

The Evolution of Humanitarian Intervention: Ethical and Pragmatic Considerations in International Law – From the Responsibility to Protect to the Responsibility While Protecting

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Abstract:

The Responsibility to Protect (R2P) is a dynamic and evolving concept within the field of humanitarian intervention. Initially introduced as a response to the global need for protecting populations from mass atrocities, it represents an attempt to create a novel framework within international law. R2P is centered on the idea that sovereignty is not an absolute right but carries the responsibility to protect citizens from genocide, war crimes, ethnic cleansing, and crimes against humanity. Despite its widespread endorsement, there is ongoing debate regarding the future trajectory and practical application of R2P. The discourse oscillates between whether R2P should be seen as a shared understanding of moral principles or as a legally binding doctrine within international law. Its evolution is shaped by the complex interactions among states, international organizations, and civil society, each promoting varying interpretations of the concept.

A significant development occurred in 2011 with Brazil's introduction of the concept of Responsibility while Protecting (RwP), which sought to refine and complement R2P by emphasizing the importance of accountability and oversight during interventions. RwP introduced the idea that while states have the responsibility to intervene in situations of mass atrocities, they must do so in a manner that adheres to strict criteria, including proportionality and monitoring the consequences of their actions. This addition has sparked further debate about the strength and limitations of R2P, with some arguing that RwP could dilute the urgency of intervention, while others view it as a necessary safeguard against abuse. The ongoing dialogue between these two concepts reflects the broader tension between ethical and pragmatic considerations in international humanitarian law, leaving the future of both frameworks open to interpretation and reform.

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Introduction:

Humanitarian intervention is controversial and yet gaining wider attractiveness inside the international community. On the one hand are arguments in opposition to intervention of any kind that center at the sovereignty of states, upon which the global system is constructed. Then again are arguments in favor of humanitarian intervention that center on the status quo of essential human rights and the obligation of states to recognize and guard the ones rights. There are several factors, each ethically and pragmatically, that influence the decision for a country or countries to commit to humanitarian intervention.

From the ethical perspective there are : Firstly, the dimensions of the violation of fundamental human rights; is the abuse against some thousand or a few hundred thousand humans. Secondly, the shape of the human rights abuses ; are they essential, described as genocide, massacres, ethnic cleansing, and forced hard work, or are they secondary human rights, so to talk, such as censorship, disenfranchisement, monetary deprivation, and the like.

From the pragmatic angle there are three factors. The first one is the ‘CNN effect’, in which persevered exposure to scenes of warfare and the sufferers of human rights abuses through the media can pressure a population to stress political leaders to intervene. The Second one is the home politics/ public opinion can affect the decision of a central authority to interfere in that election cycles and institutional energy struggles among different branches of presidency can have an effect on the choice to intervene; and political leaders are generally reluctant to invest should probably adversely have an effect on their political careers. The third one is the states remember the countrywide self-interest inside the selection to intrude that allows you to decide if the proposed intervention would be useful, dangerous, or impartial to the country wide interest. From this standpoint, the research problematic is as follows: **How can we reconcile moral and pragmatic issues in humanitarian intervention? Even when we moved from (R2P) principle to responsibility while protecting (RwP) as an evolution of**

humanitarian intervention ? We can answer to this problematic in some points as follows :

1- Humanitarian intervention in international law:

The primary focus of international law is on the regulation of state conflict, as states are considered sovereign entities. Two main bodies of regulation exist regarding state conduct in conflict and decisions to use force: both have deep roots within European Public International Law. The former can be traced back to Christian doctrines of natural law while the latter emerged as a result of European great power dynamics during the 19th century further developing through the codification movement that took place in the 20th century. The United Nations Charter forms the basis of laws related to war. It serves two main purposes: one is to prevent individual countries from using force and the other endows the Security Council with a unique power, which could decide collectively when military force can be used.

Article 2/4 lays down the fundamental principle by mandating that states shall not use force or coercion against other states : “All members shall refrain in their relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.” This is a widely recognized prohibition, enshrined within the Charter's section that delineates the common and cardinal responsibilities of UN membership as well as those of the organization itself, and often cited as the major contribution of the UN system to world order. It refers to Article 2/3, which says that UN states are required to settle their disputes using peaceful means. However, Article 2/4/ deprives states of the legal right to use force and later Articles 24, 39, 42 etc. Transfer this power to the Security Council¹. The United Nations Charter assigns the Security Council the primary responsibility for maintaining international peace and security², This includes the authority to take necessary measures, which can involve military action against states or other threats³.

¹ - Ian Hurd, *is humanitarian intervention legal? The Rule of Law in an Incoherent World*, *Ethics & International Affairs*, n° 03, 2011, pp. 295, 296.

² - See Article 24 of the charter of united nations, signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organization, and came into force on 24 October 1945.

³ - see Article 42 of the charter of united nations.

Driven by the devastating conflicts of World Wars I and II, the architects of the UN Charter sought to establish a new world order. This order would be upheld through a centralized system, with major powers acting as key players to prevent future aggression. This system aimed to achieve global peace by restricting unilateral military action by member states. Therefore, interventions endorsed by the UN Security Council, acting within its mandate to address threats to international peace and security, are generally viewed as legitimate¹. Within the international legal framework, self-defense stands as the primary justification for states to engage in warfare. This right has been long-established, with nations historically arguing that military force used in response to another state's aggression constitutes a distinct legal and practical category. Consequently, the body of international law generally recognizes this type of action as legitimate. The concept of self-defense has roots tracing back to the realm of classical international law. European thinkers like Grotius, in the 17th century, identified it as a pre-existing right. The core idea revolves around an armed response to an attack, with the force used being both necessary and proportional to the initial aggression. While historical debates have centered on the principles of necessity and proportionality, the fundamental concept of self-defense itself remains largely undisputed².

