Implications of the Conflicts in Libya and Syria for the "Responsibility to Protect" Doctrine

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IMPLICATIONS OF THE CONFLICTS IN LIBYA AND SYRIA FOR THE "RESPONSIBILITY TO PROTECT" DOCTRINE

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The article explores the (non)application of the "responsibility to protect" (RtoP) doctrine in crises in Libya and Syria. When violent conflicts between the government and the opposition arose in both countries in 2011, different international bodies reported on mass atrocity crimes committed by the government forces against civilians. As rulers of Libya and Syria showed no intention of halting those atrocities, it was expected that the international community would intervene and act under RtoP, as agreed among the states at the 2005 World Summit. In Libya, the Security Council acted pursuant to the RtoP doctrine and passed the resolution authorizing the use of force aimed at saving civilian lives. In the case of Syria, however, the Security Council was deadlocked by the Russian and Chinese veto and no resolution employing RtoP could have been adopted. The paper thus analyzes these two cases, by paying special emphasis to the reasons behind such a disparate reaction of the Security Council in similar circumstances.

Keywords: responsibility to protect, RtoP, Libya, Syria, intervention

1. INTRODUCTION

When protesters in Libya rose against Muammar Gaddafi in February 2011, mass atrocities committed by the government forces against the prote-

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sters called for an immediate invocation of the RtoP principle. Surprisingly, the United Nations Security Council (SC) managed to consolidate and passed the Resolution 1973, thus authorizing the use of force and establishing "a ban on all flights in the airspace of the Libyan Arab Jamahiriya in order to help protect civilians".[1]

It seemed that the crisis in Libya at the time constituted a firm basis for the application of the RtoP principle. When large scale atrocities started to take place, Gaddafi was not only reluctant to stop them, but also further incited them by referring to the protesters as "cockroaches" and "rats", thus using the same abusive language as the Hutu population in the Rwandan massacre.[2] Let us be reminded that it was the Rwandan massacre, together with the one in Srebrenica, which inspired the creation of the RtoP principle in the first place.

As much as the situation in Libya created a flourishing ground for the application of RtoP, the Resolution 1973 and the subsequent NATO intervention in Libya were seen by many as unexpected. This "political surprise", as some tend to refer to the intervention[3], showed that it did not take long before RtoP had been transferred from theory to practice. Encouraged by such events, the UN Secretary-General Ban Ki-moon stated the following:

"Today we mark the first decade in the life of the responsibility to protect. There will be many more, for we can now say with confidence that this fundamental principle of human protection is here to stay."[4]

Predictions of the Secretary-General, however, turned out to be premature. RtoP faced its next test soon after Libya, when the conflict in Syria broke out. It did not take long before various international bodies started to report on gross violations of human rights committed by the Syrian armed forces against the protesters.[5] Unlike Libya, in Syria occurred a well-known scenario of the

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[1]   SC Res. 1973 (2011), paragraph 6.

[2]   *Libya Protests: Defiant Gaddafi refuses to quit*, BBC News, 22 February 2011, http://www.bbc.com/news/world-middle-east-12544624 (10 March 2017).

[3]   Garwood-Gowers, A., *The Responsibility to Protect and the Arab Spring: Libya as the Exception, Syria as the Norm?*, UNSW Law Journal, vol. 36, 2013, p. 603.

[4]   *"Responsibility to Protect" came of Age in 2011*, Secretary-General Tells Conference, Stressing Need to Prevent Conflict Before It Breaks Out, SG/SM/14068, http://www.un.org/press/en/2012/sgsm14068.doc.htm (10 March 2017).

[5]   See: *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Syrian Arab Republic*, A/HRC/18/53, http://www.ohchr.org/Documents/countries/SY/Syria_Report_2011-08-17.pdf (10 March 2017); *Human Rights Council Independent International Commission of Inquiry on the Syrian Arab Re-*

SC being deadlocked by veto. It became obvious that Libya was an exception and that future implementation of RtoP might face the same obstacles as did the doctrine of humanitarian intervention.

This article examines the implications of the conflicts in Libya and Syria for the RtoP doctrine. It first gives a summarized overview of the RtoP principle. Then it sets out to analyze the crises in Libya and Syria, both from a factual and a legal point of view. In addition, a comparison between the two cases is given, with special emphasis on the reasons behind the disparate reactions of the SC to the factually similar situations. Finally, concluding remarks on the status of RtoP after Libya and Syria are given.

2. EVOLUTION AND CONTENTS OF RTOP

History shows that great humanitarian catastrophes are usually followed by an impetus of the international community to create mechanisms for future prevention of such catastrophes. The UN Secretary-General Kofi Annan provided such impetus after witnessing a failure of the international community to stop several humanitarian catastrophes, such as those in Rwanda and Bosnia. In his Millennium Report to the General Assembly in 2000, Annan posed an important question:

"If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity?"[6]

The Secretary-General has thus pointed to the problem of contradictory obligations of states: on the one hand, the obligations of non-intervention and respect for state sovereignty, and on the other, the obligation of human rights protection.

The appeal of the Secretary-General has resulted in the establishment of the International Commission on Intervention and State Sovereignty. In its 2001 Report, the Commission coined a new term, hence, the "responsibility to

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public, S-17/1, http://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/ResS17_1.pdf (10 March 2017).

[6]   *We the peoples: the role of the United Nations in the twenty-first century*, Report of the Secretary-General, A/54/2000, http://www.un.org/en/events/pastevents/pdfs/We_The_Peoples.pdf (10 March 2017).

protect" (RtoP, R2P).[7] Although the Report begins by noting that it is "about the so-called right of humanitarian intervention", its real intention is to shift the focus of the debate from "the right to intervene" to "the responsibility to protect".[8] According to the Report, the primary responsibility lies with the state itself to guarantee the protection of its people. Alternatively, if a population of a particular state is suffering serious harm as a result of 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.[9] The meaning of the RtoP concept is based on three distinct responsibilities: the responsibility to prevent, the responsibility to react and the responsibility to rebuild. The most controversial responsibility, the one to react, arises when preventive measures fail to resolve the situation or when a state is unable or unwilling to redress the situation.[10] These measures may include political, economic or judicial measures and, in extreme cases, even military action.[11]

In light of proposing a military action as one aspect of RtoP, the 2001 Report addressed the question of the right authority to take such action. The Report identified the UN SC as a body primarily entitled to authorize the use of force.[12] However, it provided alternatives to the SC in cases when it fails to act. The alternatives include General Assembly, acting under the "Uniting for Peace" Resolution[13], and regional or sub-regional organizations.[14] The military aspect of RtoP in the ICISS Report raised a concern with the non-Western powers, which traditionally fear the hegemonic interference of Western states in the internal affairs of other states.[15] As a result, all subsequent documents

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7   *The Responsibility to Protect, Report of the International Commission on Intervention and State Sovereignty*, http://responsibilitytoprotect.org/ICISS%20Report.pdf (10 March 2017).

