chemical weapons), international organizations,

⁹¹ *Salafi-Jihadism* consists of a movement that adopts several traditions of Sunni Islam based on ancestors (*Salaf*) because they believe that this would be the purest form of Islam. Individuals in this movement can advocate this traditionalism through violence (*Jihad*) to enforce their beliefs.

⁹² UN General Assembly. International, Impartial and Independent Mechanism to Assist in the investigation and the Prosecution of Persons Responsible for the Most Serious Crimes Under International Law Committed in the Syrian Arab Republic since March 2011 (IIIM-Syria). A/RES/71/248, 11 January 2017.

NGOs, foundations, and individuals. But the mechanism also gather evidence from the Commission of Inquiry in Syria (COI-Syria), that started to document violence that may constitute crimes against humanity since March 2011⁹³. Within a year of investigation, the Commission affirmed that it had reasonable evidence that war crimes were also committed in Syria. In 2012, the COI-Syria affirmed that the large operations, modus operandi and complexity of the attacks indicated the involvement of the army and the Syrian government. Including with the involvement of an Alawi militia, the *Shabbiha*, in favor of the Ba’ath regime (HINNEBUSCH, 2012). The COI-Syria has explicitly affirmed that the Syrian government has failed its responsibility to protect its people, using the language of the R2P. The Commission also recognized that other groups, as opposition, and terrorist groups were accountable for the attacks⁹⁴.

Table 1.4. The development of the Syrian conflict since 2011 and the UNSC response

<i>Escalation of violence</i>	<i>Classification of the conflict according to the ICRC</i>	<i>Crimes committed in the country confirmed by the commission of inquiry*</i>	<i>Use of Chemical Weapons</i>	<i>Crimes under the R2P's umbrella</i>	<i>Non-coercive measures</i>	<i>Coercive measures**</i>	<i>UNSC Resolutions R2P-based</i>
March 2011	Non-international conflict since July 2012 International Humanitarian Law is applicable	Torture and other ill-forms of treatment	Sarin	CAH	Establishment of Friends of Syria Group (Dialogue outside of the UNSC)	N/A	S/RES/2139 (2014)
		Unlawful killings	Chlorine	War crimes			S/RES/2165 (2014)
		Sexual violence	Sulfur mustard				S/RES/2258 (2015)
		Arbitrary detention and enforced disappearances			Establishment of Commission of Inquiry in August 2011		S/RES/2332 (2016)
		Use of prohibited weapons Cluster munitions and Anti-personnel Landmines)			Suspension from the LAS		S/RES/2393 (2017)
		Starvation of civilians as a method of combating			Deployment of monitors		S/RES/2449 (2019)
		Pillaging			Mediation (Secretary-General's Good Offices and Special Envoy for Syria)		

* *Report of the International Commission of Inquiry by the HRC (A/HRC/RES/S-15/1), 21 October 2016.*

** *Coercive measures are defined as decisions taken by the United Nations Security Council based on Chapter VII of the UN Charter, allowing the use of force.*

⁹³ Human Rights Council (HRC). Report of the Independent International Commission of Inquiry on the Syrian Arab Republic. A/HRC/S-17/2/Add.1, 2011.

⁹⁴ Human Rights Council (HRC). Report of the Independent International Commission of Inquiry on the Syrian Arab Republic (COI-Syria). A/HRC/21/50, 16 August 2012.

Based on the main goal of the R2P and comparing to how the R2P was applied in Libya, it can be concluded that the R2P has failed to enforce the protection of civilians in Syria. It is even difficult to delineate what are the actions taken in Syria based on the R2P because any resolution attempting to take a more coercive action has been vetoed. Other UN entities, as the UNGA and the HRC have taken several different decisions based on the R2P, but the UNSC itself has been in a stalemate since the start of the Syrian conflict in 2011. However, the most compelling argument that the R2P has failed in Syria is that even after the use of chemical weapons in the country, Russia and China still vetoed any coercive action taken by the UNSC to protect civilians in Syria.

6.3. Analyzing Libya and Syria as case studies

The social and political dynamics in Libya and Syria share common aspects, both countries were under dictatorships⁹⁵ at the beginning of Arab Spring, ruled by regimes that rose under the same political ideology. Initially, both Muammar al-Gaddafi and Hafez al-Assad strengthened their leadership by associating their regimes with *Pan-Arabism*, an Arab movement that seeks to unify Arab countries from the MENA region under a single political system. The movement is tied to post-colonial history in MENA (MOHAMEDOU, 2018) and several political leaders in the region rose by utilizing this type of discourse because Arabs were aggravated by the direct involvement of Western countries in their region, with the design of accords like the Sykes-Picot Agreement (1916), for instance. Such agreements represent an intervention that has aggravated former tensions between different groups, tribes, and clans in the region.