2- Towards an Ethical Framework

The role of ethics in international relations has been a contentious issue, sparking significant debate between realists and liberals. While

- see also : Jared Schot, Chapter VII as Exception: Security Council Action, and the Regulative Ideal of Emergency, *Northwestern Journal of International Human Rights*, Volume 6 | Issue 1, 2008, p 29.

¹ - For more details see, [Ramesh Thakur](#), *The United Nations, Peace and Security*, **Cambridge University Press**, January 2006. see also, Article 39 of the charter of united nations.

² - While preventive self-defense and preemptive strikes are considered illegitimate military responses on the international level, despite some justifications related to protecting the strategic interests of states, they find no basis in customary international law. On the other hand, interference in the internal affairs of states under the guise of humanity has sparked much debate, ranging from humanitarian intervention to the international responsibility to protect to the responsibility while protecting as an attempt to moralize international conflicts. See also, Ian Hurd, *op cit*, pp. 295, 296.

previously neglected by many scholars, recent years have seen resurgence of interest in this crucial aspect of global affairs¹. The global community faces a persistent dilemma, when, if ever, to intervene in humanitarian catastrophes. This paralysis allows unimaginable suffering to persist. To break this deadlock, we must understand the arguments against intervention. Humanitarian intervention, by definition, involves the use of military force in another sovereign state without their consent, with the aim of halting egregious human rights violations. While I believe there are situations where such intervention can be ethically justified, adhering to principles like those outlined in the "just war" tradition is paramount².

First of all, the central question surrounding humanitarian intervention is authority, who has the legitimate right to intervene? The most contentious debate revolves around bypassing the UN Security Council, the sole body with the legal power to authorize force. Critics of intervention often cite legal arguments, opposing any action outside of the Security Council's mandate. For instance, they point to the 1999 intervention in Kosovo, which despite humanitarian justifications, remains controversial due to its lack of UN authorization. While the Security Council serves as the primary authorizing body, its effectiveness is frequently hampered by its limitations³.

2nd point, The concept of 'just cause' for intervening in another nation remains a contentious issue. Proponents argue that intervention can be justified to prevent atrocities or safeguard civilians. However, defining 'just cause' presents a significant challenge. Ambiguous terms like "supreme emergencies" offer little guidance on when intervention is appropriate. Furthermore, the international community has a troubling history of inaction, even in the face of grave humanitarian crises.

1 - Malcolm Chalmers, *The Ethics of Intervention – Human Rights, National Sovereignty and the Balance of Risk*, 2 août 2011:

<http://www.speakerscornertrust.org/5166/the-ethics-of-intervention-human-rights-national-sovereignty-and-the-balance-of-risk/>

² - Amanda J. Porter, *The Ethics of Humanitarian Intervention*, A thesis submitted in partial fulfillment of the requirements for the degree in Doctor of Philosophy, Western University, The School of Graduate and Postdoctoral Studies, London, 2010, P – p 89 – 92.

³ - Govert Den Hartogh, *Humanitarian Intervention and the Self-Image of the State*, *Need the state make false claims?, Pluralism and Law*, University of Amsterdam, January 2001, p 108.

Conversely, focusing solely on specific justifications, like genocide, might overlook other compelling reasons to intervene. In conclusion, 'just cause' provides a moral rationale for intervention but faces practical difficulties in real-world application ¹.

Returning to the Darfur region, it witnessed the issue of humanitarian intervention as a pressure card on the Sudanese government to make concessions to the southern rebels, which is what actually happened in the "Naivasha" agreement that paved the way for a C-section operation that gave birth to the state of the South in 2011 after its separation from the mother country (Sudan). As soon as the secession, the United States removed Sudan from the list of state sponsors of terrorism, which, if anything, indicates the political background of the issue under the cover of humanity. In 2004, Congressman Donald Payne's resolution 1424 condemning the Darfur violence as genocide not only secured its recognition on the international stage, but also pressured the UN Security Council to sanction human rights violators. Additionally, the resolution advocated for potential US military intervention, ultimately playing a pivotal role in bringing attention to the

¹ - The most common reasons under "Just Cause" are: Preventing Serious Harm: Stopping genocide, ethnic cleansing, or other major human rights abuses. Protecting Civilians: Stepping in when a government isn't protecting its own people from violence. Stopping Aggression: Preventing a country from invading another or using military force. Maintaining Peace: Stopping a conflict that could destabilize a region or lead to wider war. However, there are also important limitations to consider: Proportionality: The force used has to be reasonable for the situation and not cause more harm than good. Last Resort: Intervention should only happen after all other peaceful options have failed. Legality: Just Cause might make sense morally, but international law usually requires UN Security Council approval for using force. See, Jeff McMahan, *Just Cause for War, Philosophy & Public Affairs*, 2004, *Ethics & International Affairs*, Volume 19 , Issue 3 , December 2005 p – p 03 – 06. Also, The International Commission of Inquiry on Darfur, for instance, documented severe war crimes in 2005, despite not finding evidence of government-orchestrated genocide. This case underscores the limitations of rigid legal definitions like "genocide" in fully capturing the extent of human suffering. We must prioritize the potential outcomes. If an intervention is likely to cause more harm than it prevents or has a low probability of success, it cannot be justified. Where this approach embraces flexibility, encompassing situations where governmental inaction exacerbates suffering, exemplified by the devastation following Cyclone Nargis in Myanmar (2008). See, Pursuant to Security Council Resolution 1564 of 18 September 2004, Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, Geneva, 25 January 2005, p 04.

crisis and fostering a global response. Therefore, there is no talk of an ethical framework for intervention or the R2P¹.

