Inconsistencies between Libya and Syria?

Pragmatic Revisionism and the Responsibility to Protect

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The on-going debate on the Responsibility to Protect (R2P) concept revolves around its problematic and inconsistent implementation, particularly while comparing the military intervention to protect civilians in Libya (2011) and the inadequate response to the Syrian crisis. The article traces the development of the R2P discourse in the context of key cases, which fundamentally shaped the interpretation of legitimate conditions for humanitarian military intervention. In contrast to the liberal universalist approach, which would understand the R2P as an emerging norm indicating progressive support of liberal values, the analytical framework is based on pragmatic global ethics. In this perspective, the changing perception of normative concepts according to practical politics results inevitably in discursive shifts regarding the R2P operationalisation and implementation. Therefore, hesitations over Syria do not reflect the failure of R2P; the crisis rather demonstrates continuous pragmatic revisionism of its normative foundations.

Keywords: R2P, humanitarian intervention, pragmatism, Libya, Syria

Introduction

The concept of the Responsibility to Protect (R2P) has been widely criticised for the gap between words and deeds, mainly due to the in-

adequate international response to the crisis in Syria.[1] Does this fail-
ure mean the end of R2P and, more importantly, the emergence of a
post-liberal global order? In contrast to mainstream debates, the arti-
cle argues that the Syria crisis did not bring any fundamental change,
but reflects a pragmatic revisionism that characterises the whole time
period since the R2P concept was introduced in 2001.[2] Therefore, the
inconsistent implementation in Libya and Syria corresponds with the
compromised nature of R2P and also with the pragmatic global order,
which accommodates moral principles according to practical politics
rather than on their own merit.

   The debate on humanitarian intervention, which started in the
1990s, can be summed up as a clash of liberal universalism and realist
power politics.[3] However, it did not result in the victory of liberal ide-
als, as the conception of R2P might indicate. The conflicting norms –
universal protection of fundamental human rights and inviolable state
sovereignty – framed the post-Cold War debate between proponents
and critics of humanitarian interventionism. The debate was precipi-
tated by a series of crisis situations, which, without exception, invoked
controversial reactions. Two were particularly important—the 1994
non-action in Rwanda and the 1999 NATO operation in Kosovo. As a re-
sult, in 2001, the International Commission on Intervention and State
Sovereignty (ICISS) drafted a conception of R2P in order to start a de-
bate on the question of insufficient political will (the model of Rwan-
da) and the absence of consensus in the UNSC (the model of Kosovo).

   Obviously the concept was constituted by the political practice and
the need to find a legitimate framework, which would reconcile the
existing UN Charter-based regime and the changing global political or-
der. In other words, R2P was not constituted because of abstract liberal
principles, but rather as a response to new crisis situations that were
emerging in the 90s. Rather than facing a gradual support of active/
interventionist liberalism, the lessons learned resulted in revision-
ism. R2P takes a pragmatic approach that gives primacy to the state,
yet stresses its legitimacy based on its capacity to provide security to
one's own citizens. Although it allows for military intervention, there
is nothing in the conception about a non-selective and universal ob-
ligation to use it. Rather than expressing a clear moral imperative, it
provides a compromise fitting to contemporary politics.

   The first section introduces the theoretical-methodological frame-
work based on the pragmatic revisionist approach to emerging inter-

national norms. In contrast to the static and linear liberal universalism, the progressive development of the R2P concept will be traced through the lessons learned in the key crisis situations of Rwanda and Kosovo and their pragmatic reflection within the framework. Finally, the two puzzling cases – intervention in Libya and non-involvement in Syria – will be analysed through the pragmatic interpretation of global norms. This case-oriented analysis of R2P will demonstrate the mutually constitutive relationship between practical politics and changing international standards.

Pragmatic Revisionism in Global Ethics

The essential building block of pragmatism is the primacy of practice in any theoretical or conceptual reflection.[4] In contrast to positivism, pragmatism does not attempt to reveal the objective truth through causal relations, but to reconstruct the theory pursuant to the dynamics of practical experience. Therefore, pragmatist philosophy is in its very nature *revisionist*.[5] Moral norms are not understood as deontological or transcendental, but rather constituted by social practices in the same way as any other social habits. Most importantly, pragmatism vigorously rejects Cartesian logic due to its detachment from practical phenomena and the unproductiveness of constant scepticism.[6] Instead of generating and testing universal laws, social science must always prioritise understanding of practical phenomena. In result, there is no objective truth which would encompass both historical and contemporary political events, any knowledge is just temporary and must be open to perpetual redefinition.[7] The emphasis put on social practice reveals the un-sustainability of existing theories and their falsely universalist nature.

The analytical framework is further shaped by the principle of the hermeneutical cycle, which favours seeking deeper understanding and interpretation over mere explanation. This is based on the pragmatic assumption of inter-subjective reality constituted by shared and institutionalised standards of behaviour. The key objective is thus to reveal the meanings of social events in the context of existing theoretical concepts and at the same time to consider their reassessment in light of the changing practice. Theoretical knowledge and social practice

are in mutually constitutive relation; to assume practice would be determined by transcendental human nature or a fixed structural order would be simply misleading.