8   *Ibid.*, ¶ 2.29.

9   *Ibid.*, p. XI.

10   *Ibid.*, ¶ 4.1.

11   *Ibid.*

12   *Ibid.*, ¶ 6.14.

13   *Ibid.*, ¶ 6.29.

14   *Ibid.*, ¶ 6.31-6.35.

15   China, for instance, asserted that "certain Western powers have played with noble principles to serve their own hegemonic interests". ICISS, The Responsibility to Protect: Research, Bibliography, Background: Supplementary Volume to the Report of the International Commission on Intervention and State Sovereignty, cited in: Garwood-Gowers, A., *China's "Responsible Protection" Concept: Re-interpreting*

embracing RtoP are more restrained with respect to proposing the competent authority for authorizing the use of force. The UN High-Level Panel on Threats, Challenges and Change, as well as the Secretary-General in his 2005 Report, thus provided no alternatives to the SC as the competent authority for authorizing a military action.[16]

It may be suggested that the most authoritative document promoting RtoP is the 2005 World Summit Outcome Document, which reflects the opinion of more than 170 states participating in the Summit. This Document is far less enthusiastic with regard to RtoP than the ICISS Report and reflects divergent attitudes of states towards this principle. States generally accept to act in accordance with RtoP in cases of genocide, war crimes, ethnic cleansing and crimes against humanity. As in the ICISS Report, the responsibility to protect lies with each individual state in relation to its own population.[17] The international community, on the other hand, should encourage states in fulfilling that responsibility, and should itself use appropriate diplomatic, humanitarian and other peaceful means in order to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.[18] Furthermore, states are prepared to take collective action through the SC and in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from the above crimes.[19]

The wording of the World Summit Outcome Document reveals that states are willing to embrace the RtoP principle merely as their moral obligation, but not as a legal one.[20] Undertaking a collective action remains the states' legal obligation solely under the authorization of the SC, under Chapter VII of the

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[ ] *Responsibility to Protect (R2P) and military intervention for humanitarian purposes*, Asian Journal of International Law, vol. 6, nr. 1, 2016, p. 5.

[16] *A More Secure World: Our Shared Responsibility*, Report of the Secretary-General's High-Level Panel on Threats, Challenges and Change, A/59/565; *In Larger Freedom: towards Development, Security and Human Rights for all*, Report of the Secretary-General, A/59/2005.

[17] *Summit Outcome Document*, A/RES/60/1, ¶ 138.

[18] *Ibid.*, ¶ 139.

[19] *Ibid.*

[20] See: Mohamed, S., *Taking Stock of the Responsibility to Protect*, Stanford Journal of International Law, vol. 48, nr. 2, 2012, p. 326; Garwood-Gowers, *op. cit.* (fn. 3), p. 600.

UN Charter. In other words, the introduction of RtoP did not impose any new legal obligations upon the states. Some commentators believe, though, that the significance of RtoP lies in strengthening the legitimacy of the SC actions.[21]

After the adoption of the 2005 Outcome Document, RtoP has remained present in international discourse. Since 2009, the Secretary-General has been issuing annual reports on the matter.[22] These reports put an emphasis on the preventive character of RtoP, rather than on the contentious issue of the use of force. Also, the SC regularly invokes RtoP in its resolutions. So far, 51 such resolutions have been adopted.[23]

After briefly discussing the meaning of the RtoP principle, the following chapters analyze the cases of Libya and Syria. The analysis aims at revealing how RtoP functions in practice and what are the consequences of its (non) implementation for the future of the principle.

3. THE CASE OF LIBYA

3.1. Outbreak of hostilities and the international response to the Libyan crisis prior to Resolution 1973

The Arab Spring, which firstly occurred in Egypt and Tunisia, spread to Libya in February 2011. Although none of the world's existing atrocity risk assessment frameworks identified Libya as one of the countries being at risk[24], the initially peaceful protests turned violent as the government forces acted brutally towards protesters against Gaddafi's rule. In a manner reminiscent of the Rwandan massacre, Gaddafi declared that "officers have been deployed in all tribes and regions so that they can purify all decisions from

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[21]   Payandeh, M., *With Great Power Comes Great Responsibility? The Concept of the Responsibility to Protect within the Process of International Lawmaking*, Yale Journal of International Law, vol. 35, nr. 2, 2010, p. 496.

[22]   For all the reports see: http://unbisnet.un.org:8080/ipac20/ipac.jsp?session=149Y9 RT893810.2319&limitbox_2=TM01+%3D+tm_b15&ultype=PD01&uloper= %3E&ullimit=2005&menu=search&aspect=subtab124&npp=50&ipp=20&spp =20&profile=bib&ri=1&source=č%21horizon&index=.TW&term=responsibili ty+to+protect&x=0&y=0&aspect=subtab124 (20 June 2017).

[23]   See: Global Centre for the Responsibility to Protect, http://www.globalr2p.org/resources/335 (21 March 2017).

[24]   Bellamy, A. J.; Williams, P. D., *The New Politics of Protection? Cote d'Ivoire, Libya and the Responsibility to Protect*, International Affairs, vol. 87, nr. 4, 2011, p. 838.

these cockroaches" and that "any Libyan who takes arms against Libya will be executed".[25]

Various UN bodies promptly reacted to the reports on massive violations of human rights committed by government forces. The Secretary-General called for an immediate end to violence, expressing his outrage at press reports according to which the Libyan authorities have been firing at demonstrators from warplanes and helicopters.[26] He characterized those attacks as serious violations of international humanitarian law.[27] The UN OHCHR called for immediate cessation of illegal acts of violence against demonstrators and for full and independent investigation, emphasizing that widespread and systematic attacks against the civilian population may amount to crimes against humanity.[28] The same characterization of the attacks was given by the Secretary-General's Special Adviser on the Prevention of Genocide and the Responsibility to Protect.[29]

The SC issued a press release expressing grave concern over the situation in Libya. Members of the Council condemned the use of force against civilians and called for an immediate end to violence. They also called on the Government of Libya to meet its responsibility to protect its population.[30]

Events in Libya were also condemned by several regional organizations. The Arab League condemned "the Libya government's violent crackdown of the protesters and suspended it from participation in League meetings".[31] In a similar vein, the Peace and the SC of the African Union condemned the "indiscriminate and excessive use of force and lethal weapons against peaceful protesters", and "stressed the need for the people of Libya to spare no effort

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[25] *Ibid*.

[26] *Outraged Secretary-General Calls for Immediate End to Violence in Libya*, Press Release, SG/SM/13408-AFR/2119, 22 February 2011.

[27] *Ibid*.

[28] *Pillay Calls for International Inquiry into Libyan Violence and Justice for Victims*, Office of the High Commissioner for Human Rights, Press Release, 22 February 2011.

[29] *UN Secretary-General Special Adviser on the Prevention of Genocide and the Responsibility to Protect, Edward Luck, on the situation in Libya*, Press Release, 22 February 2011.