Third point, The requirement of 'good intentions,' implying a complete absence of self-interest on the part of the intervening nation, presents another point of contention. I reject this condition for two main reasons. Firstly, by its very nature, a state acts in its national interest. Secondly, discerning whether humanitarian goals are the sole motivator is inherently difficult. As exemplified by David Cameron's statement regarding the intervention in Libya, pursuing national interests can coexist with humanitarian aims. The question then becomes: does such self-interest automatically delegitimize an intervention ostensibly intended to protect civilians?² Fourth point, The concept of 'last resort' raises a crucial question, when is intervention justified? The urgency of a potential genocide, with a million lives at stake in just three months, as tragically witnessed in Rwanda in 1994, underscores the need to revisit this principle. We can reformulating 'last resort' as the 'least harmful alternative.' Early military intervention, when necessary, should be considered alongside options like international relations or sanctions. While diplomacy and economic pressure can be successful, they may also prove to be too slow in the face of imminent atrocities³.

5th point, The issue of 'proportionality' delves into the question of 'how to intervene?' The Iraq War serves as a cautionary tale, highlighting how a seemingly just cause can be undermined by an intervention that disregards or even violates the human rights of the very people it seeks to protect. Proportionality requires careful consideration of several factors like prioritizing civilian safety over resource protection, employing discriminate weaponry (excluding uranium, napalm, or white

¹ - It appears that there is a clear plan to dismantle Sudan, using a method of legally breaching international norms. So, will Sudan - the gateway to Africa and the Arab world - witness new divisions in light of the demands of Western Sudan (Darfur region), Blue Nile and South Kordofan for self-determination, in addition to the repercussions of the development crisis in the eastern region?

² - Malcolm Chalmers, op cit.

³ - Daniel Byman and Taylor Seybolt, Humanitarian intervention and communal civil wars: Problems and alternative approaches, security studies, vol 13, N° 1, 2003, P 35. For more details about works of value related to intervention in communal civil wars, see Chaim Kaufmann, "Intervention in Ethnic and Ideological Civil Wars: why one can be done and the other can't," Security Studies vol 6, N° 1, Autumn, 1996.

phosphorous munitions), and ensuring responsible use of force. The legitimacy of an intervention should be continually evaluated throughout its planning, execution, and aftermath. While establishing universally accepted criteria for intervention remains a challenge, the absence of such guidelines risks even more devastating consequences for future situations¹.

3- The (R2P) is an ethical issue of humanitarian intervention

When we talk about the creation of the Responsibility to Protect (R2P) principle. We can say that that world leaders agreed to prevent the worst violence and persecution (R2P) in 2005, through 2005 World Summit Outcome Document (A/RES/60/1), Following this, the UN took steps to make it a reality by appointing a Special Advisor in 2008 to develop and gain agreement on how to put R2P into action, this is after the Secretary-General addressed letter (S/2007/721) to the President of the Security Council that he claimed him to recognize the need to further operationalize the (R2P) principle and designated a Special Adviser². The responsibility to protect (R2P) is a political concept aimed at ensuring that the international community takes action to prevent atrocities such as genocide, war crimes, ethnic cleansing, and crimes against humanity. It emphasizes the responsibility of individual states to protect their populations from such crimes and the international community's responsibility to assist states in fulfilling this duty. If a state is unable or unwilling to protect its population, the international community is called upon to take collective action, including the potential use of force through the United Nations Security Council, to protect the affected population³.

Lets argues that the Responsibility to Protect (R2P) represents a significant shift from the original vision of the UN Charter. Here's a breakdown :

¹ - The Ethics of Intervention – Human Rights, National Sovereignty and the Balance of Risk, the op.cit site.

² - see the documents of office on genocide prevention and the responsibility to protect , united nations, available on the cit web: <https://www.un.org/en/genocideprevention/about-responsibility-to-protect.shtml>

³- Ay Crush, The Responsibility to Protect in International Law, E-International Relations, University of Kent, ISSN 2053- 8626 , MAY 31 2013, p – p 08 – 10.

- UN Charter (1945) : Focused on preventing wars between countries.
- Innovation : Outlawed most uses of force, with exceptions for self-defense and Security Council authorization.
- Limitation : Did not address using force to intervene in a country's internal affairs (e.g. genocide). This is reflected in Article 2(7) promoting non-interference.
- Responsibility to Protect (R2P): A newer concept allowing intervention to stop mass atrocities within a country¹.
- We can say that R2P represents progress in dealing with violence, but it also highlights the tension between this concept and the principle of non-interference enshrined in the UN Charter.

The UN Charter aimed to prevent wars between countries, forbidding most uses of force. Intervention in a country's internal affairs was off-limits. The Responsibility to Protect (R2P) marks a change, allowing intervention to stop horrific violence within a country. This creates a tension with the UN Charter's principle of non-interference. So let's also explain why the principle of non-interference in the UN Charter became so strong²:

- Cold War: The tense standoff between superpowers discouraged intervention.
- Decolonization: Newly independent states saw non-interference as a shield against powerful nations meddling in their affairs.
- State fragility: Many new nations were still forming and feared outside influence. This emphasis on non-intervention* made it difficult for the UN to respond effectively to mass atrocities within countries.

¹ - Gareth Evans, from humanitarian intervention to the responsibility to protect, *Wisconsin International Law Journal*, Vol. 24, No. 3, 2012, pp 704, 705.