The article focuses on the concept of R2P, particularly on the narrow component of humanitarian military intervention. The aim is to trace the implications of R2P and, respectively, humanitarian intervention, through concrete incidents which lead to its revisions both within the debates (discourse) and implementation policies (practice). Although controversy over military protection of civilians in third countries is as old as the history of mankind, the article focuses on the 1990s onwards. The post-Cold War period signified the triumph of liberal principles, including universal human rights protection and humanitarian assistance. Yet, the enforcement of these standards through military intervention remained a contested concept, even though it was formally recognised through R2P conception. More detailed analysis of the past two and half decades will show (1) why R2P replaced the narrower concept of HI (2) to what extent the R2P concept changed over time and (3) how significant crisis situations constituted the very existence of R2P, as well as its progressive revisions. The development will be indicated by changing official discourse and inconsistent implementation in practical situations. In the framework of pragmatic revisionism, both are understandable and inevitable parts of the world politics.

Two particular events of the 1990s triggered intensive contestation over the legitimacy of international response, revealing the major dilemmas resulting from political practice rather than philosophical debate: the insufficient reaction to the genocide in Rwanda in 1994 and the 1999 intervention in Kosovo.

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Interventionism in the Context of Rwanda and Kosovo

The 1994 genocide in Rwanda was the manifest failure of the entire international community, including world media, NGOs and the responsive organs of the UN and states.[8] It was a breakdown of all existing mechanisms responsible for preventing genocide; there was the obvious lack of political will among powerful states to get involved. In addition, rhetoric was strong and emotional, highlighting the extreme nature and scale of committed violence. In the Millennium Report

published one year later, Kofi Annan addressed the issue of military intervention in a document of crucial importance, making clear reference to the Rwandan crisis:

> If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica—to gross and systematic violations of human rights that offend every precept of our common humanity? (…) no legal principle—not even sovereignty—can ever shield crimes against humanity. Where such crimes occur and peaceful attempts to halt them have been exhausted, the Security Council has a moral duty to act on behalf of the international community.[9]

The UN Secretary General became an active proponent of the idea that state sovereignty must be redefined as a responsibility (1) to provide security to a state's own citizens and (2) to comply to the international commitments in the field of human rights protection.[10]

In general, military officials, journalists and NGO workers with direct experience in Rwanda were extremely frustrated by the lack of political will to act and viewed the fiasco as a lesson learned for the future.[11] Although the concept of HI remained highly contested both among experts and most political representatives, the post-Rwanda reflection focused more on scepticism over implementation, rather than principled rejection based on the existing norms of sovereignty and non-intervention. In other words, the major dilemma was no longer whether it would be legitimate to use force in the case of serious human rights violations, but rather how to respond when there is no political will among key decision-makers.

The second key crisis – ethnic cleansing in Kosovo in 1999 – shifted the discourse to the question of UNSC authorisation as the exclusive source of legality and legitimacy for the use of military force. In contrast to the scenario in Rwanda, there was sufficient political will among the NATO states to intervene. States were motivated by humanitarian principles, maintaining their own role as global players or both. The problem, however, was a lack of consensus in the UNSC to approve the 'all necessary means' formula, thus preventing action in accordance with the UN Charter rules. More striking was the fact that the post-intervention reflection was rather mixed and not conclusively negative in the sense of condemning NATO for the breach of existing international norms.

The investigation of the Independent International Commission on Kosovo concluded that the intervention had been illegal but legitimate.[12] Although it had not been approved by the UNSC, it was allegedly justified because all diplomatic measures had been exhausted and the intervention released the majority of the Kosovo population from a long period of governmental oppression. Major academic debate was related to the issue of authority. The challenges surrounding the motivations and effects of the intervention were simply overshadowed by the principled question of whether it was permissible to intervene without UNSC approval—not whether humanitarian intervention had been justified.[13]

Experts of international law were divided over the possibility of derogation from the general restrictions on the use of force without the authorisation by the UN. The restrictionist line was followed by scholars, who agreed that unilateral intervention based on humanitarian claims was clearly illegal.[14] On the other hand, a large number of experts defended the intervention as legitimate due to historical precedents of unilateral interventions,[15] the inadequate state of existing legal norms[16] and the primacy of moral duties over legal standards.[17] Though the breach of international law was indisputable, advocates highlighted international responsibility in extreme cases of human rights violations, which constitute an exception.

The debate over Kosovo revealed the gap between legal norms and moral principles, which was reflected even by normative propositions. The UN Secretary General appealed to the international community, namely on the Security Council, to seek consensus over the responsibility to intervene in the face of serious human rights violations. In cases where the use of force was deemed necessary, the Security Council would have to act in accordance with the principle of humanity and do the best to find consensus. Underscoring his point, he used the authorised intervention in East Timor as a positive lesson learned and the Kosovo case as a failure.

Constitutive Effects of Rwanda and Kosovo and the Emergence of R2P

In 2001, the two dilemmas – insufficient political will (Rwanda) and insufficient political consensus (Kosovo) – were addressed in a detailed proposal of the International Commission on Intervention and State

Sovereignty (ICISS) entitled Responsibility to Protect (R2P). Despite the obstinate reluctance of R2P proponents to conflate the two concepts humanitarian intervention and its future was the key issue as the report explicitly maintained in the introductory part: 'The report

is about the so called right of humanitarian intervention: the question of when, if ever, it is appropriate for states to take coercive – and particularly military – action, against another state for the purpose of protecting people at risk in that other state.'[18] Paradoxically, with the shift to R2P conception, the discussion moved far away from its original purpose, for the sake of a widely acceptable compromise that sacrificed any hope of introducing an innovative framework for international response.