[30] *SC Press Statement on Libya*, Press Release, SC/10180-AFR/2120, 22 February 2011.

[31] Galal, O., *Arab League Bars Libya from Meetings, citing Forces' Crimes*, Bloomberg News Service, 22 February 2011, cited in: Davis, J. (ed.), *The Arab Spring and Arab Thaw, Unfinished Revolutions and the Quest for Democracy*, Routledge, London/New York, 2016, p. 183.

in avoiding any further loss of life".[32] Finally, both the Organization of Islamic Cooperation and the European Union condemned human rights violations.[33]

Following continuing reports on the indiscriminate use of force resulting in "high casualties", the Secretary-General urged the members of the SC to "consider concrete action to stop the violence and end the loss of life".[34] The Human Rights Council adopted a resolution to monitor the human rights situation in Libya, condemning gross and systematic human rights violations. The Resolution called upon the Libyan Government to meet its responsibility to protect its population and to immediately put an end to all human rights violations.[35] The SC unanimously passed the Resolution 1970, under Chapter VII of the UN Charter. In the Resolution, the SC deplored the gross and systematic violation of human rights, expressing deep concern at the deaths of civilians and rejecting unequivocally the incitement to hostility and violence against the civilian population committed by the highest officials of the Libyan government.[36] It recalled the Libyan authorities' responsibility to protect its population and demanded an immediate end to violence.[37] The SC further decided to refer the situation in Libya to the Prosecutor of the International Criminal Court, as well as to impose an arms embargo on Libya.[38] Sanctions in form of assets freeze and travel bans have been imposed on targeted individuals within Gaddafi's administration.[39]

Violence in Libya did not cease in the aftermath of the Resolution. In his address to the General Assembly on 1 March 2011, the Secretary-General called for a "concrete action" and for a "rapid and concrete response" to the Libyan crisis.[40] The Gulf Cooperation Council urged the SC to take "all ne-

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[32]   *African Union Peace and Security Council, Communique*, 261st Meeting, PSC/PR/ COMM(CCLXI), 23 February 2011.

[33]   *Declaration by the High Representative, Catherine Ashton, on behalf of the European Union on Events in Libya*, 6795/1/11, Presse 3, 20 February 2011.

[34]   *Fundamental Issues of Peace, Security at Stake, Secretary-General Warns as He Briefs SC on the Situation in Libya*, SC/10185, 25 February 2011.

[35]   *Situation of human rights in the Libyan Arab Jamahiriya*, Resolution adopted by the Human Rights Council, S-15/1, A/HRC/RES/S-15/1, 25 February 2011.

[36]   S/RES/1970 (2011).

[37]   *Ibid*.

[38]   *Ibid*.

[39]   *Ibid*.

[40]   *United Nations Response to Violence against Civilians in Libya Sends Strong Message There Is 'No Impunity' for Crimes against Humanity*, Secretary-General Press Release, SG/ SM/13425-GA/11051-AFR/2130, 1 March 2017.

cessary measures to protect civilians, including enforcing a no-fly zone over Libya".[41] The African Union called on "the responsibility of the African Union...and the international community to take all the necessary political and legal measures for the protection of the Libyan population".[42] The Arab League, the Organization of Islamic Cooperation and the European Union also called for an imposition of a no-fly zone.[43] The Arab League further declared that Libyan authorities lost their legitimacy and that it was recognizing the rebel movement as that country's legitimate government.[44] The Libyan Ambassador to the UN called upon the UN member states to recognize the Libyan National Transitional Council as a legitimate authority.[45]

3.2. Resolution 1973 and military intervention in Libya

Following these events and responding to the renewed threats against civilians that Gaddafi had made on 17 March 2011, the SC passed the Resolution 1973, with ten affirmative votes and five abstentions.[46] The SC reiterated the responsibility of the Libyan authorities to protect the Libyan population and condemned the gross and systematic violation of human rights. It considered that widespread and systematic attacks in Libya might amount to crimes aga-

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[41] See: *GCC backs no-fly zone to protect civilians in Libya*, http://gulfnews.com/news/uae/government/gcc-backs-no-fly-zone-to-protect-civilians-in-libya-1.773448 (27 February 2017).

[42] See: *African Commission on Human and Peoples' Rights, Resolution on the Human Rights Situation in the Great Socialist Peoples' Libyan Arab Jamahiriya*, 1 March 2011, ACHPR/RES.181(EXT.OS/IX)2011, http://www.refworld.org/docid/4d8863f82.html (28 March 2017); *Ihsanoglu Support No-Fly Decision At OIC Meeting On Libya, Calls For An Islamic Humanitarian Programme In And Outside Libya*, 8 March 2011, www.lcil.cam.ac.uk/sites/default/files/LCIL/documents/arabspring/libya/Libya_15_Ihsanoglu_Support.pdf (28 March 2017); *European Parliament resolution of 10 March 2011 on the Southern Neighborhood, and Libya in particular*, http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0095+0+DOC+XML+V0//EN (28 March 2017).

[43] Leiby, R.; Mansour, M., *Arab League asks U.N. for no-fly zone over Libya*, The Washington Post, 12 March 2011, https://www.washingtonpost.com/world/arab-league-asks-un-for-no-fly-zone-over-libya/2011/03/12/ABoie0R_story.html?utm_term=.90738e7d8def (28 March 2017).

[44] *Ibid*.

[45] Talmon, S., *Recognition of the Libyan National Transitional Council*, ASIL, vol. 15, nr. 16, 2011, https://www.asil.org/insights/volume/15/issue/16/recognition-libyan-national-transitional-council (29 March 2017).

[46] Russia, China, Brazil, India and Germany abstained from voting.

inst humanity. The Council determined that the situation in Libya constituted a threat to international peace and security and acted pursuant to Chapter VII of the UN Charter. With regard to the protection of civilians, it authorized member states to take "all necessary measures…to protect civilians and civilian populated areas under threat of attack…, while excluding a foreign occupation force of any form on any part of Libyan territory".[47] It strengthened sanctions against designated individuals, imposed by the Resolution 1970. Finally, it established a no-fly zone, that is, a ban on all flights, with the exception of the ones for humanitarian purposes. In order to operationalize such a ban, it authorized member states to "take all necessary measures to enforce compliance with the ban on flights".[48]

Following the adoption of the Resolution 1973, a military coalition led by NATO undertook an intervention in Libya. The US conducted an air campaign against Gaddafi's forces, while NATO assumed responsibility for enforcing the arms embargo and a no-fly zone.[49] During the intervention, diverging attitudes of the permanent members of the SC toward military actions could have been observed. When a NATO airstrike resulted in Gaddafi's son and three grandchildren being killed in their own home, Russia condemned the attack, calling it "a disproportionate use of force".[50] The intervention lasted for seven months, until Gaddafi was ousted from power and ultimately murdered. At that time, the UN ended a mandate for NATO operations in Libya.[51]

The Resolution was rightly considered to be "groundbreaking"[52], not so much for the fact that the SC members managed to reach an agreement on the authorization to use "all necessary means" to protect civilians, for such authorizations already existed in some previous resolutions[53], but for the fact that it

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[47] S/RES/1973 (2011).

