

The responsibility to protect civilians during armed conflicts under international law: challenges and prospects

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Abstract

The central task of this paper is to ascertain the extent to which international law protects civilians under principle of responsibility to protect (R2P) during armed conflicts since its development in 2001 and subsequent adoption as Resolution 60/1 of 24th October 2005 by the United Nations (UN) General Assembly. The article assesses the application of the principle in line with civilian protection during armed conflict. It makes use of qualitative methodology which is ideal for legal research and adopts doctrinal method. The analysis includes primary data from treaties, declarations, resolutions as well as secondary data from journal articles, reports and online sources. The research reveals that the real purpose of R2P, which is protection of civilians against mass atrocities as laid down in theory, has not materialized in practice especially in the last decade. The main solutions advanced include reforms of the UN Security Council particularly with regard to the composition of permanent members as well as use of veto power. The use of an early warning signal system on likely mass killings and a timely response to distress by the actors forming the international community. Legality and uniform enforceability of the principle is only achievable when all the players are operating on a level platform. This study is important to the international community as it establishes the fundamentality of the R2P. States must act collectively in ensuring the observance of the principle to protect civilians in armed conflict. It becomes complex when the state is a perpetrator of violation of civilians' rights in armed conflict.

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1 Introduction

The responsibility to protect¹ is an important policy concept which has been applied numerous in conflicts across the world. This concept has been applied in Africa, a continent riddled with conflicts, as well as in other developing countries. Among the countries where the concept has been applicable are Libya, Yemen and Cote d'Ivoire.

In these jurisdictions, some successes have been recorded in the application of the principle, including among others, cooperation between the international community and the State Party, as well as the forceful role of the United Nations Security Council (UNSC) amid opposition from concerned state despite these successes, challenges persist. These include legal and structural issues within the R2P framework, operational constraint of the UNSC such as its composition, limited resources, rivalries among permanent members of the UNSC, and stalemates between members with veto powers. This paper addresses the research question on 'how effective is the responsibility to protect civilians during armed conflicts under international law?' It also achieves the third specific research objective on analysing the effectiveness of the concept of the responsibility to protect civilians during armed conflict under international law. This work is underpinned by the theory of liberalism as it acknowledges human rights and the need for state cooperation in guaranteeing the protection of those rights. It postulates peaceful interventions and cooperation amongst nations and a world with no war.

¹ Responsibility to protect refers to the notion that the national community has a legal responsibility to protect civilians against the potential or on-going occurrences of the mass atrocity crimes of genocide, large scale war crimes, ethnic cleansing and crimes against humanity. R2P allows for intervention where the individual state is unable or unwilling to so protect its people or is in fact the perpetrator. The responsibility to protect is an international norm that seeks to ensure that international community never fails to halt mass atrocity crimes of genocide, war crimes, ethnic cleansing, and crimes against humanity.

2 Practical application of the responsibility to protect civilians during armed conflicts

The practical application of the concept of R2P is evident in armed conflict scenario. This principle is practiced in several countries such as; Libya, Somalia, South Sudan, Kenya, Ukraine, Central African Republic, Côte d'Ivoire, Democratic Republic of the Congo, Liberia, Mali, Somalia, Yemen. This work will focus on Libya, Côte d'Ivoire and Yemen due to the unique circumstances and challenges each country presents. R2P in Libya was the first UN military mission justified by government's failure to protect its citizens. In Côte d'Ivoire, the UNSC authorized military action to protect civilians while in Yemen, R2P depicts complex challenges in its application.

2.1 The case of Libya

The first Libyan conflict in 2011 'presents an important case study on R2P and particularly authorization of the use of force on normative basis² when the crisis was dire, to protect the public.³ Libya was seeking to free itself from the four-decade long regime under Colonel Muammar Gaddafi, which was viewed as tyrannical with no space for opposition or nonconforming political expressions.⁴ Not much economic development was achieved during his era⁵as the 'undemocratic regime used repressive security services to maintain its power.'⁶ Civilians protested the bad leadership but Gaddafi did not heed to their calls of change of his leadership style.⁷ He called the protesters 'cockroaches' and 'rats' who did not deserve to live.⁸ In February 2011, civilian protestors went wild on the street protesting against the long reign of Muammar Gaddafi and lack of economic growth in the country. Pressure was mounting on Gaddafi to step down 'so that a different and more committed person can be given a

² Osita Afoak, 'The Responsibility to Protect: A Comparative Analysis of UN Security Council Actions in Libya and Syria' (2015) *IJ* 5.