The mission of R2P conception clearly overlaps with the purpose of humanitarian intervention. Both aim to stop human suffering and protect civilians from widespread systematic violence. Hence, the R2P conception referred to specific situations constituting a universal moral responsibility to act—namely the Rwanda genocide and ethnic cleansing in Kosovo and Bosnia. While using existing cases of non-action, it provided legitimacy to the use of force in cases where the nature and scale of violence reach unusual proportions. In legal terms, the concept elaborated on the 1948 genocide convention and established a universal duty to halt and punish the crime of genocide. In contrast, it extended the applicability of such a principle to any systematic violence not necessarily qualified as genocide. Most importantly, the R2P report supposedly shifted the debate from the right to intervene to the duty to act, while introducing three levels of responsibility.

As the primary responsibility remains on the shoulders of each state, international action is only subsidiary, confined to situations in which the state is clearly not providing protection to its citizens. This is the first mechanism limiting any use of forcible measures within the R2P framework. Quite paradoxically, the lessons learned from Kosovo prevented any diversion from the UN-Charter based regime and led to a confirmation of the existing legal restrictions. The scenario of Kosovo was presented as a warning to the UNSC to act more effectively in future, otherwise it would be risking a loss of credibility. Orford argued in similar fashion that the concept did not impose any new obligations upon states or upon the UN, but rather distributed authority within the international system while guaranteeing executive power to the

UN institutions, particularly to the Security Council and the Secretary General.[19]

Finally, the packaging of military response to a more complex system of prevention-reaction-reconstruction resulted in a breakdown of the fundamental questions in the wide list of adequate measures that would be preferable to military intervention. The three pillars of protection make perfect sense in the context of current conflict resolution theories. Yet, altogether they constitute a much too flexible and all-inclusive approach, which relies on political deliberation when it comes to the selection of appropriate response. In the context of the debates on the crises in Rwanda and Kosovo, this was a pragmatic compromise. On one hand, it reflects the consensus regarding the protection of civilians, who became the prominent victims of post-Cold War violent conflicts. On the other hand, controversy over the means of protection, the sovereignty of the state and exclusive authority of the UNSC to approve any enforcement action remained deliberately vague.

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	Model Situation	Lessons Learned	Constitutive Effects within R2P
Rwanda	Illegitimate inaction	*Protection from widespread and systematic violence* must be *universal* and *more effective*	→ Human security → Responsibility to act → Universalism
Kosovo	action with contested legitimacy	Interventions should be *exceptional, multilateral, authorised*, and *last resort*	→ Restrictions on the use of force → UNSC authority maintained

Table 1. Constitutive Effects of Rwanda and Kosovo

Therefore, it would be misleading to argue that the R2P report was a victory of liberal universalism. Rather, it was the result of the pragmatic synthesis of competing norms (protection of civilians vs. state sovereignty), which have been contested since the early 1990s. The R2P concept accomplished reconciliation through a discursive shift from the *right to intervene* to the *duty to act* and a concept of conditional sovereignty, which might be substituted through international protection. The protectionist discourse that emphasises the mission of the concept disguises both its conceptual and operational shortcomings. For example: what mechanism should be used to decide which among the

three pillars of responsibility would be adequate? What is the tipping point for shifting authority from the state to the international level?

Pragmatic Interpretation of R2P

The conceptual vagueness only grew worse once R2P was debated on the inter-governmental level during the 2005 World Summit. On one hand, the just cause threshold was specified to four explicitly defined situations: *genocide, ethnic cleansing, war crimes and crimes against humanity*. However, the most problematic issue—operationalisation of the three-level concept of responsibility—was only partial and rather ambiguous. The Outcome of the Summit proposed the condition of a 'manifest failure,' which refers to the situation when a state is unable or unwilling to protect its population from one or more of the four defined crimes.[20] In practical terms, it means that the activation of the third pillar (external intervention) depends on the interpretation of a concrete situation as a genocide/ethnic cleansing/war crime/crime against humanity and at the same time occurring *in a failed state*. Thus, the implementation of the concept rests on the authoritative assessment provided almost exclusively by Western academics, media, NGOs and their platforms. In addition, the limitation of the international duty to act to the cases of failed states enhanced the power of a sovereign state.

As a follow up to the recognition of R2P by the World Summit, there are several institutional mechanisms how the concept remains present in the UN debates. The UN Secretary General in cooperation with the Special Advisor on the Prevention of Genocide and the Special Advisor on R2P publishes an annual report dealing with specific issue of the R2P debate. In 2009, Ban Ki-Moon introduced the most important report thus far, entitled 'Implementing the Responsibility to Protect,' which explained the different levels of responsibility and the role of particular actors.[21]

The Report of the Secretary General aimed to mitigate tensions over the interpretation of the 2005 World Summit Outcome and to bring a compromise proposal, which would be acceptable even for sceptical states. Thus, it emphasised the first and the second pillar while outlining a set of restrictions with regard to the third. However, the follow-up debate during the 63rd General Assembly showed prevailing dis-

crepancy among the member states. Although the general principles of the R2P have been endorsed by all UN member states, the third pillar covering intervention was far from being universally supported.[22] Major concerns were expressed with regard to the working methods of the Security Council being in the exclusive position of decision-makers. The double standards, hypocrisy and selectivity of the permanent members were the most common points of criticism. The outcome of the debate was a very brief and general resolution 'taking note' of the Secretary General Report and deciding to continue in the deliberations.[23] If the aim of the Secretary General and other R2P advocates was to progress from the World Summit Outcome to more explicit recognition of complex principles within the R2P concept, the resolution reflects rather hesitation among states.