[48] *Ibid*.

[49] Nanda, V. P., *The Future Under International Law of Responsibility to Protect after Libya and Syria*, Michigan State International Law Review, vol. 21, 2013, p. 13.

[50] Denyer, S.; Fadel, L., *Gaddafi's youngest son killed in NATO airstrike; Russia condemns attack*, The Washington Post, 1 May 2011, https://www.washingtonpost.com/world/gaddafi-calls-for-cease-fire-as-nato-strikes-tripoli/2011/04/30/AF1jZsNF_story.html?utm_term=.d3b117714565 (30 March 2017).

[51] Charbonneau, L., *U.N. ends mandate for NATO operations in Libya*, Reuters, 27 October 2011, http://www.reuters.com/article/us-libya-un-idUSTRE79P6EC20111027 (30 March 2017).

[52] Zifcak, S., *The Responsibility to Protect after Libya and Syria*, Melbourne Journal of International Law, vol. 13, 2012, p. 64.

[53] See resolutions on Somalia and Haiti: S/RES/794 (1992); S/RES/940 (1994).

is the first time that the Council authorized the use of force in order to protect civilians without the consent of the host state.

3.3. Responsibility to Protect in the Libyan crisis

The Libyan crisis was the first test of how the RtoP principle, endorsed at the 2005 Summit as a theoretical concept, functions in practice. When a humanitarian disaster seemed likely to happen, many believed that Libya was a point where RtoP will "either triumph or die".[54]

Following the adoption of the Resolution 1973, the coalition of Western states, and subsequently NATO forces, undertook military intervention in Libya. The aim of the Resolution was not to intervene in the internal conflict, but to protect the civilian population. To be sure, this aim was accomplished, for the intervention saved many civilian lives, which were jeopardized by outright threats Gaddafi had made. Some believe this is enough to claim the "triumph" of RtoP.[55]

From the legal point of view, the intervention was undoubtedly justified. The SC is empowered by the UN Charter to authorize the use of force in case of a threat to international peace and security, and it thus acted accordingly. The motive of the intervention, however, is the element that needs to be considered in order to reveal whether an action fits into the RtoP framework. It, therefore, needs to be determined whether the aim of the intervention was to save the civilian population from atrocities, thus promoting and strengthening the principle, or whether the Libyan scenario, as some would say, gave RtoP a "bad name".[56]

As noted above, the SC passed the Resolution 1973 with ten affirmative votes and 5 states, including Russia and China, abstaining. These two states, which traditionally veto similar resolutions, clearly did not want to take responsibility for a humanitarian catastrophe which would have happened had

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[54] *The Lessons of Libya*, The Economist, 19 May 2011, http://www.economist.com/node/18709571 (31 March 2017).

[55] See: Thakur, R., *R2P, Libya and International Politics as the Struggle for Competing Normative Architecture*, E-international relations, http://www.e-ir.info/2011/09/07/r2p-libya-and-international-politics-as-the-struggle-for-competing-normative-architectures/ (31 March 2017).

[56] Words of Indian UN representative, cited in: Mohamed, S., *Syria, the United Nations and the Responsibility to Protect*, American Society of International Law Proceedings, nr. 106, 2012, p. 223.

the Resolution not been adopted. But in spite of the fact that the Resolution was passed, a disagreement among the SC members over the implications of the Resolution was present immediately after its adoption. States which abstained from voting expressed their concern over the implementation of the resolution. Germany saw "great risks" in using military force and a "danger of being drawn into a protracted military conflict that would affect the wider region".[57] The Indian representative was concerned with the "[lack of] clarity about details of enforcement measures, including who will participate and with what assets, and how these measures will exactly be carried out".[58] The representative of Brazil expressed doubt as to whether "the use of force as provided for in paragraph 4 of the Resolution will lead to the realization of...common objective — the immediate end to violence and the protection of civilians".[59] He further raised concerns that "such measures may have the unintended effect of exacerbating tensions on the ground and causing more harm than good to the very same civilians...[they] are committed to protecting".[60] The Russian representative pointed out that the whole range of concrete and legitimate questions raised by Russia and other members of the Council remained unanswered. Those questions, he said, "touched on how the no-fly zone would be enforced, what the rules of engagement would be and what limits on the use of force there would be".[61] Similarly, the Chinese representative stated that some "specific questions...failed to be clarified or answered" and that "China has serious difficulty with parts of the resolution".[62] These statements show that there was no real agreement on the use of military force among states, not even upon the adoption of the resolution, let alone during the intervention, which went beyond the sole protection of civilians.

The intervention in Libya was according to the text of the Resolution 1973 and the statements of several world leaders and NATO officials supposed to be limited to the protection of civilians. NATO Defense Ministers issued a statement on Libya, in which they reiterated the mandate of both the Resolution 1970 and 1973 to protect civilians.[63] The US, the UK and French leaders also

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57   SC, 6498th meeting, 17 March 2011, S/PV.6498, p. 5.

58   *Ibid.*, p. 6.

59   *Ibid.*

60   *Ibid.*

61   *Ibid.*, p. 8

62   *Ibid*, p. 10.

63   *Statement on Libya, Following the Working Lunch of NATO Ministers of Defense with non-*

emphasized the limited objectives of the Resolution 1973.[64] However, their statement suggesting that "it is impossible to imagine a future for Libya with Gaddafi in power" might lead to a different conclusion.[65] Following the intervention, many believed that it is the regime change that the foreign powers were ultimately after. A concern about protecting human lives was perceived by some critics as a pretext for an unlawful intervention, which goes far beyond the mandate given by the Resolution 1973. They claim that the US, the UK and France have each allied with governments such as Guatemala, Indonesia, Colombia and Zaire, which have in recent decades engaged in the slaughter of civilians as bad or worse as had been occurring in Libya.[66] Additionally, the critics question the argument of the regional consensus giving weight to the legitimacy of the intervention. In their view, the Arab League, which supported the establishment of a no-fly zone, is an organization composed primarily of pro-Western autocracies which have shown little hesitance in brutally suppressing their own pro-democratic struggles.[67]

It was rather difficult to separate the motive of saving the civilian population from the motive of changing the regime in the case of Libya. Considering Gaddafi's threats against the protesters and his determination to eliminate them, it is doubtful whether the aim of protecting the population could have been accomplished with Gaddafi in power. But regardless of whether the regime change was a pretext for the intervention in Libya or a spontaneous course of events in saving the Libyan population from mass atrocity crimes, the fact remains that the intervention aimed at regime change and as such exceeded the mandate of protecting civilian lives. If NATO had abided by the narrow mandate from the Resolution 1973, it would have probably assuaged the fears

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NATO Contributors to Operation Unified Protector, NATO Press Release 071, 8 June 2011, http://www.nato.int/cps/en/natohq/news_75177.htm (31 March 2017).