³ UNSC Res 1631 (17 October 2005) UN Doc S/Res/1631 (2005).

⁴ *ibid*

⁵ At the World Summit in 2005.

⁶ Jonathan M. Winer, 'Origins of the Libyan Conflict and Options for Its Resolution' (Policy Paper 2019-12, *Middle East Institute* <https://www.mei.edu/sites/default/files/2019-05/Libya_Winer_May%202019%20update_0.pdf> accessed 23 August 2024

⁷ Petra Perisic, 'Implications of the Conflicts in Libya and Syria for the Responsibility to Protect Doctrine' (2017) 47 *Zbornik Pravnog Fakulteta u Zagrebu* 783-814.

⁸ Nathalie Tocci, 'On Power and Norms: Libya, Syria and the Responsibility to Protect' (2016) 8 *Global Resp Protect* 51.

chance to rule the country'.⁹ In turn, Gaddafi's government attacked the civilians and more so, by using armed forces which quickly escalated to a civil war that caused many deaths and displacements.¹⁰ This scenario set a centre stage for the application of the principle of Responsibility to Protect in Libya in 2011.

The International Coalition for the Responsibility to Protect, an international security and human rights organization comprising of regional and non-governmental organizations founded on 8 January 2009 reported that 'the crisis in Libya seized the attention of the international community and has been labelled a clear case for when timely and decisive response to uphold R2P in the face of an imminent threat of mass atrocities should occur.'¹¹

Early on in the crisis, The UN High Commissioner for Human Rights and Special Advisers had severally called upon the Libyan government to stop using violence against civilians and other protestors amidst threats for crimes against humanity.¹² Resolution 1970 adopted on 26 February 2011 was passed freezing Gaddafi's assets, travel restriction and referring the matter to the International Criminal Court for investigation.¹³ The United Kingdom, United States, Germany and France notably proposed the resolution. The resolution was also in line with Article 41 of the UN Charter that encourages not involving the use of force but allows the use of economic and communication disruption to give effect to its decisions. The Gaddafi government, however, failed to heed to the calls aggravating the crisis and violence. Though the exact number

⁹ *ibid*

¹⁰ Hanah Saleh, *To End the Killings in Libya, the Cost balance has to Change* (Human Rights Watch, 15 December 2020) < <https://www.hrw.org/news/2020/12/15/end-killings-libya-cost-balance-needs-change>> accessed 23 August 2024.

¹¹ Martin Mennecke, 'Never again? The Role of the Global Network of R2P Focal Points in Preventing Atrocity Crimes' (2021) 39 *Neth Q Hum Rts* 161.

¹² Statement to the United Nations Security Council on the situation in the Libyan Arab Jamahiriya, pursuant to UNSCR 1970 (4 May 2011) <<https://www.icccpi.int/Pages/item.aspx?name=statement+to+the+united+nations+security+council+on+the+situation+in+the+li>> by an accessed 14 September 2024.

¹³ <<https://www.icccpi.int/Pages/item.aspx?name=statement+to+the+united+nations+security+council+on+the+situation+in+the+li>> by an accessed 23 August 2024

of casualties varies, unwarranted deaths of innocent civilians running in thousands have been documented.¹⁴

One of the significant interventions was North Atlantic Treaty Organization (NATO)'s involvement¹⁵ and the UNSC's issuance of the Operation Unified Protector),¹⁶ as provided for under Resolution 1973¹⁷ and Chapter VII of the UN Charter. It allowed the use of force or military action and the institution of a no-fly zone over at-risk cities.¹⁸ As a result of the resolution, NATO sent military forces to Libya and no-fly zones over regions such as Benghazi were set, which were considered high risk for violence.¹⁹ The no-fly zones applied to all except for forces protecting Libyan citizens. They blocked away Gaddafi air forces and allowed freedom fighters with the support of the country to change the tide of the conflict, defeat Gaddafi and create a chance for a representative government.²⁰ Military action was applied on a higher level, which was justified by the fact that the UN attempt to use peaceful negotiations and calls to Gaddafi to end the violence against civilians was not significant.²¹ In the process, the violence had escalated, necessitating measures that are more aggressive. The intervention was considered a success because of the involvement of NATO²², marking the first time that

¹⁴ Armed Conflict Location and Event Data Project (ACLED), listed over 6000 fatalities; WHO listed slightly over 2000 deaths

¹⁵ Kate Ferguson, 'Did the Libyan Intervention give R2P a bad name?' (January 2017) The Syrian Issue <<https://una.org.uk/did-libyan-intervention-give-r2p-bad-name>> accessed 23 August 2024.