However, the common point between these regimes is not their initial adherence to *Pan-Arabism*, but how they have strategically adapted their political discourse to maintain themselves in power. Both Gaddafi and Assad were drawn by the ideas of the Egyptian leader, Gamal Abdel Nasser, the main figure of *Pan-Arabism*, but the movement suffered a decline in MENA after

⁹⁵ Dictatorships can be defined as “political systems with limited, not responsible political pluralism, without intensive nor extensive political mobilization, and in which a leader or a small group exercises power within formally ill-defined limits” (LINZ, 2000). On the other hand, PRZEWORSKI et al. (1996) defines dictatorships as an antonym of democracies which are defined as regimes in which leaders are selected through contested elections. In this case, this work considers that dictatorships are mainly characterized by the lack of contested elections, and consequently, the maintenance of a single leader or a single group/party in the political system. Following this rationale, Libya and Syria have been under dictatorships, with the leadership of Muammar al-Gaddafi in Libya since 1969 and the Ba’ath Party with Hafez and Bashar al-Assad in Syria since 1971 (more specifically under the leadership of a single family, the Assads).

Nasser's death in 1970. In the following years, both Gaddafi and Assad demonstrated that their adherence to *Pan-Arabism* were not an ideological passion, but a strategy to adhere to an identity discourse that could help them to extend their regimes and maintain their political system. SADOWSKI (2002) has addressed the political evolution of the Syrian identity and affirmed a sort of identity fluidity which means they often define themselves by different groups or its nationality, depending on the context. The same sort of fickleness is seen in Libya, as Gaddafi sometimes framed Libyan politics based on a Middle Eastern identity, but he would quickly shift this and associate Libya to other North African countries (JOHN, 2012). The goal of both leaders was to adjust their regime to an identity that was also shared by civilians.

While Libyans and Syrians were initially attempted to join the Arab Spring, for sharing a sentiment that they were all Arabs living under hard conditions, the discourse was quickly shifted and focused on religious groups (within a religion as between Muslims – Sunnis, Shias, Alawites or among different religions - Christians and Muslims, for instance) or between tribes and clans. For this reason, the main characteristic between Libya and Syria is the strategic articulation of identity in each country. Both Gaddafi and Bashar al-Assad (Hafez's son) have framed their regimes as the most 'suitable' option because of the complex fragmentation between different social, political, and religious groups. For this reason, Gaddafi and Assad overestimated their popularity and responded with violence and repression to maintain their regimes. Regarding the ascension of an armed conflict in Libya and Syria at the Arab Spring, systematic violence was reported in both countries from murder, torture, to arbitrary detention. Nonetheless, the UN response to each scenario differed. It is possible to consider a few reasons that might have persuaded the political decision of the UNSC:

(a) The Russian support to the Assad Regime

The alignment of Syria and Russia has been strongly built since Hafez al-Assad's leadership, but Russia has clearly stated that it was not an advocate of the Assad regime (MURTHY, 2018). According to ALLISON (2013), in several different speeches, the Russian government was supportive of the UN's action in Libya, but it made it clear that this should not be an automatic response. In this sense, according to the Russian government, an attempt to reproduce what happened to Libya in Syria would be "very dangerous". While Russia has been portrayed as an

ally of the Assad regime, Libya became a pariah State after being frequently associated with terrorism and violations of human rights in the 1980s.

(b) The likelihood of a political vacuum after Assad's deposal, more specifically, how this void could facilitate the evolvement of ISIS

The international community has successfully and accurately taken coercive measures in Libya (the use of force based on Chapter VII of the UN Charter) based on the R2P premises. Nonetheless, on the long term, this did not bring stability, democracy, social or political cohesion to the country. The fragmentation in Libya has developed a fertile ground to a political vacuum and the UN has been struggling to help Libyans to re-store any sort of political cohesion in the country. Nonetheless, any political vacuum in Syria could lead to catastrophic consequences. ISIL is composed by Sunni jihadists that have left Al-Qaeda and formed a new group. The Islamic State became known to the international community after its ascension in the city of Fallujah, Iraq in 2014, only a few kilometers from Mosul. Since this battle, ISIL has advanced in West Iraq and the North of Syria to establish its caliphate⁹⁶. Any action that could contribute to ISIL's evolvement may have serious consequences to international security. Since its ascension, ISIL became international known, and the world has seen a global movement of youth joining ISIL even without being Muslim, or without understanding Islam.⁹⁷ While the international community has not been able to design an effective strategy to fight terrorism, because it is very challenging to fight an ideology, we already know that a mistake in an approach in Syria can facilitate the advancement of ISIL in the country.

(c) The change of the leader in Syria is likely to have significant impact at the regional level depending on the religious roots of the new Head of State

Several actors in the region have a piercing interest in who is governing Syria, and not for the sake of Syrians but to determine whether this change may directly impact the current dynamics of the region. For instance, groups like Hezbollah have showed support to the Assad government in order to avoid the takeover of a Sunni leadership in the country. Which means, the change of

⁹⁶ BYMAN to BROOKING INSTITUTION, Comparing Al-Qaeda and ISIS: Different goals, different targets, 29 April 2015.