[64]   *Libya's Pathway to Peace*, The New York Times, 14 April 2011, http://www.nytimes.com/2011/04/15/opinion/15iht-edlibya15.html (31 March 2017). See also President Obama's Address to the Nation, in which he said that "broadening ... [US] military mission to include regime change would be a mistake". *Remarks by the President in Address to the Nation on Libya*, 28 March 2011, https://obamawhitehouse.archives.gov/the-press-office/2011/03/28/remarks-president-address-nation-libya (9 June 2017).

[65]   *Supra* note 64, Libya's Pathway to Peace.

[66]   Zunes, S., *Libya, the "Responsibility to Protect", and Double Standards*, The Huffington Post, http://www.huffingtonpost.com/stephen-zunes/libya-the-responsibility-_b_841168.html (25 April 2017).

[67]   *Ibid*.

of Russia and China about interventionism in the internal affairs of foreign states, thus enhancing the chances that these two permanent members of the SC would support similar resolutions in future. After the Libyan experience, however, it is highly likely that Russia and China will veto resolutions authorizing the use of military force under the RtoP mantra. The case of Syria was a clear example of such restrained approach taken by these two states.

4. THE CASE OF SYRIA

4.1. Emergence of conflict and international response

Non-violent demonstrations in Syria began in February 2011. They were motivated by social issues, primarily poverty, and a quest for higher degree of democracy. Another wave of peaceful demonstrations occurred in March 2011, following the rebellion of a group of young people who painted anti-government graffiti. The government's reaction to the graffiti was brutal, thus resulting in arrests and tortures. Protests quickly spread across the country, aiming at the removal of president Bashar al-Assad from power. As the government forces responded fiercely to the protests, an uprising soon evolved into a civil war. It was largely characterized by a sectarian division between the Alawite minority, to which Assad and his forces belonged, and the majority Sunni population.[68] Each side to the conflict was backed by several foreign powers. Assad was backed by Russia and Iran, while the opposition forces were supported by Saudi Arabia, Qatar and Turkey in the Middle East, as well as by the Western states – the US, the UK and France.

In April 2011, the demonstrations grew larger and the government employed even harsher tactics. The Under-Secretary-General for Political Affairs told the SC members that "reliable sources are consistently reporting the use of artillery fire against unarmed civilians; door-to-door arrest campaigns; the shooting of medical personnel who attempt to aid the wounded; raids against hospitals, clinics and mosques; and the purposeful destruction of medical supplies and arrest of medical personnel".[69] In 2012, the Human Rights

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[68] See: Chulov, M.; Mahmood, M., *Syrian Sunnis fear Assad regime wants to ethnically cleanse Alawite heartland*, The Guardian, 22 July 2013, https://www.theguardian.com/world/2013/jul/22/syria-sunnis-fear-alawite-ethnic-cleansing (28 April 2017).

[69] UN News Centre, *Syrian army carrying out 'major military operation' against key city – UN official*, http://www.un.org/apps/news/story.asp?NewsID=38201#.WQMrC9qLSUk (28 April 2017).

Watch reported that the security forces conducted several large-scale military operations in towns and cities, resulting in mass killings, arrests and detentions, as well as the use of torture.[70]

In August 2012, a report from the OHCHR "found a pattern of human rights violations…which may amount to crimes against humanity," and recommended the SC to refer Syria to the International Criminal Court.[71] The Human Rights Council condemned the "grave and systematic human rights violations by the Syrian authorities" and established the Independent International Commission of Inquiry to investigate all alleged violations since March 2011.[72]

While the US and the EU imposed economic sanctions and an arms embargo on the Assad regime, members of the SC condemned the violence but could not agree on how to respond to it. Western states and the Arab League advocated Assad's removal from power. The first Western draft resolution reminded Assad of his responsibility to protect the Syrian population and condemned human rights violation in Syria.[73] The second draft resolution again condemned the violence in Syria and supported the decision of the Arab League to facilitate a Syrian-led political transition.[74] The third one proposed sanctions against Syria.[75] Russia and China called for the respect of the principle of non-intervention in the internal affairs of Syria and vetoed all three draft resolutions.

Discussions in the SC revealed high tensions among states. Following double-vetoes wielded by China and Russia, the US ambassador stated that their government was "disgusted" with the veto.[76] Equally harsh was the response of the Russian ambassador, who accused "some influential members of the international community" of desiring regime change in Syria and of disfavoring a political settlement.[77] Two resolutions were passed at that time – one proposed

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[70] *Human Rights Watch, World Report 2012: Syria*, https://www.hrw.org/world-report/2012/country-chapters/syria (2 May 2017).

[71] *Ibid*.

[72] *Ibid*. See Human Rights Council resolutions: Resolution S-16/1 and Resolution S-18/1.

[73] Draft Resolution October 2011, UN Doc S/2011/612.

[74] Draft Resolution February 2012, UN Doc S/2012/77. The resolution similar to that vetoed in the SC was later adopted in the General Assembly (GA Res. 66/253).

[75] Draft Resolution July 2012, UN Doc S/2012/538.

[76] UN SCOR, 67th Session, 6711th mtg, UN Doc S/PV.6711, 4 February 2012.

[77] *Ibid*.

by the US, asking for a team of UN military observers to support Annan's six-point plan[78], and another, proposed by Russia, establishing a UN supervision mission in Syria.[79]

As in the case of Libya, the Arab League responded to the Syrian crisis. It suspended Syrian membership in the League, imposed sanctions, demanded a cessation of hostilities and sent its monitors to observe the compliance of Syrian authorities with the League's demands.[80]

Although Assad repeatedly claimed that his forces fought against terrorists[81], denying his responsibility for the atrocities that had occurred, the Independent International Commission of Inquiry[82] reported gross violations of human rights committed by the Syrian regime. The Commission "found reasonable grounds to believe that Government forces and the *Shabbiha* had committed crimes against humanity of murder and torture, war crimes and gross violations of international human rights law and international humanitarian law, including unlawful killing, torture, arbitrary arrest and detention, sexual violence, indiscriminate attacks, pillaging and destruction of property".[83] In addition, allegations of the use of chemical weapons emerged in 2012.[84] In 2013, chemical attacks occurred in Aleppo, Al-Otaybeh and Ghouta area of Damascus, and in several other places. The UN chemical weapons experts examined the allegations of the use of chemical weapons and reported that such use had been confirmed.[85] It was not quite clear which side to the conflict

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[78] SC Res. 2042 (2012).

[79] SC Res. 2043 (2012).

[80] MacFarquhar, N.; Bakri, N., *Isolating Syria, Arab League Imposes broad Sanctions*, New York Times, 27 November 2011, http://www.nytimes.com/2011/11/28/world/middleeast/arab-league-prepares-to-vote-on-syrian-sanctions.html (15 May 2017).