The recent popularity of R2P is not based on gradual institutionalisation within UN structures, but rather on non-governmental discourse. According to Gregor Hofman, there is a tendency to exaggerate the level of R2P acceptance, especially within the epistemic community of its adherents.[24] Hofman argues that a powerful mechanism to legitimise the concept is by making reference to adopted UN resolutions and related debates, as if the solemn presence of R2P in the discourse would automatically assume its gradual support. In addition to emphasising the relevance of R2P in the official discourse, R2P proponents also use the complex and rather vague nature of the concept to camouflage its most problematic aspects, as addressed during the previous debates on humanitarian intervention.

There are two key platforms assembling R2P advocates, both located in New York but operating worldwide. One is the Global Centre for the Responsibility to Protect (GCR2P), which was established in 2008 by the Ralph Bunche Institute for International Studies. The Centre aims to pressure governments to affirm and implement the R2P concept, mainly through multilateral organisations. In past years, the executive director Simon Adams and the members of the Advisory Board (Gareth Evans, Francis M. Deng, Edward C. Luck, Thomas G. Weiss) lobbied for greater R2P support in the UN and urged for more action in particular crisis situations.[25] The second most influential organisation is the International Coalition for the Responsibility to Protect (ICR2P) was founded in 2009.[26] The mission statement is practically the same as the one declared by GCR2P, yet it works as a network of various NGOS

including Human Rights Watch, International Crisis Group, Oxfam International and tens of others.[27] Since the platform brings together members of civil society, not states, the representativeness of participants is logically greater.

Both GCR2P and ICR2P use the same techniques aimed to simply keep R2P on the world agenda. They gather the 'core documents on R2P' demonstrating its progressive internationalisation, while focusing on the general principles, which are less problematic than their operationalisation and application in practice. Urging for more action in specific crisis situations sounds less conflicting than calling for military intervention. The effect is immense, as the core staff members are incredibly active, combining activism with scholarly work, thus legitimising their campaigns through a large number of their own publications. A very important part of the strategy is networking among individuals and NGOs, which spills over to UN structures. This is most visible in the UN Secretariat and the consistent support of R2P by both Kofi Annan and Ban Ki-Moon. The UN Secretary General has the power to bring R2P to UNGA debates, as well to UNSC meetings in particular crisis situations. Finally, before the diplomats of the permanent missions by the UN come to the negotiation table, they are regularly contacted by R2P advocates.

The final section of the article reviews the implementation of humanitarian intervention within the R2P framework, using as examples two crisis situations that attracted enormous attention: the 2011 intervention in Libya and the continuing humanitarian disaster in Syria. The impact of both crises on the R2P concept will be also discussed.

Implementation of R2P in Libya and Syria

Since the deterioration of the situation in Libya in February 2011, the newly appointed authorities within the UN showed deep commitment and immediately took action. The joint office of the Special Advisors for Prevention of Genocide and for Responsibility to Protect released a press statement, where they qualified the violence perpetrated by the regime as crimes against humanity.[28] The UN Secretary General participated at the UNSC meeting three days later, where he appealed on the members to immediately stop violence, while referring to the

2005 World Summit Outcome.[29] The repressive campaign of Gaddafi's loyalists was further condemned by the UN Human Rights Council as well as by the UN High Commissioner for Human Rights. All UN officials unanimously labelled violence in the country as systematic, widespread and probably reaching the level of war crimes and crimes against humanity.

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The pressure for international response was strengthened by the activism of NGOs, especially those aligned with the ICRtoP and GCR2P. By the end of February, Human Rights Watch alone had published about twenty reports criticising Gaddafi's violent campaign.[30] Some reports included explicit calls for decisive international action including sanctions, an arms embargo and the creation of a no-fly zone.[31] In March, The ICRtoP published a letter addressed to the UNSC arguing that '[...] in line with the 2005 World Summit the Security Council must be ready for a decisive collective action.'[32] Compared to the crises that emerged in previous years, most notably the situation in Darfur, NGOs very effectively accomplished a rapid discursive shift, from the first two pillars to the third and to hard measures on the wide scale of possible international responses.

The reply of the UNSC was unprecedentedly firm due to a unique combination of factors. A series of hateful threats by Gaddafi addressed to his opponents, and to Libyan civilians in general, swiftly got the attention of the media and put the leader on the edge of the international community. Western countries could easily use this situation to demonstrate their own commitment to democratic principles, the protection of human rights in particular. As neither China nor Russia had any special interest in Libya, they both adopted the pragmatic position not to block international sanctions. Finally, the absence of regional allies made forceful measures passable, even within the two key regional organisations. The League of Arab States adopted a resolution appealing to state authorities to comply with international humanitarian law and stop crimes against civilians.[33] Moreover, it requested the UNSC to act in accordance with its responsibility in light of the worsening situation, while suggesting a no-fly zone to protect Libyan citizens. The African Union was more restrained regarding any external intervention; nonetheless, it strictly condemned violence against peaceful protesters.[34] Although it may sound simplified, Gaddafi had

practically no friends backing his regime and started the violent campaign at the time when the spirit of the Arab Spring was receiving great international support.

The UNSC Resolutions 1970 and 1973 both referred to the R2P concept; thus the following operations were interpreted as the first implementation of the third pillar. Resolution 1970 was adopted as early as 25 February 2011. Although it rather emphasised the first pillar – calling on state authorities to fulfil their responsibility and protect their own citizens – it included a set of sanctions in response to the manifest failure to do so.[35] It referred the case to the ICC for investigation, imposed an arms embargo on the entire territory and targeted sanctions against high-profile political representatives. The resolution was adopted unanimously, which reflected a wider consensus with the R2P general purpose of protecting civilians from systematic and widespread violence. The discourse on R2P was present in the text of the resolution, as well as in the speeches made by representatives during the debate before the voting.[36] Most notably, France, Great Britain and the US combined R2P principles with the right of citizens to build democracy, freedom and justice, which was a quite fundamental reinterpretation of the concept. However, as the resolution did not include any direct involvement of third states to the conflict, it was adopted without reservations.