⁹⁷ DARDEN (2019) has developed a report to the UN that addressed how *salafi-jihadist* groups have worked to exploit youth in their terrorist strategies.

leadership in Syria can reverberate in the entire region, that is already fragile with the instability of different conflicts, social inequality, and violence.

(d) Libya has presented a concrete example that even when the UN use its maximum resource to maintain international peace, the approval of a resolution based on Chapter VII of the UN Charter, this does not necessarily lead to sustainable peace.

The UN action in Libya had a cascading effect in Syria (MURTHY, 2018). Nonetheless, unlikely Syria that had a contested but significant leadership with the Assads, Libya lacked a consolidated local or regional authority that could lead when Gaddafi was killed in 2011 (LACHER, 2020). Which means, to interfere in a country to halt on-going violence may lead to a longer intervention that does not necessarily lead to sustainable peace. That is why, international intervention must be the last option.

Although Libya and Syria had a few similarities, the behavior of each leader during the uprising was very different. According to LINZ and STEPAN (2013), Gaddafi was controlling the entire regime in Libya, he would create, dismantle, and re-create chains of command and even security structures, which means very few business groups were taking advantage of this regime. On the other hand, elites and members of the Ba'ath Party enjoyed the regime and had little but some autonomy in Syria. Financing insurgencies around the world also made Libya a pariah in the international community, but most importantly, Gaddafi did not try to fit his discourse into what is minimally acceptable, he clearly stated that 'any Libyan who takes arms against Libya will be executed' which does not align to the principles established by human rights. Nonetheless, the main catch in Gaddafi's polemical speeches was the use of the word 'cockroaches' to call his opposition. In Chapter 2 about new wars, the Rwanda genocide is presented as an example of the mass-killings during the 1990s, as well as the UN's failure to respond to it. The hatred between *Tutsis* and *Hutus* was fomented by the radio station RTLM allied with the Tutsis that repeatedly called *Hutus* of *inyenzi*, or *cockroaches*. Gaddafi called his opposition the exact same name utilized by perpetrators against their enemies during the fastest genocide in modern history, in Rwanda in 1994. This was a very concrete signal of a mass-killing, with a former, catastrophically sour example in our history.

By comparing both scenarios, it can be concluded that Russia's support to Assad and its piercing position in the UNSC have been one of the most significant reasons for a non-intervention in Syria as the Council has a political characteristic. Nonetheless, it is essential to perceive that Assad has taken advantage of different concerns to keep himself in power. For instance, Syrians that are Shia or Alawite Muslims as well as non-Muslims (Christians, Druzes, Yazidis) are concerned if they could be persecuted if there is a democratic election in the country and the majority of the population that is Sunni choose a Sunni leader. Also, Assad has consistently affirmed that its government is impeding the advancement of ISISL. While we still have not found out how to build sustainable peace, we know that terrorism is a concrete threat to achieve peace. Terrorists work in cells, they do not have a headquarter, they are bounded by an ideology and ISIS has been able to recruit fighters worldwide. Which means it is quite complex to create responses to fight terrorism mainly because we do not know how to impede an idea, an ideology to be spread across borders. Consequently, Assad has been purposively using these two different fears to maintain himself in power.

But Assad has also been adjusting and justifying his actions based on what is expected of him in terms of what we have commonly determined as the minimum behavior to respect human rights. Even if there are proofs of his systematic attacks against civilians that opposed to his regime, he continues to portray his government as an authority that respects human rights. Also, he presents himself as the balancer of a divided society, following this rationale, he portrays his dictatorship as the equilibrium in Syria (HINNEBUSCH, 2012). Furthermore, he takes advantage of the uncertainty of how we can effectively fight terrorism in his favor by framing his actions as the most viable option against terrorism. Although the UN has been able to identify the atrocities committed by groups like ISISL in Syria and has recognized its threat in the country, Assad can take advantage of this scenario, and define whoever he wants as a terrorist for being against his regime. It can be conjectured whether the international community is weighting down two different threats, the Assad in power and the advancement of ISIL, and choosing to proceed without taking an action that could cause an even bigger political vacuum in Syria. On the other hand, it is important to delineate that while Assad keeps justifying his actions, adjusting his discourse, and re-framing his government as the least deleterious option, Gaddafi publicly stated that his government was willing to kill anyone that was against its regime.