[81] See: *Syria: Bashar al-Assad's Speech – Tuesday 10 January*, The Guardian, https://www.theguardian.com/world/middle-east-live/2012/jan/10/syria-bashar-al-assad-speech-live-updates (3 May 2017).

[82] The Commission was established on 22 August 2011 by the Human Rights Council through resolution S-17/1.

[83] *Report of the Independent international commission of inquiry on the Syrian Arab Republic*, Human Rights Council, 16 August 2012, A/HRC/21/50. All the reports of the Commission see at: http://www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/Documentation.aspx.

[84] For a timeline of significant events related to Syria's chemical weapons program from 2012 to the present, see: Arms Control Association, https://www.armscontrol.org/factsheets/Timeline-of-Syrian-Chemical-Weapons-Activity (5 June 2017).

[85] *United Nations Mission to Investigate Allegations of the Use of Chemical Weapons in the*

had been using those weapons, as the government and the rebel forces accused each other of the incident, while the UN refrained from assigning blame in its report. While Russia criticized the UN report and raised suspicion that rebels staged the attack, the Western powers accused Assad, raising the issue of a possible military action in response to the attack.[86] The idea of undertaking military intervention materialized when the latest chemical weapons attack in Syria took place in April 2017. It was the first time since the beginning of the Syrian war that the US intervened against the Syrian government. Assad called the incident a "fabrication" used to justify a US cruise missile strike on Syria's Shayrat airbase.[87]

4.2. Responsibility to Protect in the case of Syria

Strikingly departing from the Secretary-General's statement from the beginning of this article, which announced that RtoP is "here to stay"[88], the case of Syria seriously raised doubts as to whether the principle of RtoP can be considered more efficient than the controversial doctrine of humanitarian intervention.

Although the OHCHR, the Human Rights Watch, the Independent International Commission of Inquiry and others all reported mass atrocity crimes occurring in Syria[89], the international community failed to prevent a humanitarian disaster. Permanent members of the SC could not reach an agreement on adopting the resolution which would authorize the use of force aimed at saving civilian lives. Russia and China vetoed each resolution proposing not only the use of force, but also the imposition of sanctions against the Syrian regime.

Syrian Arab Republic, Report on the Alleged Use of Chemical Weapons in the Ghouta Area of Damascus on 21 August 2013, Note by the Secretary-General, http://www.un.org/zh/focus/northafrica/cwinvestigation.pdf (2 June 2017).

[86] Gutterman, S.; Holmes, O., *Russia says UN report on Syria Attack biased*, Reuters, 18 September 2013, http://www.reuters.com/article/us-syria-crisis-russia-idUSBRE-98H0RQ20130918 (2 June 2017).

[87] *Syria Chemical "Attack": What we know*, BBC News, 26 April 2017, http://www.bbc.com/news/world-middle-east-39500947 (2 June 2017).

[88] *Supra* note 4.

[89] In April 2016, the UN Special Envoy in Syria reported that around 400 000 people died in the Syrian civil war. A similar figure, a death toll of 470,000, had been reported in 2015 by the Syrian Research Group. See: Hudson, J., *UN Envoy revises Syria Death Toll to 400,000*, http://foreignpolicy.com/2016/04/22/u-n-envoy-revises-syria-death-toll-to-400000/ (2 June 2017).

While Russia traditionally raised suspicion of the true motives of the Western involvement in the Syrian conflict, its own true motives for non-intervention were brought into question. Russian close ties with the Syrian government and its strategic interests, such as the Russian naval base in the Syrian city of Tartous, were considered as least as important as its general support for the non-intervention principle.[90]

Divisions over Syria in the SC made individual states and regional organizations take certain actions. The Arab League, the EU, Turkey and other states diplomatically isolated the Syrian regime and by March 2012 at least 49 countries had imposed bilateral targeted sanctions, while at least 14 had closed their embassies in Damascus.[91]

Although the international community, acting through the SC, failed to take military action in Syria, the Syrian civil war has been characterized by a high degree of foreign military involvement of individual states or groups of states. For years now, the US-led coalition, as well as several states from the Middle East, has been taking part in a fight against ISIL.[92] On the other hand, in 2015 Russia responded to Assad's request for military assistance and launched air strikes, firstly targeting ISIL, and subsequently other Syrian rebels as well.[93] Finally, the latest intervention took place in April 2017, when the US for the first time since the beginning of the Syrian civil war launched an attack against the Syrian government, as retaliation for the chemical weapons attack that killed dozens of civilians.[94] The US and Russian military forces are still present in Syria at the moment, apparently both fighting ISIL. However, in spite of having the same enemy, cooperation between the two states is scarce.

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[90]   Williams, P. R.; Ulbrick, J. T.; Worboys, J., *Preventing Mass Atrocity Crimes: The Responsibility to Protect and the Syria Crisis*, Case Western Journal of International Law, vol. 45, 2012, p. 489.

[91]   Adams, S., *Failure to Protect: Syria and the UN SC*, Global Centre for the Responsibility to Protect, Occasional Paper Series, no. 5, March 2015, p. 11.

[92]   Fantz, A., *Who's doing what in the coalition battle against ISIS*, CNN, 9 October 2014, http://edition.cnn.com/2014/10/09/world/meast/isis-coalition-nations/ (30 May 2017).

[93]   *Russia Joins War in Syria: Five key points*, BBC News, 1 October 2015, http://www.bbc.com/news/world-middle-east-34416519 (30 May 2017).

[94]   An attack, authorized by President Trump, departs from the previous US practice. When a chemical attack occurred in 2013, crossing the President Obama's "red line", Obama was not willing to strike Assad's regime, at least not without the congressional approval. See: Herb, J., *How Trump's Syria airstrike is different from – and similar to – Obama's*, CNN, 07 April 2017, http://edition.cnn.com/2017/04/07/politics/obama-syria-airstrikes-trump/index.html (7 June 2017).

Some argue that this is because they cannot agree with respect to what should happen in Syria once ISIL is destroyed.[95]

Individual states taking military actions is exactly what the 2001 ICISS Report warned about. It pointed out that "the SC should take into account in all its deliberations that, if it fails to discharge its responsibility to protect in conscience-shocking situations crying out for action, concerned states may not rule out other means to meet the gravity and urgency of that situation – and that the stature and credibility of the United Nations may suffer thereby".[96]

Several conclusions could arguably be drawn from the Syrian experience.

First, future resolutions implementing RtoP should be as precise as possible, in order to minimize the chances that different states will interpret the same resolution in different ways. This precision should refer not only to the sole text of the resolution, but also to the discussions among the SC members preceding the adoption of the resolution. What happened with the Resolution 1973 – when abstaining states expressed discontent with the vagueness of the resolution aims right after the adoption of the resolution – should be avoided in future.

Second, Russia and China by unconditionally adhering to the non-intervention principle, regardless of the need to save the civilian population in particular cases, risk undertaking unilateral military interventions by the US and its allies. The US has demonstrated on numerous occasions that it is not willing to abstain from military action – justified or not – (only) because that action is not authorized by the SC. A better scenario could have been constructed if Russia and China pursued an agreement within the UN system, rather than vetoing even moderately formulated resolutions as in the case of Syria, thus ultimately contributing to the unilateral activity of the Western states.