Resolution 1973 was more problematic, as it went a step further and authorised all necessary means to protect Libyan people.[37] In line with the Chapters VII and VIII of the UN Charter, it asked any states or regional organisations to act in cooperation with the UN Secretary General to provide protective measures. This time, the UNSC was more divided, yet none of the PM used the veto to block the resolution.[38] The camp of supporters was dominated by France and Great Britain, which again used the R2P imperative and the political rights of Libyans to support a democratic transition. Lebanon, Colombia, Bosnia and Herzegovina, Nigeria and the South African Republic agreed with the protection of civilians, but strictly avoided any backing of the democratisation process. Five members of the UNSC abstained from voting and their motivations were also divergent. Whereas the abstention of China and Russia can be interpreted as an implicit 'yes' to possible intervention, the position of Germany indicated restraint and a careful 'no' to military involvement. This was part of the tendency to limit the engagement of Bundeswehr to avoid another 'Afghanistan scenario.'

Both India and Brazil argued that the resolution was too vague regarding concrete implementation of enforcement measures, while potentially exceeding the option of a no-fly zone, which was supported by regional actors.

Resolution 1973 became the most important source of legitimacy for deployment of the NATO military operation aptly called 'Unified Protector.' Strong international opposition to the Gaddafi regime, and his oppressive campaign against civilians, made space for implementation of the third R2P pillar. However, extending the mandate from the protection of civilians to the open support of rebellion and, finally, overthrow of the regime triggered great controversy. China, Russia, Brazil, India and the AU opposed NATO's interpretation of Resolution 1973 and fundamentally disagreed with the political motivations beyond humanitarian principles.

Taking into account the non-critical endorsement of the R2P conception by its advocates, it is not surprising that there were enthusiastic reactions presenting Libya as a role model for the future.[39] Thakur and Weiss published op-eds celebrating the decisive international response.[40] Even the UN Secretary General welcomed the implementation of the third pillar without any reservations about the actual NATO operation. In response to Libya, there was a debate in the UN which, for the first time, shifted the focus to the criteria of legitimate conduct of war (in legal terms, principles of *ius in bello*). Since the justification of NATO operation was limited to the authorisation through the Resolution 1973, non-Western states in particular supported proposals to review whether international response within the third pillar was undertaken according to some predefined criteria.[41]

As an alternative, Brazil introduced a concept of "Responsibility while Protecting" (RWP), which was debated in the General Assembly interactive dialogue on R2P in 2012.[42] The discussion was obviously shaped by the positions on the previous crisis in Libya. Intervening states defended the appropriateness and timing of military action, referring to the principle of last resort, which was emphasised by Brazil in its own initiative. China, Russia, India and South Africa used the RWP framework to criticise the alleged misuse of the UN Resolution to legitimise regime change in Libya.[43] In addition, China introduced a similar concept entitled 'Responsible Protection,' which also implied more accountability of intervening actors.[44] Although these ideas did not succeed in replacing the concept of R2P, they indicated lack of

consensus over the implementation of military measures within the third pillar, while, at the same time, pushed for a review of effective protection in the post-intervention phase.

The crisis in Syria pushed the debate to revisit the scenarios of Rwanda and Darfur—only with more complicated political circumstances making any forceful protection of civilians practically impossible. In spite of strong pressure from the UN Secretary General, his Special Advisors, the UN High Commissioner for Human Rights and the network of R2P advocates, no decisive action was taken by the UNSC. The GCR2P regularly put Syria on the top of the list of serious crises requiring immediate international response. In the last Occasional Paper from March 2015, Failure to Protect: Syria and the UN Security Council, Adams argues that the 'failure to end atrocities and protect civilians in Syria is not a failure of R2P but of the imperfect actors and institutions charged with its implementation.'[45]

The UNSC responded to the crisis for the first time in August 2011 through the statement of its president, who condemned 'widespread violations of human rights and the use of force against civilians.'[46] In October, the first resolution that would officially hold Syrian authorities accountable for violence against civilians was debated, yet was vetoed by Russia and China.[47] This was one in a series of UNSC Draft Resolutions blocked by the tandem of the P2. Any draft resolution that included sanctions imposed on the Assad regime was opposed even before the UNSC had progressed to debate and voting.[48] On the other hand, several resolutions were approved, as they referred to the first pillar of R2P while emphasising the primary responsibility of Syrian authorities to protect their people.[49] This was obviously absurd in the context of the growing number of interdependent reports bringing both quantitative and qualitative evidence of mass atrocities perpetrated by the government forces. The lack of consensus with regard to enforcement measures was "balanced" by diplomatic negotiations. As a result, the political dimension of the crisis vanquished the humanitarian one; the civil war between the government and opposition groups put aside the one-sided violence against civilians being perpetrated by both sides.