A significant catch in both conflicts is that the nature of the uprisings had changed, and while the media was framing Libya and Syria under the same lens, international political analysts perceived the difference in the discourse. Initially, an uprising towards democracy was transformed into a religious fight. Although Syria possesses a few similarities to Libya, the use of chemical weapons as well as the number of victims and civilians that have been affected by this conflict makes it even more gruesome. In the R2P analysis, it is the use of chemical weapons that sets Syria apart from Libya. As previously addressed in Chapter 4 on the Theoretical Framework, the UN is a bureaucratic organization and the design of the UNSC as well as its decision-making processes ensures that the UN possess legitimacy to act in the international field. The UNSC's deadlock after the use of chemical weapons in Syria illustrates how a bureaucratic organization, like the UN, may possess international legitimacy but it may also become frozen in political dilemmas that hamper the UN to act. But non-action after chemical attacks is not easily justifiable, for this reason, other actors (States, organizations, foundations, NGOs) that have embraced human rights norms, have worked to enforce them. In this sense, the R2P has certainly not been able to save civilians that have been threatened or killed either by the Assad's regime, his opposition or terrorist groups. But it is these "failures" that urges other actors (besides the UNSC) to create alternative paths to ensure that human rights norms are still applied because they are drawn by the human rights discourse that has been widely established at the international level. For instance, other UN entities have reacted to the UNSC's impasse, the HRC established the COI-Syria and the UNGA established the IIM-Syria, two initiatives that have recognized that crimes of large-scale as war crimes and crimes against humanity have been committed in the Syrian civil war and have create alternative ways to respond to the war and fight impunity.

Conclusion

This work has aimed to develop an in-depth analysis of the R2P, an international norm that aims to lead to a more pragmatic international response regarding civilian protection. The sovereign State has the responsibility to protect its population but if the State is being negligent/uncapable or is targeting civilians in systematic attacks that may constitute war crimes, crimes against humanity, ethnic cleansing and/or genocide, then this responsibility is yielded to the international community. Hence, this research has utilized the conflicts in Libya and Syria since

2011 as case studies to evaluate the performance of the R2P, and to further analyze the norm.

This work has been organized as following: Chapter 1 introduced the theme and presented the main research question of this work, ‘If the R2P has failed in Libya or Syria, does it mean that the R2P is an overall failure?’. To answer this question, it is necessary to consider several other points. What should be assigned as a failure or success when discussing the R2P? If the R2P has failed, does that mean that other human rights norms and instruments that form the base of the R2P have failed as well? Such as the Universal Declaration of Human Rights (UDHR), the Convention on the Prevention and Punishment of the Crime of Genocide, both from 1948 as well as the Rome Statute from 1998. The failure-success dichotomy of the R2P is elucidated in the Methodology section. The main reason for raising this issue is that the R2P can be associated with failure because a coercive action, as an international intervention, might adversely affect a State’s stability on the long term. However, this topic belongs to another debate, whether an intervention (with or without the deployment of peacekeepers or international troops) is the appropriate measure to build sustainable peace. This study does not aim to enter this discussion because the focus is to evaluate whether the R2P failures constitute a failure in its overall, if the R2P is a failed norm.

For this reason, this work establishes a much more straightforward approach to determine what is a success or failure to the R2P based on the norm premises at the UN. The norm is considered successful if it has been implemented by the legitimated organization, the United Nations, with a specific goal, to save civilians and, in a very specific moment. Which means that the main responsibility to protect civilians does not lie within the United Nations, but the organization can take over this responsibility as an exception (civilians being targeted under systematic State violence, failure, or negligence). On the other hand, the R2P has failed when the United Nations is unable to save civilians. The other underlying point behind the main research question of this work is that the R2P has been developed based on previous human rights norms and instruments. Following this rationale, this work deems the R2P as part of a series of norms, instruments and landmarks that have strengthened (a) the protection of civilians under systematic and grave violations of human rights, and (b) the accountability for these crimes. This research has tested the hypothesis that even with setbacks, the R2P has contributed to these efforts because it helps the UN to foment what is minimally expected of political leaders.

After introducing the main question and hypothesis, this work contextualized the international scenario in which the R2P has emerged in Chapter 2. The end of the Cold War in 1991 marks not only a shift in the power dynamics of the international arena, but the period also marks an intensification of civil wars with very specific characteristics. Although we have seen these features in other conflicts before the Cold War, they became more striking to scholars in the 1990s. The so-called *new wars* are conflicts with a convoluted involvement of foreign parties (paramilitary groups, mercenaries, foreign troops) without being an international war. These conflicts are frequently carried out in the loss of State's monopoly to organized violence and a decay of its formal security capacity. Furthermore, these scenarios may include a partial or total collapse of the formal economy with a shift in the warfare from strategies to gain territory to political control by using guerillas and counterinsurgency. At last, *new wars* are articulated through the manipulation of identity discourse associated with nationality, religion, ethnicity, etc. As in the example of Uganda, in *new wars*, there are regional and/or international actors taking advantage of local friction to advance their goals in the country or region in question.