² -Zhang Naigen, *The Principle of Non-interference and its Application in Practices of Contemporary International Law*, Fudan Journal of the Humanities and Social Sciences ISSN, Volume 9 N° 3, Springer, 2016. Available from: https://www.researchgate.net/publication/302869288_The_Principle_of_Non-interference_and_its_Application_in_Practices_of_Contemporary_International_Law#fullTextFileContent [accessed Mar 31 2024].

- For more details about the principle of non-intervention, see : Pietro Pustorino, *The principle of non-intervention in recent non-international armed conflicts, questions of international law (QIL)*, vol 53, 2018, pp 17, 18.

The concept of Responsibility to Protect (R2P) is framed around three main pillars:

A. The State's Responsibility (Pillar I Prevention responsibility):

This is the primary responsibility. Every individual state has the obligation to protect its own citizens from the most severe crimes : genocide, war crimes, ethnic cleansing, and crimes against humanity. Where article 2 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide defines genocide as a threat to humanity due to its causing the death of thousands of innocent people. The crime of genocide also has been regarded as one of the areas in which humanitarian intervention is raised, as a means of preventing or mitigating the effects of this crime and punishing its perpetrators, both in time of peace and in time of war. The mentioned Convention provides for a number of actions to be taken by States :

- States parties' obligation to enact the necessary legislation to ensure the implementation of the Convention.
- Prosecution of persons accused of this offence in accordance with article 06 of the Convention¹.

This includes taking steps to prevent these crimes from happening in the first place, such as addressing discrimination and promoting peaceful conflict resolution². The responsibility to address the root causes and immediate triggers of internal conflict is crucial for preventing future outbreaks of violence and promoting sustainable peace. As recognized by the UN Security Council, preventive measures play a vital role in mitigating the underlying factors that fuel conflict, such as political marginalization, economic inequality, and social injustice. By addressing these root causes, communities can build resilience, foster inclusive governance, and promote peaceful coexistence. Where the UN Charter recognizes that addressing economic, social, and cultural issues

¹ - Mohammad Ghazi Nasser Al-Janabi, *Humanitarian Intervention in Light of Public International Law*, 1st Ed., Al-Halabi legal publications, 2010, p – 195 – 197.

² - Jared Genser, *The responsibility to protect and the organization of american states: a path forward for atrocity prevention and response in the americas* , Report of the General Secretariat of the Organization of American States, Washington, D.C., September 15, 2022, p 08.

is fundamental to fostering peaceful relations among nations. By promoting Holistic development and tackling poverty, inequality, and discrimination, societies can create a more stable and prosperous environment conducive to peace¹.

Furthermore, in Canada, the International Centre for the Study of International Security (ICISS) delved into the question of when the international community should intervene to protect civilians through the (R2P) doctrine, which emphasizes preventive measures. The R2P principle empowers the UN Security Council to authorize military intervention as a last resort in cases of genocide, other violations of international humanitarian law, mass killings, and ethnic cleansing. Additionally, experts at the ICISS advocated for referring cases involving crimes against humanity, war crimes, or genocide committed by parties to the conflict to the International Criminal Court (ICC) . This would allow the ICC to exercise its protective mandate in a preventive manner to prevent the escalation of crises. This approach was further solidified following the 2005 World Summit. For instance, the role of the Special Envoy to Darfur is not to determine whether genocide has occurred but rather to propose preventive measures. The Envoy's duties include:

- Gathering available information on violations.
- Activating the UN Secretary-General's early warning mechanism, who then informs the UN Security Council.
- Submitting requests to the UN Security Council through the Secretary-General to prevent or halt genocide.

Coordinating with the UN system on genocide prevention and enhancing UN capabilities in analyzing information related to genocide and associated crimes².

¹ - Art 55 of the united charter.

² - Juan E. Mendez, Possibilities Genocide Prevention, in: Explaining Darfur, edited by Agnes Van Ardenne, mohamed salih, nick grono, juan mendez, Vossiuspers UVA, Amsterdam, 2006, pp 50, 51.

B. The International Community's Responsibility to Assist (Pillar II the Responsibility to react) :

This is the most complex and controversial pillar. It applies when a state is demonstrably failing to protect its own people from these horrific acts. In such situations, the international community has a responsibility to take on the burden of protection, which may involve diplomatic or economic sanctions, and in extreme cases, even authorizing military intervention. So here we must remember about R2P:

- Prevention is Central : The core principle of R2P is to prevent these mass atrocities from happening in the first place.
- Respecting Sovereignty: There's a strong emphasis on respecting a state's sovereignty, with international intervention being a last resort.
- Phased Approach: The use of force is a very serious decision. R2P advocates for exhausting diplomatic, political, and humanitarian measures before considering military action¹.

The international community doesn't just standby. It has a responsibility to support states in fulfilling their duty to protect their populations. This assistance can take many forms, such as offering diplomatic or financial aid, or providing training and resources for law enforcement and peacekeeping². Renzo Sommaruga, the former president of the ICRC, believes that the Geneva Conventions do not preclude the use of force as a last resort in the event that all diplomatic and humanitarian means have failed. This is in accordance with Article 1 common to the four Geneva Conventions of 1949, as well as Article 89, which states that States may, singly or collectively, act with the UN in accordance with the Charter to deal with serious violations. Therefore, in

¹ - Gareth Evans, op cit, pp 709, 710.

² - See, 2005 World Summit Outcome Document (A/60/1): This document formally adopted the R2P principle by the UN member states. You can find it on the UN website. See also, International Commission on Intervention and State Sovereignty (ICISS) Report (2001): This report, titled "The Responsibility to Protect," laid the groundwork for the R2P concept.

the event of a conflict that threatens international peace and security, States should take measures under Chapter VII to stop the violations¹.