This trend was reflected in the so-called 'Annan Plan' supported by UNSC Resolution 2043, which established a 90-day UN Supervision Mission (UNSMIS) aimed at monitoring its implementation.[50] The mission was an obvious failure, seeing as the mandate, rules of engage-

ment and material capacities were totally disproportional to the continuing violence.[51] The second attempt to find a negotiated solution to the crisis was a round of Geneva meetings starting at the end of June 2012. The foreign ministers of China, France, Russia, the UK, the US and Turkey collectively met with the UN Secretary General, representatives of the League of Arab States and the European Union High Representative for Foreign and Security Policy to establish an 'Action Group' to renew negotiations after the dead Annan proposal.[52]

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The international dimension of the Syrian crisis has been crucial since the very beginning. On one hand, the Western states led by France, the UK and the US condemned the regime and pushed for harder measures ranging from economic sanctions to an arms embargo to indictment of the ICC. On the other hand, the Syrian government was consistently supported by Russia and Iran due to strategic economic (arms trade) and regional interests. The peak of the crisis was the chemical weapons attack on Syrian civilians in August 2013 that resulted in 1400 casualties, including many children. In the words of the Obama administration, this was supposed to be the 'crossing of the red line' leading to military intervention.[53] However, no firm action was taken by the UNSC, NATO or any of the states that condemned the violent campaign of the regime.

In September 2013, the UNSC unanimously adopted Resolution 2118 which noted that the council was 'deeply outraged by the use of chemical weapons' and endorsed the decision of the Organization for Prohibition of Chemical Weapons (OPCW) requesting the Executive Council to destroy the Syrian chemical weapons program.[54] Resolution 2118 did not include any sanctions, which was a result of hard negotiations among the P5. The representative of Russian Federation, Sergey Lavrov, praised the diplomatic settlement of the conflict and only referred to the containment of weapons of mass destruction. Generally speaking, debate during the voting on the resolution was confined to the issue of chemical weapons, which prevented a more complex response to the indiscriminate killing of civilians.[55]

Since mid-2014, the Syrian crisis has escalated further with the rise and military advancement of the Islamic State in Iraq and the Levant (ISIL) and Al-Nusrah Front (ANF). The focus has shifted from the protection of civilians to the fight against terrorism, as ISIL clearly represented a common enemy for states engaged in the conflict. In August 2014, the UNSC adopted another Resolution on Syria, which reaffirmed

that 'terrorism in all forms and manifestations constitutes one of the most serious threats to international peace and security'. The Resolution condemned violence against civilians perpetrated by various terrorist organisations, while not mentioning any violent actions perpetrated by state authorities. The reinterpretation of the conflict was a pragmatic move out of the stalemate regarding any measures taken against the regime. In 2015, an additional set of resolutions was adopted—either against terrorism in the Middle East or, generally, on the protection of civilians in armed conflicts, which dealt with violence against civilians in Syria but did not invoke R2P, let alone the third pillar.[56]

The contemporary situation is, logically, criticised by literally all R2P supporters. By January 2016, the crisis was ranked as the top concern of the GCR2P, ICR2P, Human Rights Watch, International Crisis Group, UNHCHR, UN Secretary General, UN Human Rights Council and other institutions.[57] The unsatisfactory development resulting from political stalemate, which was triumphantly misused by Syrian authorities and their foreign allies, triggered a debate on the failure of R2P and its future.[58]

In the context of its deficient implementation in the Syrian crisis, R2P proponents continued their strategy of presenting the concept as progressively (1) relevant, (2) supported and (3) institutionalised within the UN and other international organisations.[59] Regarding the lack of consensus in the UNSC, the GCR2P started an intensive campaign entitled 'responsibility not to veto,' which aims to convince UN member states to accede the (thus far ineffective) reform of UNSC working methods.[60] In parallel with the Syrian crisis, Simon Adams and other representatives of GCR2P lobbied by the permanent missions of states by the UN to put pressure on the P5 to voluntarily refrain from using its veto in cases of massive and systematic violence against civilians—in practicality, those where R2P would be applicable. Since 2013, during the regular sessions of the General Assembly, several state representatives called for the veto restraint. France, for example, proposed a code of conduct, which would include this mechanism using *self*-restraint.[61] The idea was also supported by the UNHCHR and representatives of HRW and Amnesty International (GCR2P 2015).[62] The proposal is not completely new since the debate on the reform had already started in the 1990s. However, the crisis in Syria gave the idea a sense of urgency.

The following table sums up the impact of the two recent crisis situations on the debate of military intervention within the R2P and the major revisions of the concept in line with the lessons learned from Libya and Syria.

	Model Situation	Lessons Learned	Constitutive Effects within R2P
Libya	action with contested legitimacy	R2P does not cover *regime change.* Legitimacy of the *conduct of intervention* should be reviewed. Military intervention should be *an exception* (x rule)	→ Proposal on Responsibility while Protecting (RWP) → Lack of consensus on implementation of the 3rd pillar
Syria	Illegitimate inaction	*Politics in the UNSC* fundamental for R2P implementation. *Selectivity* based on *prospects for success*	→Emphasis on the 1st and 2nd R2P pillar →Proposal on Veto Restraint in the UNSC

Table 2. Constitutive Effects of Libya and Syria

Conclusion

The R2P conception is under constant revision, based on the practical politics of international crisis resolution. Libya was first celebrated as a triumph of R2P. This interpretation was later challenged due to dubious outcomes and the misuse of R2P discourse for regime change policy. Among humanitarian activists, it resulted in sceptical opposition to military operations in response to human rights violations and careful reconsideration in the UN of the criteria for any use of force. Blaming Libya for the insufficient response to the Syrian crisis would be oversimplifying. Yet, the effect of the harsh military campaign was rather a restraint on the use of force. Although UNSC authorisation may legitimise the intervention, it is not the only pre-condition for general acceptance. The Libya scenario has proven to be an exception, as, since 2012, there have been only very limited prospects for R2P intervention.