However, the 1990s not only marks the intensification of *new wars*, but it also features two large-scale crimes committed in Srebrenica (1993) and Rwanda (1994). The dynamics of *new wars* added a level of complexity because of the deep interconnection between social, economic, political and security issues in these conflicts, consequently, the UN extended its workplan as an attempt to properly respond to them. Although the UN's presence in domestic issues has increased, international politics are still articulated based on the principle that all States are sovereign over its territory, what is corroborated in the Article 2.7 of the UN Charter from 1945. Based on the State sovereignty principle, the UN did not promptly act in the face of escalating violence that led to mass-killings in Srebrenica and Rwanda. The dilemma between respecting State sovereignty and protecting civilians under grave violations of human rights entered the center of international debates. In 1998, DENG and COHEN stated that civilians that left their country (refugees) were under international protection, while civilians that fled but continued inside the country (IDPs), could not be directly protected by the international community because they were still under State's jurisdiction. This has raised the concept of 'Sovereignty as Responsibility', that was furtherly developed by several scholars and became the central point in the ICISS Report on the

Responsibility to Protect. The main idea of this Chapter is to contextualize the international scenario in the Post-Cold War, with the intensification of the so-called *new wars*, as well as the obstacles of the UN to promptly respond to them. Subsequently, the debate between State sovereignty and protection of civilians is introduced to elucidate how this scenario has led to a shift in the nature of international security from state security to human security. At last, this introduction is essential to understanding what the ICISS aimed to achieve at the UN operational level with the R2P Report.

Chapter 3 has introduced the Responsibility to Protect report drafted by the International Commission on State Sovereignty (ICISS) in 2001. The report affirms that State sovereign implies responsibility and while this responsibility mainly relies within the State itself, it can be yielded to the international community as a result of State violence, negligence or failure to protect its population. The report delineates three pillars to guarantee this protection: (1) the responsibility to prevent, (2) the responsibility to react, and (3) the responsibility to rebuild. In the description of each pillar, the ICISS delineates which measures should be appropriate and how they should be undertaken. One of the main ideas of the report is that the international community must act under actual or apprehended human rights violations. Furthermore, the report suggests that the UNSC should not veto resolutions that aims to protect civilians under grave violations of human rights. In this sense, any action taken to enforce the R2P must be taken by the right authority (the UNSC), under a just cause (to protect civilians), as a last resort (other non-coercive measures must have been taken), with proportional means (the damage of a coercive action should not be greater than the on-going violence), and must have reasonable prospects (the coercive action will be auspicious in fulfilling its goal which is to protect civilians).

At the 2005 World Summit, the UNGA unanimously adopted a shorter version of the ICISS Report, committing to act to protect civilians facing grave violations of human rights, more specifically, crimes against humanity, war crimes, ethnic cleansing, and genocide. The UNSC re-affirmed this compromise in 2006 but only in 2009 the Secretary-General, Ban-Ki Moon issued the report “Implementing the Responsibility to Protect” that established a workplan for the R2P. The articulation of the R2P is undertaken by the United Nations Office on Genocide Prevention and the Responsibility to Protect, as well as by the UN Special Advisor for the R2P. Moreover, the operationalization of the R2P in the UN attempts to mainstream the norm in all UN organs,

entities as the human rights mechanism and bodies. At the end, the terminologies used to refer to the R2P are elucidated, (concept, principle, norm, and doctrine), and this work has utilized the term 'norm' because the R2P establishes how the international community should behave to respond to these crimes. The end of Chapter 3 reviews the R2P literature based on the analysis of previous UN Special Advisers to the R2P, scholars and members of the ICISS. While this work corroborates with the literature in the idea that the R2P is in a normative contestation, it also decides to break down Welsh's perception that this contestation is not necessarily good and progressive. For this reason, this work contributes to the literature by further analyzing this niche.

The methodology and theoretical framework are introduced in Chapter 4. The methodology consists of an evaluation of the Responsibility to Protect norm, based on two case studies (Libya and Syria), utilizing official documents of the UN, NGOs and the R2P literature. Furthermore, the theoretical framework chosen for this research is the constructivist theory. Constructivism is one of the main IR theories that aims to bring a theoretical lens to analyze international events and processes. The main premise of constructivism is that the world is constituted of agents and structure, agents would be any actor that has agency, and the structure is the environment that we have created through our actions. Also, the interests that motivate our actions (or States actions) are not pre-determined, they are continuously constructed. Which means that according to constructivism, we should not determine that international events and processes based only on States interests because they are constantly changing.

Furthermore, the constructivist analysis provides a perspective that international organizations are bureaucratic bodies, but this makes them legitimated to undertake their workplan. The UN, as an international organization carries out its work based on human rights norms. Through these norms, the UN has been able to establish a minimally standard that States should respect and enforce human rights provisions, including in ensuring the protection of civilians. Nonetheless, these norms are not automatically adopted by States, they undergo a process of three stages: (1) norm emergence, (2) norm contestation, and (3) norm internalization. Which means that after emerging, a norm can be contested or applied in the interaction of agents. Following this rationale, the R2P would be in the stage of norm contestation, because the norm is not automatically applied by States.