Whereas Throughout the year, the Global Centre shared our analysis on more than 30 countries, including through an updated and reinvigorated R2P Monitor that describes and analyzes risk factors for atrocities in the crises covered. During June the center sounded the alarm on rising atrocity risks in Sudan, highlighting the imminent risk of genocide in Darfur. Since October the center have reported on the unconscionable suffering of populations in Gaza and Israel in various publications and briefings with UN Security Council members and other relevant stakeholders. This year the center also continued to engage with civil society, human rights defenders and affected populations, including survivor communities, as critical partners in its collective advocacy to ensure their voices were centered in policy conversations regarding the response to atrocity situations, including in Myanmar, Syria and Yemen².

While the concept of (R2P), which has been applied in the context of Sudan, from Darfur to South Sudan, through UN Security Council resolutions, has provided a justification for intervention based on the notion that the Sudanese state is incapable of protecting its own citizens. This responsibility, therefore, falls upon the international community, represented by the UN Security Council. In the case of Darfur, international intervention was authorized by a UN Security Council resolution 1706 that deployed over 10,000 peacekeepers to protect the peace agreement and compel Sudan to fulfill its obligations under the accord, which reshaped the country's constitutional and legal frameworks. This effectively placed Sudan under UN trusteeship. Similarly, R2P was invoked in the case of South Sudan in 2014, with the UN Security Council arguing that the country was unable to control internal conflicts that threatened international peace and security³.

¹ - Mohammad Ghazi Nasser Al-Janabi, *op cit*, pp 51, 52.

² - Global center for the responsibility to protect, 2023 highlights, message from the executive director, December 2023, p 06.

³ - The UN Security Council, under the banner of humanitarian intervention and the (R2P) doctrine, has been instrumentalized by major powers to serve their own interests. In the case of Sudan, all Security Council resolutions were politically motivated, cloaked in the guise of humanitarian concerns. Moreover, while the UN General Assembly resolution 60/1 (2005) on R2P is considered binding, states often disregard

C. The International Community's Responsibility to Take Action (Pillar III the Responsibility to rebuilt) :

The responsibility for reconstruction or rebuilding during a conflict, especially after international intervention, as indicated by ICISS is that military action to stop atrocities can only be legitimate if authorized by the Security Council¹ Therefore, this responsibility usually comes after each military intervention as happened in Iraq, for example, if peaceful means do not ensure that the concerned state protects its people against genocide, war crimes, ethnic cleansing, or crimes against humanity² This solution is basically in the case that the state's capabilities and authorities have failed to protect or that it has relinquished its responsibility ³ Among the basic functions of intervention forces is to provide protection for civilians and ensure their security, in addition to building peace, encouraging the economy, and ending the coercive measures that were imposed before and during the intervention⁴.

The emergence of reconstruction is associated with the American Civil War, when the infrastructure and economy of the American South

non-binding General Assembly resolutions. This selective application of international norms highlights the manipulation of R2P as a tool to pressure the Sudanese government into concessions to the southern rebels, as evident in the Comprehensive Peace Agreement (CPA). In addition to the resolution 1593 that refer the case of darfur to the ICC.

¹ - Susan E. Rice and Andrew J. Loomis, *The Evolution of Humanitarian Intervention and the Responsibility to Protect*, in: *Beyond Preemption, Force and Legitimacy in a Changing World*, edited by Ivo.H.Daalder , Brookings Institution Press, Washington, 2007, p.84.

² - Laurence Boisson de Chazournes et Luigi Condorelli, « De La Responsabilité de Protéger » ou d'une Nouvelle Parure pour une Notion déjà bien Etablie, *Revue Générale de Droit Public*, Tome CX, Pedone, Paris, 2006, pp. 11, 12.

³ - Amina A.Awgje, *The Responsibility to Protect :Relevance of the Report of the International Commission on Intervention and State Sovereignty (ICISS) to the African Union*, In : *the Constitutive Act of African Union and the Challenge of International Law*, ICRC Seminar, Adiss Ababa, 2002, p. 127.

⁴ - Walid Hassan Fahmin UN *From Humanitarian Intervention to the Responsibility to Protect*, electronic article published on 20 / 07 / 2010. Available online: <http://www.dahsha.com/old/viewarticle.php?id=32008> date of access : 20/03/2024

were destroyed. Then-US President Abraham Lincoln implemented a reconstruction program. The term was also used after World War II to rebuild Europe and Japan. After the Cold War, reconstruction has become one of the most important tools for peacebuilding, through a set of measures that meet the needs of countries ravaged by conflict. It is also considered a mechanism to prevent the escalation and continuation of conflicts, in order to avoid setbacks after the end of international conflicts, with the aim of building sustainable peace. However, there are many challenges facing post-conflict reconstruction projects, the most important of which is the high cost allocated to reconstruction programs, which is linked to the extent of the destruction that has affected the infrastructure, which is usually catastrophic as it is in Libya, according to World Bank estimates in 2016, where it needed more than \$100 billion to rebuild it, in addition to the protracted armed conflicts and competition between businessmen for reconstruction contracts, especially in the city of Benghazi¹.

4- The Responsibility While Protecting (RWP)

The Responsibility While Protecting (RWP) is a concept introduced by Brazil as a development of the Responsibility to Protect (R2P) doctrine. RWP emphasizes using force as a last resort, avoiding regime change, and stricter monitoring of R2P interventions. Brazil's proposal arose from its preference for non-intervention and development-focused peacekeeping. The UN has debated and refined the RWP proposal, reflecting a growing divide between Western nations favoring R2P flexibility and the more cautious approach of BRICS countries and the Global South. This highlights their increasing role in the international community.