Returning to the original question posed in the introduction, the rise and fall of the third pillar corresponds with the pragmatic approach

towards the entire R2P concept. Representatives of the civil society, who managed to change the discourse in line with the R2P framework, used both crises to strengthen its cause. During and (especially) after the escalation of violence in Libya, it celebrated the international response as the final move from words to deeds. In the context of Syria, it pushed for more consistent implementation of the third pillar and used the case as a pressure point to urge for more political will to act. In contrast, individual states were calling for a cautious case-by-case approach in response to the situation in Libya, arguing that the conditions were exceptional. Although the scale of violence in Syria far exceeded Gaddafi's repressions, the interpretation is in favour of pillars I and II, meaning there are no prospects for enforcement in the near future. Why does this inconsistency not stop enthusiasts from lauding the R2P as the international standard? It is because the R2P concept is meant to be flexible to suit different situations.

With regard to the Syrian crisis, any comparison with Libya must be a great disillusionment to R2P advocates who supported the emergence of R2P as a norm. However, they lay blame exclusively on the Security Council for its lack of political will in activating the third pillar, although in official discourse support for it was fundamentally shaken, precisely due to the lessons learned in 2011. The R2P concept as a whole was falsely interpreted as a universally supported standard. The way NATO implemented the third pillar did not strengthen its legitimacy; rather, it deepened the gap between supporters and sceptical opponents (both among states and in the civil society). Ultimately, the lack of political will to provide capacities to a crisis where little strategic interests are at stake is no longer the problem; however, the post-Libya lack of consensus over what constitutes an adequate response, and limited prospects for a successful outcome, have prevented international response to humanitarian crises.

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Notes:

1   See, for example Simon Adams (2015), *Failure to Protect: Syria and the UN Security Council*, Global Centre for the Responsibility to Protect; Kathryn Kersavage (2014), 'The "Responsibility to Protect" our Answer to "Never Again"? Libya, Syria and a Critical Analysis of R2P,' *International Affairs Forum* 5, no. 1, pp. 23-41 and Robert W. Murray and Alasdair McKay (2014), *Into the Eleventh Hour: R2P, Syria and Humanitarianism in Crisis*, Bristol: E-International Relations.
2   International Commission on Intervention and State Sovereignty, The Responsibility to Protect, Ottawa: International Development Research Centre, 2001.
3   In contrast to R2P, humanitarian intervention was quite clearly defined as: 'A threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied.' See J L Holzgrefe, and Robert O Keohane (2003), *Humanitarian Intervention Ethical, Legal, and Political Dilemmas*, Cambridge UP, p. 18.
4   The origins of pragmatism date back to the American philosophers of the Metaphysical club, in the first place Charles S. Pierce, William James and John Dewey. Pragmatism in social sciences was revived by social constructivists and their search for complex constitutive relations among theory and social practice. See Peter M. Haas and Ernst B. Haas (2002), 'Pragmatic Constructivism and the Study of International Institutions,' *Millennium - Journal of International Studies* 31, no. 3, pp. 573-601.
5   Todd Lekan (2003), *Making Morality: Pragmatist Reconstruction in Ethical Theory*, Vanderbilt UP.
6   Jörg Friedrichs and Friedrich Kratochwil (2009), 'On Acting and Knowing: How Pragmatism Can Advance International Relations Research and Methodology,' *International Organization* 63:04, p. 701.
7   Ibid.
8   There is an entire project on the critical self-reflection among UN officials, Security Council member state representatives, NGOs and journalists involved in the 1994 crisis. See *Ghosts of Rwanda* by Frontline; the Interviews: <http://www.pbs.org/wgbh/pages/frontline/shows/ghosts/interviews/>
9   UN. Doc. A/54/2000, *We the Peoples: The Role of the United Nations in the 21st Century, Report of the Secretary General*, 2000, p. 45.

10 He reaffirmed this principle in the final report prepared by the High Level Panel on Threats, Challenges and Change, while referring to Rwanda or Bosnia and Herzegovina. UN Doc. A/59/565, *A More Secure World: Our Shared Responsibility. Report of the High Level Panel on Threats, Challenges and Change*, 2004, p. 4.

11 One of the most active and prominent supporters of the *never again to genocide* was General Roméo Dallaire having personal experience from the UNAMIR mission. Since 1994, he actively disseminated information to prevent similar scenario in the future and also initiated a project funded by the Montreal Institute for the Study of Genocide and Human Rights – *Mobilizing the Will to Intervene*. For more information see Will 2 Intervene, Online: <http://migs.concordia.ca/W2I/home.htm>.

12 Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned*, Oxford UP, 2000.

13 David N. Gibbs (2009), *First Do No Harm: Humanitarian Intervention and the Destruction of Yugoslavia*, Vanderbilt UP.

14 See, for example, Simon Chesterman and Michael Byers (1999), 'Has US Power Destroyed the UN?,' *London Review of Books* 21:9, pp. 27–30 and Thomas M. Franck (1999), 'Lessons of Kosovo,' *The American Journal of International Law* 93:4, p. 857.

15 Alan Boyle (2000), 'Kosovo: House of Commons Foreign Affairs Committee 4th Report, June 2000,' *International and Comparative Law Quarterly* 49:4, pp. 876–77; Christopher Greenwood (2000), 'International Law and the NATO Intervention in Kosovo,' *International and Comparative Law Quarterly* 49:4, pp. 926-934.