¹⁶ *ibid*

¹⁷ UNSC Res 1973 (17 March 2011) UN Doc S/RES/1973 (2011).

¹⁸ Clotilde Asangna, 'Quick to the Rescue: Humanitarian Intervention in Libya' (E-international Relations, 9 November 2015) <<https://www.e-ir.info/2015/11/09/quick-to-the-rescue-humanitarian-intervention-inlibya/>> accessed 23 August 2024.

¹⁹ Sarah Brockmeier et al, *The Impact of the Libya intervention debates on principles of protection* (Taylor & Francis 2015) 234.

²⁰ AJ Kuperman, 'NATO's intervention in Libya: A humanitarian success?' In: A Hehir and Murray (eds), *Libya, the responsibility to protect and the future of humanitarian intervention* (Palgrave Macmillan 2013).

²¹ UNSC Res 1970 (26 February 2011) UN Doc S/Res/1970 (2011); UNSC Res 2016 (27 October 2011) UN Doc S/Res/2016 (2011); UNSC Res 2040 (12 March 2012) UN Doc S/Res/2040 (2012).

²² GO Lekarenko and KV Gostev, 'NATO and EU's Involvement in the Libyan Crisis (2011-2020)' (2021) 23 *Bulletin of the Kemerovo State University* 350 <<https://vestnik.kemsu.ru/jour/article/view/4992>> accessed 23 August 2024.

NATO had operated in North Africa.²³ Compared to other humanitarian interventions in countries suffering from civil unrest like Syria, aims and consequences of the collaborative diplomatic community engagement against Gaddafi was remarkable.²⁴

An estimated number of 500-700 civilians were killed over several weeks as Libya government deployed the military and used tanks against civilians and rebel forces in the besieged cities of Benghazi, Misrata and elsewhere.²⁵ In response to these attacks on civilians, the UNSC adopted resolutions 1970 and 1973, invoking the Responsibility to Protect, authorizing the use of force to protect the populations. Subsequently, a NATO-led alliance conducted air strikes against military targets that posed a severe threat to civilians.

2.2 The case of Yemen

The Yemen war has 'led to the displacement of more than 3.6 million civilians and two overthrown governments creating the world's biggest humanitarian crisis since its beginning in 2011.'²⁶ Similar to the previous cases, the civil war arose as part of the Arab spring movement which had sprouted as a result of oppressive government regime. It was a case against Yemen's President (Ali Abdulla Saleh) who had ruled the country for over three decades.²⁷

Fighting between Houthis rebels, members of the General People's Congress, the Southern Transitional Council, and forces loyal to the

²³ Debora Valentina Malito, 'The Responsibility to Protect What in Libya?' (2017) 29 *Peace Rev* 289-

298 <[http://eds.a.ebscohost.com/eds/pdfviewer/pdfviewer?vid=3&sid=ace48d7f-1c98-4518-b159-](http://eds.a.ebscohost.com/eds/pdfviewer/pdfviewer?vid=3&sid=ace48d7f-1c98-4518-b159-96daae9a49a7%40sessionmgr4007)

96daae9a49a7%40sessionmgr4007> accessed 23 August 2023.

²⁴ Matthew Green, 'To What Extent Was the NATO Intervention in Libya a Humanitarian Intervention?' (E-International Relations, 2 February 2019) <<https://www.e-ir.info/2019/02/06/to-what-extent-was-the-nato-intervention-in-libya-a-humanitarian-intervention/>> 23 accessed August 2024.

²⁵ Global Centre for the Responsibility to Protect, 'Libya' (2 April 2022) <https://www.globalr2p.org/countries/libya/>. Accessed 9/10/2023.

²⁶ Karen da Costa, 'On the Controversial 'Responsibility to Protect' Doctrine and Why It Adds No Value to Disasters,' in Flavia Zorzi Giustiniani, Emanuele Sommario et al (eds), *Routledge Handbook of Human Rights and Disasters* (Routledge 2019).

²⁷ Ronald F Inglehart, 'Changing Values in the Islamic World and the West: Social Tolerance and the Arab Spring,' in Michele J Gelfand and Mansoor Moaddel (eds), *Values, Political Action, and Change in the Middle East and the Arab Spring* (OUP 2017).

internationally recognized government as well as airstrikes by a Saudi Arabia and United Arab Emirates (UAE)-led international coalition. It resulted in the deaths of more than 12,000 civilians since March 2015 though, the actual death toll is believed to be much higher. At least 3.6 million people have been displaced and the conflict has created the world's largest humanitarian crisis.²⁸

Due to recurrent war crimes and crimes against humanity, the UN insisted on an inclusive, peaceful, orderly led transition. External partners²⁹ formed a coalition and began military airstrikes geared towards protecting civilians. A series of resolutions³⁰ were passed by the UNSC, to renew Yemen regime sanctions, Yemen assets freeze, travel ban measures, and UN mandates in a bid to foster the protection of the civilian population. A valid invitation for military intervention couched in the language of R2P was issued by Presidents Hadi to regional bodies. In response, a military intervention was carried out by a Saudi-led coalition with the aim of protecting the population from mass atrocities.