Where Brazil launched its Responsibility while Protecting (RwP) note In November 2011, in the context of a failed international intervention in Libya based on a resolution inspired by R2P language,

¹ - Talis Ibtissam, Farida Hamoume, Reconstruction: a study of the nature of the concept, *Journal of the Thinker for Legal and Political Studies*; Vol. 3, No. 3, December 2020, pp 226, 227. P 235. However, this mechanism is also subject to double standards on the international level. For example, Gaza needs about \$40 billion to rebuild, which could take up to 80 years. Who will rebuild Gaza and who will heal its wounds and the wounds of its citizens? Unfortunately, the international community stands helpless and ignores what has been happening in Gaza since the beginning of time until today.

Seen by specialists as Brazil's first serious effort at norm entrepreneurship on a major issue within the United Nations system, it was in part a response to Resolution 1973 that led to military operations (Operation Unified Protector) in Libya. Recent events in this country, especially the actions of the United Kingdom, the United States and France (the P-3), that went beyond the R2P mandate outlined in Resolution 1973 and led to a regime change operation in Libya provided the context for Brazilian contestation on the issue of international intervention and the use of force under UN mandate¹.

A- The concept of (RWP) :

The core idea behind Brazil's "Responsibility While Protecting" (RWP) concept, declared by Brazil's president Dilma Rousseff On 21 September 2011. Highlights a perceived gap in the existing "Responsibility to Protect" (R2P) doctrine. While R2P focuses on the responsibility to intervene, Brazil argues for a stronger emphasis on acting responsibly when such intervention occurs². Concerning the statement submitted by the Permanent Representative of Brazil to the United Nations "María Luisa Riperoviotti" to the United Nations, Brazil is introducing in this statement a new concept called "Responsibility While Protecting" (RWP) to be considered alongside the "Responsibility to Protect" (R2P) doctrine. The document argues that the international community needs to act responsibly when using force to protect civilians. The letter requests the UN to circulate this concept note as an official document³.

Brazil's Responsibility While Protecting (RWP) initiative has emerged as a major player in the discussion around intervention and the Responsibility to Protect (R2P) doctrine. This concept not only guides Brazil's approach to intervention, collective security, and global

¹ - Andrés Serbin and Andrei Serbin Pont, Brazil's Responsibility while Protecting: a failed attempt of Global South norm innovation? CRIES, Pensamiento propio, vol 41, 2015, p 172.

² - Thorsten Benner, Brazil as a norm entrepreneur: the "Responsibility While Protecting" initiative, Global Public Policy Institute (GPPI), working paper, berlin, March 2013, p 01.

³ - paper presented in the context of the open debate on "protection of civilians in armed conflicts", UN Doc. A/66/551- S/2011/701 v. 11 November 2011, called "concept paper" in the following.

governance, but also offers a framework for other rising powers. RWP's significance lies in its ability to bridge the divide between supporters and critics of R2P, particularly following the controversial 2011 intervention in Libya. In this way, RWP serves as a prime example of how emerging powers can leverage their UN Security Council membership to shape international norms¹.

The RWP note aimed to make the Responsibility to Protect (R2P) concept practical. It outlined steps for the Security Council and other countries to consider when planning an R2P intervention. These steps stressed preventative measures, using peaceful solutions whenever possible, and getting Security Council approval for using force. They also emphasized that any force used should be legal, proportionate, and limited in scope. Finally, the RWP note called for better monitoring of how interventions are carried out².

B- (RWP) Proposals for developing and moralising the (R2P):

The Security Council has played a key role in upholding the Responsibility to Protect (R2P) principle through several landmark resolutions. In response to the 2011 Libyan crisis, the Council issued Resolution 1970 explicitly endorsing R2P. This was followed by Resolutions 1973 and 2009 authorizing military intervention to protect Libyan civilians³. However, the Libyan crisis has proven the failure of

¹ - Although initially criticized, the Responsibility while Protecting (RwP) concept eventually showed potential as a means to reconcile differing perspectives on intervention. However, a mix of diplomatic considerations and domestic politics, coupled with the end of Brazil's term on the Security Council, led to their withdrawal of support for the initiative. The journey of RWP provides valuable insights for the intervention debate, emphasizing the significance of normative discussions within the Security Council, especially for emerging powers aiming to influence the global order. It also highlights the essential role of sustained leadership in the success of new ideas in international diplomacy. See, Kai Michael Kenkel and Cristina G. Stefan, *Brazil and the Responsibility While Protecting Initiative: Norms and the Timing of Diplomatic Support*, *Global Governance*, vol 22, 2016, p 41.

² - UN Doc. A/66/551- S/2011/701 v. 11 November 2011, pp 02, 03. Available at: <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/POC%20S2011%20701.pdf>

³ - The 2013 Resolution 2062 also addressed the conflict in Côte d'Ivoire, incorporating R2P language before transforming the military intervention into a peacekeeping mission. The Council has also adopted numerous resolutions on Sudan and Yemen, paving the way for potential coercive measures, including military action, to safeguard

this principle on the ground. Instead of providing protection, civilians can be harmed by its implementation, especially with regard to the responsibility to respond, where the use of force is allowed by UN forces or UN-mandated forces (NATO in Libya), which has resulted in serious crimes and violations of international humanitarian law and international norms. This has led some countries, preceded by Brazil, to propose an alternative to the Responsibility to Protect principle, namely the "Responsibility While Protecting" principle. It calls for the ethicalization of the first principle by providing real protection for civilians during the implementation of protection measures and procedures in themselves, by holding those responsible for these violations accountable.