Third, if a military intervention is approved by the SC in a particular case, it should be conducted as unbiasedly as possible, with the sole aim of saving the civilian population at risk. In the case of Libya, the Western allies took sides, thus desiring regime change. The price to be paid was the Russian and Chinese veto in the Syrian crisis. If a foreign intervention is only about saving civilian lives and has no hidden agenda, the likelihood that the SC members will support it is much higher.

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[95] Friedman, U., *What is Putin up to in Syria?,* The Atlantic, 19 June 2017, https://www.theatlantic.com/international/archive/2017/06/russia-isis-baghdadi-syria/530649/ (20 June 2017).

[96] The Report, XIII.

5. LIBYA AND SYRIA – A COMPARISON

Reasons behind a disparate reaction of the international community in the conflicts in Libya and Syria may be divided into two categories. The first one refers to the domestic situation in each of these countries, for instance, the way in which their rulers responded to the protests, the organization of the opposition forces, the position and strength of each state within the region, and others. The second one refers to particular interests of powerful states in these two countries.

Although the conflicts in both countries are characterized by a clash between the government and the opposition forces, resulting in a heavy humanitarian situation, these two crises differ in many ways. While Gaddafi brutally responded to the protests in Libya, calling the protesters "cockroaches" and threatening to kill them, Assad's rhetoric was more moderate. In his speech before the Syrian parliament in Damascus, he said that "security forces were given orders not to harm citizens during the protests".[97] His next speech, in which he promised reform and a more humble government[98], was even more conciliatory than the one before the Parliament. Such a position was significantly different from the one Gaddafi had taken.

The second difference is the one between the Libyan and Syrian opposition. While the opposition in Libya was more or less consolidated, the opposition in Syria was extremely fractured, ranging from the Free Syrian Army, to the Islamic State, al-Nusra and others.[99] Undertaking a military intervention against Assad at the same time meant strengthening the position of an opposition group such as ISIL, which is a consequence that every state wishes to avoid.[100]

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[97] *Syrian Leader Blames Protests on "Conspirators"; No Reforms Announced*, Radio Free Europe/Radio Liberty, available on: https://www.rferl.org/a/assad_speech/3541439.html (6 June 2017).

[98] Marsh, K., *Syria protests continue as Bashar al-Assad promises reform*, The Guardian, 16 April 2011, available on: https://www.theguardian.com/world/2011/apr/16/bashar-al-assad-syria (6 June 2017).

[99] Sary, G., *Syria Conflict: Who are the groups fighting Assad?*, BBC News, 11 November 2015, http://www.bbc.com/news/world-middle-east-34710635 (6 June 2017).

[100] After the US airstrike in Syria in April 2017, Russian Prime Minister Medvedev said the US strike was "good news for terrorists". See: Khomami, N.; Grierson, J., *US military strikes on Syria: what we know so far*, The Guardian, 07 April 2017, https://www.theguardian.com/world/2017/apr/07/us-airstrikes-on-syria-donald-trump-what-we-know-so-far (7 June 2017).

The third difference may be observed in the regional actors, primarily the Arab League, which are said to have played more active role in the case of Libya. It took less than a month from the beginning of the unrest in Libya for the League to suspend the membership of that state. Conversely, in the case of Syria, the League suspended its membership after about nine months of severe fighting. Such inconsistency between the League's reactions is said to be caused by the close political, economic and personal ties between many of its members and the Assad government.[101]

Although all the above reasons might have contributed in some extent to the decision to intervene in Libya and not to intervene in Syria, it is the disagreement between the permanent members of the SC that played the decisive role. Disunity among the permanent five existed ever since the adoption of the Resolution 1973 and grew stronger as NATO exceeded the strict mandate of the Resolution. This certainly influenced the decision of Russia and China to adopt an utterly restrained approach when discussing in the SC not only on the use of force in Syria, but also on the imposition of sanctions. The most illustrative explanation of the situation was perhaps given by the Russian representative in the Council, who drew a comparison between the cases of Libya and Syria, stating that "the situation in Syria cannot be considered in the SC separately from the Libyan experience".[102] He further suggested that "the international community is alarmed by statements that compliance with SC resolutions on Libya in the NATO interpretation is a model for the future actions of NATO in implementing the responsibility to protect…"[103] He stressed that "the demand for a quick ceasefire turned into a full-fledged civil war", that "the situation in connection with the no-fly zones has morphed into the bombing of oil refineries, television stations and other civilian sites", while "the arms embargo has morphed into a naval blockade in western Libya".[104] The Russian Representative concluded that "these types of models should be excluded from global practice once and for all".[105] However, it was not only an excessive military intervention in Libya that made a difference in the case of Syria. It was also the post-Gaddafi turmoil, characterized by violence and

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[101] Zifcak, *op. cit.* (fn. 52), p. 85.

[102] UN SCOR, 66th session, 6627th meeting, UN Doc S/PV.6627 (4 October 2011), 3-4.

[103] *Ibid*.

[104] *Ibid*.

[105] *Ibid*.

lawlessness, that further complicated international responses to the ongoing crisis in Syria by raising doubts about the long-term results of the RtoP-type military action.[106]

Disagreement among the permanent members over taking action in Syria, however, was not exclusively a matter of principle. As usually is the case with raising foreign military intervention, interests of great powers came into play in both cases. In the case of Libya, interests of great powers were different than in the case of Syria. Apparently, there had been an odd situation between the US and Gaddafi over Libyan oil reserves. Allegedly, prior to the 2011 intervention Gaddafi demanded tough contract terms with the US companies and was unsatisfied with the profits that the US oil companies made in Libya. The US referred to this as "pursuing increasingly nationalistic policies in the energy sector that could jeopardize efficient exploitation of Libya's extensive oil and gas reserves".[107] On the other hand, although it seemed that Russia had very little strategic interests in Libya, its engagement in Syria was critical for maintaining some of Russia's crucial interests. It is a well-known fact that Assad has been for decades one of the few Russia's allies in the Middle East. As has already been pointed out, Russia wanted to protect a key naval facility in the Syrian port of Tartous, which serves as Russia's sole Mediterranean base for its Black Sea fleet.[108] Secondly, Russia supplied Syrian armed forces with weapons, thus representing the biggest arms importer to Syria.[109] In addition to these two most frequent arguments that support Russian involvement in the Syrian war, there might be another one – the fear of Islamic extremists and terrorists with whom Russians themselves have had experience in the region of northern Caucasus.[110] As for the US motive for intervening in Syria, the most

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[106] Thakur, R., *Syria and the Responsibility to Protect*, http://www.e-ir.info/2014/02/04/syria-and-the-responsibility-to-protect/ (9 June 2017).