16 Bruno Simma (1999), 'NATO, the UN and the Use of Force: Legal Aspects,' *European Journal of International Law* 10:1.

17 Fernando Tesón (1999), 'Kosovo: A Powerful Precedent for the Doctrine Humanitarian Intervention,' *Amsterdam Law Forum* 2:1; Christine M. Chinkin (1999), 'Kosovo: A "Good" or "Bad" War?,' *The American Journal of International Law* 93:4, p. 841 and Louis Henkin (1999), 'Kosovo and the Law of "Humanitarian Intervention,"' *The American Journal of International Law* 93:4, pp. 824-828.

18 ICISS 2001, p. VII.

19 Anne Orford (2011), *International Authority and the Responsibility to Protect*, Cambridge UP.

20 UN Doc. A/60/1, *World Summit Outcome*, 2005.

21 UN Doc. A/63/677, *Implementing the Responsibility to Protect: Report of the Secretary General*, 2009.

22 *Interactive Thematic Dialogue of the United Nations General Assembly on the Responsibility to Protect*, Online: <http://www.un.org/ga/president/63/interactive/responsibilitytoprotect.shtml>.

23 Ibid.

24 Gregor Peter Hofmann (2015), 'R2P Ten Years on: Unresolved Justice Conflicts and Contestation,' *Global Responsibility to Protect* 7, no. 3-4, pp. 275-299.

25 The key to progressing implementation is the publication of regular moni-

toring reports on (i) current crisis where urgent action is needed, (ii) imminent risk where effective preventive action must be taken and (iii) serious concern, where atrocity crimes might occur in foreseeable future if effective action is not taken. See GCR2P online: <http://www.globalr2p.org/>

26 The institutionalisation of the Coalition was a follow up to the Responsibility to Protect-Engaging Civil Society (R2PCS) project ran in 2003-2009 by the World Federalist Movement-Institute for Global Policy (WFM-IGP) in New York.

27 'International Coalition for the Responsibility to Protect (ICRtoP),' available at <http://www.responsibilitytoprotect.org/>.

28 UN Press Release, *UN Secretary-General Special Adviser on the Prevention of Genocide, Francis Deng, and Special Adviser on the Responsibility to Protect, Edward Luck, on the Situation in Libya*, 2011.

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30 Among the most pressing appeals were for example HRW, *Libya: Security Forces Kill 84 Within Three Days*, 18 February 2011; HRW, *Too Little, Not Yet Too Late*, 23 February 2011 and HRW, *Silence is Not an Option: Human Rights Council Must Use Its Voice*, 23 February 2011. See also Amnesty International, *Libya Must End Protest Crackdown*, 16 February 2011

31 See HRW, *Libya: Commanders Should Face Justice For Killings*, 2011; HRW, *Libya: Governments Should Demand End to Unlawful Killings*, 2011; ICG, *Immediate International Steps Needed to Stop Atrocities in Libya*, 2011 and *Genocide Intervention Network*, Mass Atrocities in Libya, 2011.

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35 UN Doc. S/RES/1970, *Security Council Resolution 1970*, 2011.

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38 UN Doc. S/PV.6498, *Security Council, 6498th Meeting*, 2011.

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40 Ramesh Thakur (2011), 'UN "breathes Life into Responsibility to Protect,"' *Toronto Star*; Thomas G. Weiss (2011), 'RtoP Alive and Well after Libya,' *Ethics & International Affairs* 25:3, pp. 287-292.

41 *Timely and Decisive Response: Summary of the Informal Interactive Dialogue of the UN General Assembly on the Responsibility to Protect,* held on 5 September 2012. See: <www.globalr2p.org/media/files/r2p_unga_dialogue_2012.pdf>

42 *Letter dated 9 November 2011 from the Permanent Representative of Brazil to the United Nations addressed to the Secretary-General. Annex: Responsibility while protecting: elements for the Development and Promotion of a Concept.*

43 Timely and Decisive Response 2012.

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cept: Reinterpreting the Responsibility to Protect (R2P) and Military Intervention for Humanitarian Purposes,' *Asian Journal of International Law*, pp. 1-30.

45   Adams (2015), p. 2.
46   S/prst/2011/16, Statement by the President of the Security Council on the Situation in the Middle East, 2011.
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49   un Doc. S/res/2043, *Security Council Resolution 2043*, 2012; un Doc. S/res/2118, *Security Council Resolution 2118*, 2013.
50   un Doc. S/res/2043, *Security Council Resolution 2043*, 2012.
51   Adams (2015).
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53   James Ball (2013), 'Obama Issues Syria a "Red Line" Warning on Chemical Weapons,' *The Washington Post,* 20 August 2013.
54   un Doc. S/res/2178, *Security Council Resolution 2178*, 2014.
55   S/pv.7038,*The Situation in the Middle East*, 2013.
56   For example un Doc. S/res/2199 from 12 February 2015 on *Threats to international peace and security caused by terrorist acts*; or un Doc. S/res/2222 from 27 May 2015 on *Protection of civilians in armed conflict*.
57   *Timeline of International Response to the Situation in Syria*, gcr2P, Online: <http://www.globalr2p.org/publications/135>.
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59   Hofman (2015).
60   The gcr2P includes a section on the veto restraint campaign, while referring to associated ngos, government representatives in the un and events indicating support to the idea. See gcr2P, *un Security Council Veto Restraint*. Online at: <http://www.globalr2p.org/our_work/un_security_council_veto_restraint>.
61   Since 2013, high representatives of France repeatedly supported the veto self-restraint in the un. See for example *Statement of Fracois Hollande, President of France, at the Opening of the 68th Session of the un General Assembly*, 24 September 2013. Online at: http://www.franceonu.org/24-September-2013-Opening-of-the> and Laurent Fabius (2013), 'A Call for Self-Restraint at the un,' *The New York Times*, 4 October 2013.
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