Brazil's Responsibility While Protecting (RwP) builds on the existing R2P concept by adding a specific order to follow. Here's the gist as it is mentioned in UN Doc. A/66/551- S/2011 :

- peaceful solutions should be prioritized and thoroughly explored before considering force.
- Only the Security Council can authorize force (except in rare situations where the General Assembly can).
- Any authorized force must be tightly controlled and follow clear limitations.
- The Security Council needs better ways to track how interventions are carried out.
- hold the Security Council accountable for ensuring those using force are answerable for their actions¹.

C- Procedures for activating (RWP)

Amidst concerns about the Abuse of the legitimacy of force, the international community's perspectives have diverged. Some argue that invoking the Responsibility to Protect (R2P) principle to launch a campaign against the Gaddafi regime under Chapter VII of the UN Charter, justifying military operations that appeared to have a clear

civilians. Underpinning this authority is Article 41 of the UN Charter, which grants the Security Council primary responsibility for maintaining international peace and security. This entails a broad range of powers, such as imposing economic sanctions and adapting the Charter's provisions to address evolving threats.

¹ - Ibid, pp 03, 04.

objective of supporting rebel forces, has raised doubts about the principle of using force to protect civilians¹, the RwP proposal called for better ways to track how UN-authorized military operations are carried out². This aims to make these operations more transparent and hold those using force accountable. However, member states have historically chosen not to give the Security Council its own military or advisory capabilities, despite the UN Charter creating a Military Staff Committee for this purpose. While suggestions to increase this capacity have been rejected, the Security Council has developed other methods in areas like sanctions. These methods, like Sanctions Committees with independent experts, can be a model for monitoring military operations. Regular reports from such independent bodies would improve the quality of decisions made by the Security Council before and during military interventions³.

While most countries acknowledged the continued validity of the Responsibility to Protect (R2P), initial opposition emerged from France, the UK, and the US. They viewed Brazil's "Responsibility While Protecting" (RwP) proposal as a challenge to their Libyan intervention and a potential obstacle to future military actions. However, Brazil's approach and advocacy efforts by civil society organizations eventually swayed most critics. They came to understand RwP as a mechanism to strengthen R2P implementation, not a replacement for the core principle itself⁴.

Since the R2P is fundamentally a proactive principle, it is not only used in actual conflicts, but should also be used in the framework of activating its proactive diplomatic dimension, such as early warning. Even if it is activated with the consent of states under an explicit mandate from the UN within the framework of forming international peacekeeping missions, this would be the final measure that can be used,

¹ - For the shift in the use of force to confront the Gaddafi regime had dire consequences for civilians instead of protecting them.

² - S. Krishnan, UN Peacekeeping, Responsibility to Protect and Humanitarian Intervention, *India Quarterly*, Vol. 76, No. 1 March 2020, pp 131, 132.

³ - Marcos Tourinho, Oliver Stuenkel & Sarah Brockmeier, "Responsibility while Protecting": Reforming R2P Implementation, *Global Society*, vol 30, N° 1, published by Routledge, by Taylor & Francis 2016, p 147.

⁴ - Marcos Tourinho and others, "Responsibility while Protecting": Reforming R2P Implementation, *Global Society*, Vol. 30, No. 1, 2016, p 140.

since the use of force has proven its failure at the level of international law and international relations, given the destruction it has brought instead of protection for the individuals. On this basis, the RWP that have contributed to the moralization of the R2P principle and its redefinition are represented by diplomatic means, which means that it is understood that we must return to the general principle in international relations and then apply Article 33 of the UN Charter, which provides for methods of peaceful settlement of international disputes¹.

At the forefront are Measures to deter and influence hostilities behavior were also a key topic of discussion. The Security Council, and regional organizations all have tools at their disposal to address situations involving potential atrocities. One such instrument is the targeted and strategic use of sanctions authorized under Article 41 of the UN Charter. These sanctions, implemented in close collaboration with relevant regional actors, can be tailored to specific situations. They aim to compel positive behavior changes from regimes, head of states, through a range of measures. These measures can include restrictions on financial resources and movement, limitations on diplomatic interactions, and the freezing of assets.

However the UN's increased emphasis on preventive measures after the Libyan intervention and the Syrian stalemate has revealed new challenges. While prevention enjoys broad diplomatic support, implementing it at the local political level proves difficult. Sovereignty concerns, while seemingly diminished in situations of ongoing atrocities, remain relevant during negotiations with member states regarding preventive strategies. These states fear excessive UN oversight, potential vulnerability to foreign intelligence activities, and reputational damage from being singled out for UN intervention. This highlights the need to

¹ - International disputes can arise from various sources, including political, economic, territorial, or ideological differences between nations. These conflicts can have far-reaching consequences, destabilizing regions and threatening global peace and security. In response to such challenges, international law and practice recognize a range of peaceful mechanisms for resolving disputes without resorting to armed conflict. These methods, including negotiation, mediation, conciliation, and inquiry, involve dialogue, compromise, and the involvement of neutral third parties to facilitate communication, find common ground, and suggest solutions. This approach to conflict resolution helps maintain peace, protect human rights, and strengthen international cooperation and order

broaden the arguments for prevention beyond the immediate threat of mass atrocities. Closer collaboration with existing on-the-ground entities, such as peacekeeping missions and potentially the Peacebuilding Commission, could alleviate these anxieties¹.