[107] Mufson, S., *Conflict in Libya: US oil companies sit on sidelines as Gaddafi maintains hold*, The Washington Post, 10 June 2011, https://www.washingtonpost.com/business/economy/conflict-in-libya-us-oil-companies-sit-on-sidelines-as-gaddafi-maintains-hold/2011/06/03/AGJq2QPH_story.html?utm_term=.c86847e0070e, (9 June 2017).

[108] *Syria Crisis: Where Key Countries Stand*, BBC News, 30 October 2015, http://www.bbc.com/news/world-middle-east-23849587 (9 June 2017).

[109] Grove, Th.; Solomon, E., *Russia boosts arms sales to Syria despite world pressure*, Reuters, 21 February 2012, http://www.reuters.com/article/us-syria-russia-arms-idUSTRE81K13420120221 (9 June 2017).

[110] Pukhov, R., *Why Russia is backing Syria*, The New York Times, 6 July 2012, http://www.nytimes.com/2012/07/07/opinion/why-russia-supports-syria.html (9 June 2017).

prominent reason seems to be the territorial proximity of Syria to Israel, the US ally. The US military intervention against Assad, with whom Israel was traditionally at odds, meant increasing Israel's stability and security. After the intervention in April 2017, Israel hailed the engagement of its strong ally.[111]

In light of all the above circumstances, it may be concluded that, although appearing to be quite similar, the cases of Libya and Syria differ in many respects. Some might argue that the only relevant circumstance is the humanitarian disaster, the consequences of which are the same in both cases. However, it also holds true that the very essence of world politics lies in the interests of great powers, the latter being a relevant factor in a decision-making process.

6. CONCLUDING REMARKS

The case of Syria has shown that humanitarian disasters, such as those in Bosnia or Rwanda, are likely to happen again, despite of the proclaimed intention of the international community to stop them. This indisputable fact again raises the question of (in)efficiency of the current legal regulation on the use of force. A system in which the permissibility to use force, except for in self-defense, is based on the agreement of the permanent five, has proved to be inefficient on numerous occasions. If we disregard the post-Cold war temporary unity among the SC permanent members, we can claim that the US, the UK and France on the one side and Russia and China on the other, do not seem to be able to reach an agreement on decisions involving the use of force. This poses a paramount problem, as the efficiency of RtoP – although in theory presupposing the primary obligation of proper governments in assuring the rights of their populations – in practice rests upon the international community, that is, the SC. Some estimates show that in the 20th century some 262 million people were killed by their own governments, which is six times higher than the number of those killed in interstate wars.[112]

Applying RtoP in the Libyan crisis was at the moment the intervention took place perceived by many as a triumph of RtoP. The case of Syria, however, has shown that the principle was applied in Libya solely because the need to protect lives coincided with the interest of intervening states. It would,

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[111]   Mitnick, J., *Many in Israel Cheer US attack on Syria as a welcome sign of a more assertive key ally*, Los Angeles Time, 07 April 2017, http://www.latimes.com/world/la-fg-israel-syria-trump-20170408-story.html (9 June 2017).

[112]   Bellamy, A. J., *The Responsibility to Protect*, in: Williams, P. D. (ed.), *Security Studies: An Introduction*, Routledge, Abingdon, 2012, p. 487.

however, be exaggerated to say that RtoP triumphed after Libya and died after Syria. No such dramatic conclusion can be reached. We can claim, on the other hand, that the concept of RtoP faces the same obstacles as the doctrine of humanitarian intervention. In that sense the idea of separating these two concepts can be considered mainly unsuccessful. In spite of the fact that the RtoP doctrine differs from humanitarian intervention in some respects, the key issues pertinent to both concepts remain the same – and unresolved.

Following the Libyan intervention, there have been attempts to renew discussions on RtoP. One such initiative came from Brazil, which introduced the "Responsibility While Protecting (RwP)" concept, aiming at providing guidelines on how to implement RtoP more efficiently.[113]

The appropriateness of undertaking future military interventions will have to be evaluated within the SC on a case-by-case basis. The decision to intervene or not intervene will depend on the humanitarian situation in a particular state and, inevitably, on the interests of intervening states. In an ideal scenario, RtoP would be applied each time when human lives are sufficiently endangered, which would be measured in accordance with objective parameters, thus disregarding strategic or other interests of any state. However, it seems unrealistic to expect states to take such a principled approach.

The problem of application of RtoP is just a part of the overall controversy over the use of force in international relations. Inefficiency of the SC makes the system of the use of force established by the UN Charter untenable and no rhetorical inventions can change or overcome that. The Libyan and Syrian cases have shown that RtoP will be applied selectively up until a thorough reform of the entire system of the use of force is undertaken.

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[113] More on RwP see at: Tourinho, M.; Stuenkel, O.; Brockmeier, S., "*Responsibility While Protecting": Reforming R2P Implementation*, Global Society, vol. 30, nr. 1, 2016, pp. 134 – 150.

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Sažetak

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UTJECAJ SUKOBA U LIBIJI I SIRIJI NA DOKTRINU "ODGOVORNOSTI PRUŽANJA ZAŠTITE"

Kada je 2011. godine libijski diktator Muammar Gaddafi odgovorio na pobunu protiv svoje vlasti teškim kršenjima ljudskih prava, Vijeće sigurnosti je, pozivajući se na načelo "odgovornosti pružanja zaštite" (RtoP) usvojilo Rezoluciju 1973, kojom je ovlastilo države na upotrebu oružane sile kako bi se zaustavilo stradavanje civila u Libiji. Taj čin Vijeća sigurnosti dao je naslutiti da je načelo RtoP zaživjelo i da će ono poslužiti kao učinkovito sredstvo u borbi za očuvanje ljudskih prava i u budućim slučajevima. No sukob u Siriji koji je uslijedio nedugo nakon toga pokazao je da su takva predviđanja bila preuranjena. Stalne članice Vijeća sigurnosti u slučaju Sirije nisu zauzele jedinstveni stav pa rezolucija kojom bi se ovlastilo države na upotrebu sile s ciljem sprječavanja humanitarne katastrofe nije usvojena.

U članku se analiziraju sukobi u Libiji i Siriji te reakcija međunarodne zajednice na svaki od njih. Osobito se istražuju razlozi različitog postupanja Vijeća sigurnosti u dvama slučajevima koji, iako se razlikuju u nizu značajki, imaju bitnu zajedničku karakteristiku – kršenje ljudskih prava stanovništva od strane središnje vlasti.

Zaključak je članka da kod odlučivanja u Vijeću sigurnosti o poduzimanju oružanih intervencija, pa bile one uzrokovane i humanitarnim razlozima, države ne nastupaju principijelno, već u praksi uvijek gledaju i svoje strateške i druge interese. Tek kada ti interesi koincidiraju s humanitarnom katastrofom, RtoP načelo – točnije, njegov aspekt "reakcije" – biva primijenjeno.

Ključne riječi: odgovornost pružanja zaštite, Libija, Sirija, intervencija

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