Chapter 5 aims to evaluate the case studies chosen for this work, the conflict in Libya and Syria that started in 2011. For this reason, the research introduces the mass protests that arose in the Middle East and North of Africa as a series of anti-government upheavals that advocated pro-democracy changes, the so-called Arab Spring. By juxtaposition the conflicts in Libya and Syria, it is possible to raise a few similarities. Since its independence, Libya had been controlled by one figure, Gaddafi, while Syria has been controlled by the Assad family in the Ba’ath party. The lack of democracy and high social inequality were features of both countries. However, in the domestic perspective, Assad had a limited support from Syrians but a full support from the army. While Gaddafi did not. Besides this, the Libyan delegation at the UN made a direct accusation against Gaddafi at the 6490th meeting of the UNSC in 2011, what can be considered a plea for help, directly from Libyans. But Gaddafi’s figure was already negatively marked in the international community as he was often associated with terrorist initiatives as insurgent groups, militias, and guerillas around the world. Meanwhile, Assad was framing himself as the “stabilizer” of Syria and the main source of legitimacy to halt the advancements of ISIS.

Table 1.5. Conclusion by juxtaposing Libya and Syria as R2P case studies

<i>State</i>	<i>Beginning of the conflict</i>	<i>Is IHRL applicable?</i>	<i>Did the COI confirm that the government was involved in attacks against civilians?</i>	<i>Use of chemical weapons</i>	<i>Why is the R2P applicable?</i>	<i>Did the UNSC act based on the R2P?</i>	<i>UNSC stance</i>
Libya	February 2011	Yes	Yes	No	CAH War crimes	Yes	-Collective use of force -To seek accountability -Political transition (through elections)
-----	-----	-----	-----	-----	-----	-----	-----
Syria	March 2011	Yes	Yes	Yes	CAH War crimes	No	-Mediation -To seek accountability -Political transition (through elections)

As seen above, the conflict in Syria started one month after Libya in 2011, both were categorized as ‘non-international armed conflict’ by the International Red Cross, and consequently, the rules of International Humanitarian Law are applicable in both countries. To the R2P analysis, a few points are paramount: first, the commissions of inquiry established in each country confirmed that the government attacked civilians during the conflict. Second, only in Syria, chemical weapons were utilized in the warfare, and more importantly, were also used by the Syrian government. The commissions of inquiry have reported that crimes against humanity and

war crimes have been committed in Libya and Syria – crimes that are under the R2P’s umbrella. As a response to the conflict, the UNSC only carried out a coercive action based on Chapter VII of the UN Charter (that allows the use of force) in Libya. All the resolutions that attempted to do the same in Syria have been vetoed. At last, the UNSC’s stance in Libya was first focused on the collective use of force, and subsequently, political settlement while in Syria, the decisions of the UNSC have been focused on mediation and political settlement.

Although the goal of the R2P is not to bring sustainable peace, the instability in Libya after NATO’s intervention has certainly affect the decision-making process in Syria. In the R2P literature review, it has been presented the perspective of both BABBITT (2014) and WELSH (2016) that affirm that one of the issues about the implementation of the R2P is that it has not been specified for how long the preventive measures should be applied. Another point that has been raised in the literature is the vagueness regarding the reconstruction of the State after a R2P-based intervention (SCHNABEL, 2012). These arguments have appointed what have been the main in the operationalization of the R2P in Libya and Syria. In the case of Libya, the vagueness of reconstruction after the application of the R2P has not build stability in the country. Consequently, this has affected the decisions taken in Syria, that have been stuck in the preventive measures, since the UNSC has never settled what is the threshold to start applying coercive measures.

Nonetheless, this work considers that the R2P has been “successfully” applied in Libya considering that successful means *achieving its purpose*, and the goal of the R2P is to halt on-going violence and protect civilians. In this sense, the UNSC has been able to authorize the use of force in Libya towards the protection of civilian, under a very specific timescale, from 22 March 2011 until 21 October 2011. As seen in the case study of Libya, there are two arguments to affirm that the R2P has been successful:

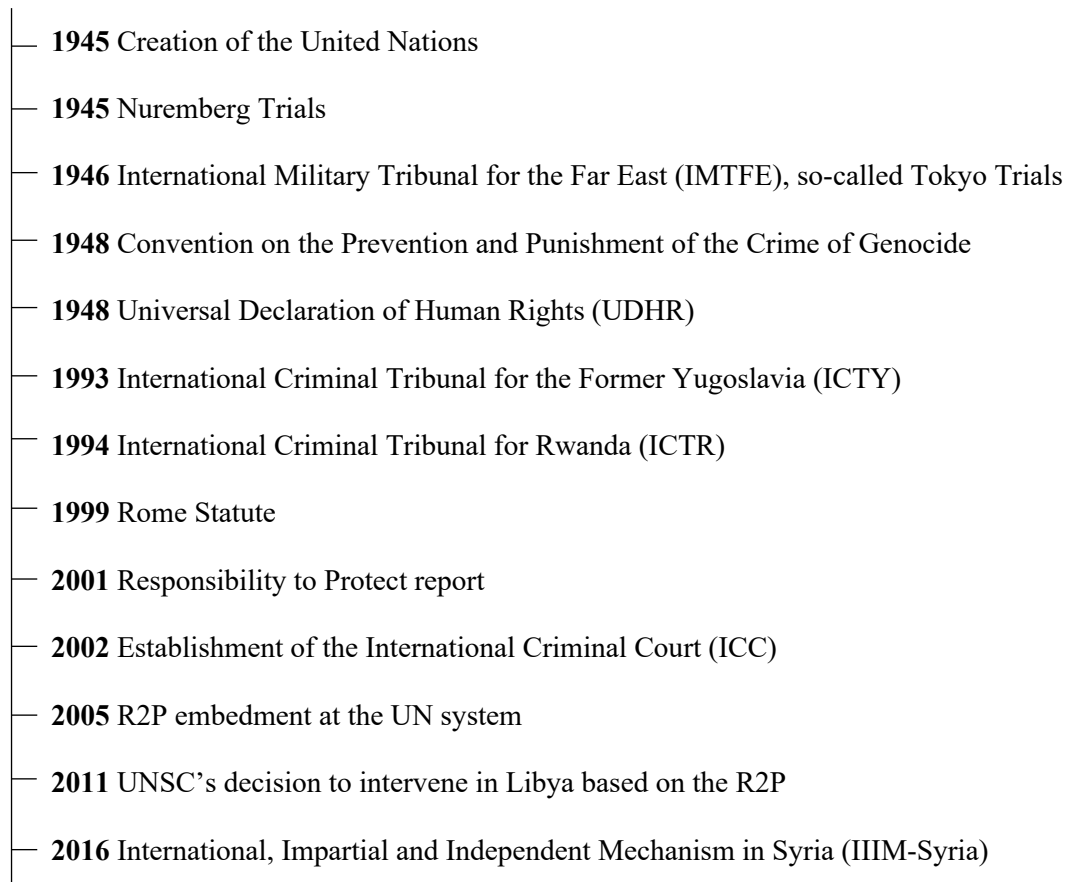
- (1) NATO succeeded in dismantling Gaddafi’s continuous attacks against civilians based on the approval of Resolution 1970 by the UNSC based on Chapter VII of the UN Charter, and consequently authorized regional arrangements, as NATO, to take over the collective use of force in Libya. In this sense, NATO was able to halt the on-going violence. At the 2005 World Summit document, it was clear that if the State itself is committing the crimes, it lays within the UN the responsibility to protect the population. Therefore, targeting the regime that is carrying out systematic attacks against civilians are among one of the measures that must be taken to reenforce the responsibility to protect, and consequently, this can lead to a regime’s deposal.

- (2) The 1970 Resolution has also been able to refer Libya to the ICC to guarantee accountability for the crimes committed in Libya in 2011.

On the other hand, the UNSC relies on several reasons for not applying a coercive action based on the R2P in Syria. Among these are (a) the continuous Russian vetoes in the UNSC because the Russian government has affirmed that it fears that a coercive action based on the R2P could become a common and automatic measure, invalidation the principle of State sovereignty; (b) the likelihood of a political vacuum after Assad's deposal and an UN intervention which could facilitate the evolvement of ISIS in the region; (c) A shift in the current power balance in the Middle East based on the religious roots of a new leader in Syria and finally, (d) Libya has served as an example that the R2P can bring an immediate response to violence, but does not build sustainable peace. These motivations can amount to "non-reasonable prospects", one of the conditions suggested by the ICISS Report to be considered in the R2P decision-making. However, thousands of civilians could have been saved in Syria, if the UNSC had decided to take a coercive action in the country. Furthermore, the use of chemical weapons is unacceptable which means that the UNSC has failed to ensure the R2P in Syria.

Considering this contrasting scenario, with the R2P failure in Syria and success in Libya, the main question of this research is posed, is the R2P a failure in its overall? While the case studies are essential to understanding how the R2P works in practice, the R2P must be embedded within a broader understanding of the history of human rights. The operationalization of the R2P in the UN system is the result of the work of several different norms, instruments and landmarks that have previously contributed to the development of civilian protection under serious violations of human rights. These events and norms possess a common cosmopolitan trait that have stimulated a shift from the sovereign State as the moral referent in international politics to replace it with the rights-bearing individual. As KERSTEN (2018) has pointed out, the creation of the R2P – as thenormative to protect civilians, and the ICC, as the Court that can ensure accountability, are ground-breaking because they galvanize the potential to establish a global rule of law founded on the protection of human rights. Among the main norms, instruments, and landmarks to the protection of civilians since the creation of the UN in 1945 are:

Figure 1.2. Timeline of precedents for the protection of civilians before the R2P



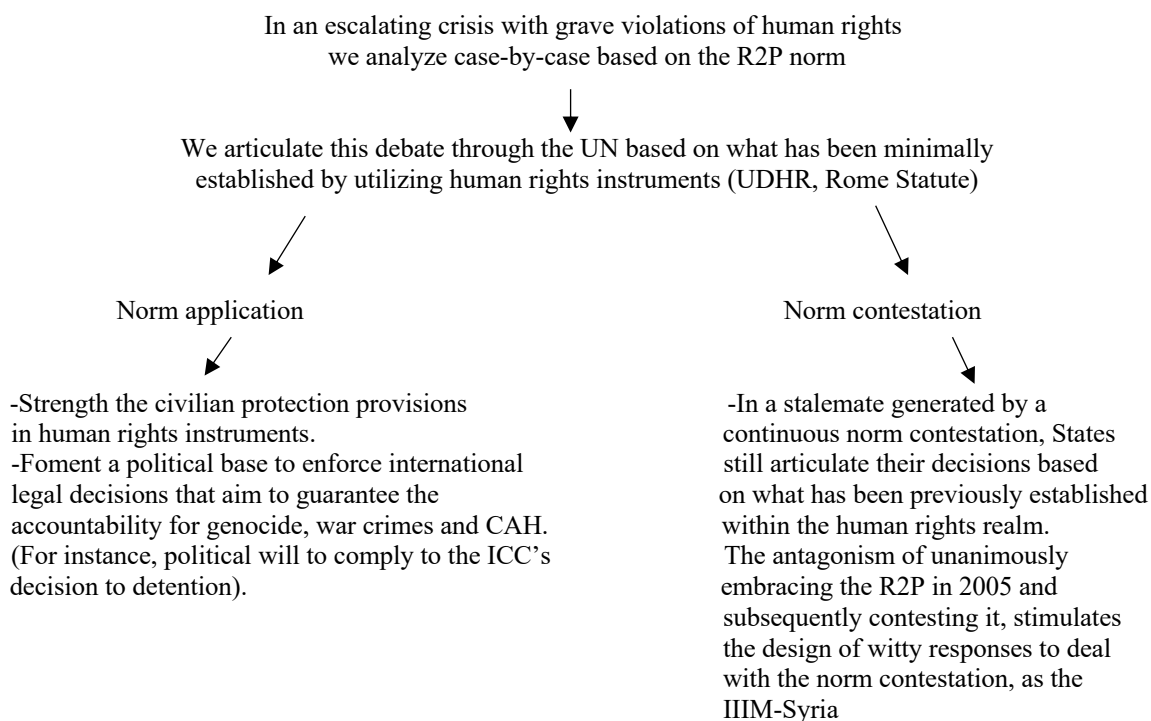
In this sense, these norms, instruments, and landmarks have been able to establish what is minimally acceptable in terms of human rights, and more specifically, the protection of civilians. Following this rationale, the normative contestation of the R2P leads to a meta-organizing principle of governance in the global realm (WIENER, 2014).

The R2P is not a failure in its overall because the tensions and setbacks around the norm, caused by the normative contestation, creates a fertile ground to discuss why the norm is not being properly applied and what we can do to change this, and consequently stimulates measures to effectively respond to the shortcomings. Based on the constructivist theory, the unanimous embedment of the R2P by the UN system demonstrates that even States with contrasting political systems, with different perspectives and goals consider that we must protect civilians under catastrophic violations of human rights. This corroborates the hypothesis that the R2P has contributed to the efforts (cited in the timeline above) because it helps the UN to foment what is

minimally expected of political leaders regarding the protection of civilians and why and how the international community should respond.

But besides corroborating the hypothesis, this work has reached other conclusions. Throughout this work, it became noticeable that actors tend to value to demonstrate that they are following human rights norms. They adopt the norms, the discourse and even agreements that can negatively affect them in the future. But the use of chemical weapons in Syria along with the international community failure to react after establishing a complex human rights network have made other actors apart of the UNSC to move to make a change. Based on Syria, we can conclude that the following dynamic has occurred:

Figure 1.3. The R2P precedent after Syria



In the above dynamic, we can see that the international community may apply or contest the normative (the international responsibility to protect civilians under State failure to do so) based on human rights instruments that have been previously established (UDHR, Rome Statute) to give life to landmarks, as the establishment of the IIIM-Syria, an investigate mechanism to trial the crimes occurred in Syria. The IIIM-Syria is a landmark because it is an effort raised by the UNGA after the UNSC's stalemate, which means the majority of the UN member States created an

alternative mechanism because they are driven by what we have established at the international level as the minimum regarding human rights. It is indeed the craft of witty responses based on the human rights network that may help us avoid in the future another Rwanda, Yugoslavia, or another Syria.

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