In light of this, it appears that the international community has been paralyzed in the face of the Syrian crisis due to Russia's refusal to intervene there. Neither the principle of the (R2P) nor the (RWP) has been applied. Even the United States, which has traditionally championed humanitarian interventions, has called for political solutions to the crisis, despite the fact that the tragedy in Syria & Ukraine has far exceeded what happened in Libya. The most that has been done is to implement temporary protection measures for people displaced by the hostilities in the region². Indeed, while the principle of sovereignty has evolved into sovereignty as a responsibility within the framework of the state's duty to protect its citizens, and in cases where this is impossible, the assistance from the State actors within the framework of UN resolutions, through (R2P) as modified by the (RWP) will be done, however, the Ukrainian case has demonstrated the failure of both principles altogether. It is considered as a repetition of what is happening in Syria in light of the State actors's disregard, which makes the human cost high. So where is the question of human conscience and the ethics of humanitarian intervention in all its developments?

D- Challenges of RWP in Complex Situations :

- **Limits on Military Action :** While RWP aims to minimize violence and instability caused by interventions, it might be unrealistic in complex situations like Syria. Here, both sides commit atrocities and regional actors are involved, raising the risk of escalation.

¹ - Marcos Tourinho and others, op cit, p 144.

² - Immediate Protection Response (TPMs) are emergency provisions designed to provide a swift and humane response to the mass displacement of people from Ukraine. These measures were activated under Directive EC 55 /2001 of the European Council and further specified by Council Council Directive EU 382 / 2022 of 4 March 2022. The TPMs aim to offer Swift protection and support to displaced individuals seeking refuge in EU member states due to the ongoing conflict in Ukraine.

- **Accountability and Paralysis:** RWP's focus on accountability could discourage intervention due to potential blame for negative outcomes.
- **Security Council Hurdles:** RWP requires Security Council approval for every step, potentially leading to inaction or conflicting decisions with those leading the intervention on the ground¹.

In Addition to double standards at international level, where that led to no reaction in Gaza for example, where more atrocities held there, Where the prevailing situation suggests ethnic cleaning rather than a Genocide crime only , in addition to the policy of starvation aimed to ending the entire sector, given the difficulty of humanitarian assistances access and the United States' use of the veto against any draft resolution that includes the need to stop firing, except the UN Security Council Resolution N° 2728 of Monday 25 March 2024². So here where is humanitarian intervenention? And where is the responsibility to protect? Or even the responsibility while protecting? The Global Center for the Responsibility to Protect underscores the need for renewed commitment from all parties to resolve the conflict in Yemen and similarly affected countries. Achieving progress necessitates a nationwide ceasefire and negotiated peace talks, supported by all involved, including external actors. It is vital to hold inclusive peace talks that encompass all relevant Yemeni groups and stakeholders while ensuring accountability for past actions, as outlined in the Yemen Declaration for Justice and Reconciliation. The Yemeni government must permit UN human rights investigators access, and any potential war crimes and crimes against humanity must be thoroughly investigated and prosecuted. Justice and reparations for victims are imperative, and all conflict parties, with international assistance, should work towards this aim. Furthermore, UN member states need to establish a new mechanism for accountability and

¹ - Xenia Avezov , Responsibility while protecting': are we asking the wrong questions? Electronic article publishe on 30 January 2013 , available online :

<https://www.sipri.org/node/409>

² - S/RES/2728 (2024), Monday 25 March 2024, about the situation in the Middle East, including the Palestinian question.

reparations, and the UN Security Council should consider referring the Yemen situation to the International Criminal Court¹.

Conclusion :

Deciding on military intervention for humanitarian aims is a multifaceted process that requires a tailored approach for each situation. The evolving norms in global foreign policy, exemplified by the R2P doctrine, underscore these complexities. The differing responses to historical crises suggest that factors beyond ethical concerns or the prevention of human suffering often determine whether states choose to intervene, either alone or in collaboration with others. Without binding legal controls, the concepts of R2P and RWP will fail to effectively address crises, potentially leading to humanitarian disasters rather than resolving conflicts and promoting international humanity. To address this, we need to focus on capacity building by investing in human capital, such as peacekeepers, mediators, and human rights monitors, which is essential for non-military intervention and post-conflict reconstruction.

Some results concluded:

- Humanitarian Intervention : This refers to the use of force to protect civilians from atrocities. Given the circumstances you describe, a strong case can be made for humanitarian intervention.
- R2P : This principle obliges the international community to prevent genocide, war crimes, ethnic cleansing, and crimes against humanity. In this case, R2P would necessitate decisive action.
- RWP : This emphasizes minimizing harm and upholding international law during any intervention.
- The challenge lies in overcoming the obstacle of the veto power. Here are some possibilities:

Some proposals concluded :

¹ - R2P Monitor, R2P Monitor applies an atrocity prevention lens to the following situations of concern, ISSUE 68, Global center for the responsibility to protect, 1 MARCH 2024, p 37.

- Un must put Clear Criteria and Triggers Concerning the Improving Intervention Processes : Developing clearer criteria for identifying situations where R2P applies and specific triggers for intervention would improve decision-making.
- Un must Enhanced Monitoring and Oversight: Strengthening mechanisms to monitor and assess how interventions are carried out can ensure better adherence to R2P principles and hold those involved accountable.
- The need of Building Consensus Concerning Strengthening International Cooperation: Efforts to build broader international consensus around R2P can make interventions more legitimate and garner wider support.& The need OF Regional Action: Empowering regional organizations to take action in situations where the UN Security Council remains deadlocked due to veto power.
- Preemptive Action : WE MUST Investing in conflict prevention and early warning systems to identify and address potential crises before they escalate.
- we must also Addressing Challenges of the Veto Power because Finding ways to navigate the obstacle of veto power in the UN Security Council remains a significant challenge.
- National Sovereignty Concerns Addressing concerns about infringement on national sovereignty requires balancing state responsibility with the international community's duty to protect civilians. By implementing these proposals, the international community can increase the effectiveness of R2P in preventing atrocities and protecting vulnerable populations.