2.3 Côte d'Ivoire

The Second³¹ Ivorian civil war broke out in March 2010 when the crisis in Côte d'Ivoire escalated into full-scale military conflict between forces loyal to Laurent Gbagbo, the President of Côte d'Ivoire since 2000, and supporters of the then internationally recognized president-elect Alassane Ouattara.³² Côte d'Ivoire's general election was marred with rigging leading to the incumbent president refusing to accept the results, which had declared the opposition leader Ouattara, the winner.³³ Ouattara was even certified by the then UN Secretary General Representative in the

²⁸ Alex J Bellamy, *Rethinking Humanitarian Intervention* (Palgrave 2018) 37.

²⁹ Saudi Arabia, Egypt, Morocco, Sudan.

³⁰ UNSC Res 2692 (10 June 2023); UN Doc S/Res/2692; UNSC Res 2675 (15 Feb 2023); UN Doc S/Res/2675; UN SC Res 2643 UN Doc S/Res/2643.

³¹ 'Ivory Coast Poll Overturned: Gbagbo Declared Winner,' *BBC News* (3 December 2010) <<https://www.bbc.co.uk/news/world-africa-11913832>> accessed 14 September 2024.

³² Andrew Harding, 'Civil war, Ivory Coast-style' *BBC News* (London, 9 April 2011) <https://www.bbc.co.uk/blogs/thereporters/andrewharding/2011/04/civil_war_ivory_coast-style.html> accessed 14 September 2024.

³³ Samuel Momodu, 'Second Ivorian Civil War (2010-2011)' <<https://www.blackpast.org/global-africanhistory/events-global-african-history/second-ivorian-civil-war-2010-2011/>> accessed 22 February 2021.

region as the duly elected president.³⁴ The regional block, the Economic Community of West African States (ECOWAS)³⁵ and the UNSC general declared Ouattara the winner which seemed to aggravate the situation, leading to the commencement of atrocities from both political sides. ECOWAS acted as a regional organization with mandate under the UN Charter to act in pacific settlement of disputes. Article 52 thus provides:

- (1) Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.
- (2) The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.
- (3) The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the States concerned or by reference from the Security Council.
- (4) This Article in no way impairs the application of Articles 34 and 35.³⁶

The UN Operation in Côte d'Ivoire³⁷ was created through a resolution,³⁸ a UNNATO peace-keeping mission 'whose aim was to

³⁴ 'Côte d'Ivoire Post-Gbagbo: Crisis Recovery (2 December 2004 – 3 May 2011) <<https://www.everycrsreport.com/reports/RS21989.html>> accessed 14 September 2024.

³⁵ Economic Community of West African States whose member countries are: Benin, Burkina Faso, Cabo Verde, Cote d'Ivoire, The Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo.

³⁶ UN Charter chap VIII.

³⁷ United Nations Operation in Ivory Coast.

³⁸ UNSC Res 1528 (27 February 2004) UN Doc S/Res/1528.

facilitate the implementation³⁹ by the Ivorian parties of the peace agreement signed by them in January 2003.’⁴⁰ In January 2003, a meeting was held in Linas-Marcoussis in France for the purpose of negotiating a peace settlement. The key parties were the leaders of the rivalling political factions with third parties made up of the UN, African Union (AU) and ECOWAS representatives overseeing the negotiations. The highlight of the agreement was a power sharing strategy in which President Gbagbo was to retain power as head of State but the opponents would get the ministries of Defence and Interior.⁴¹ The provisions of the agreement includes but not limited to reconciliation, preparation of a ‘timetable for holding a credible and transparent national elections, rebuilding the security forces and organizing the disarmament of all armed groups’⁴² In 2007, a state of emergency was declared due to the postponement of the presidential election.⁴³

UN Security Council reminded all parties of their R2P with the rising threats for violence and mass killings. In the context, and with the need for protection of civilians increasing,⁴⁴ diplomatic efforts were exercised in two dimensions. As per the provisions of Chapter VII of the UN Charter, firstly, Côte d’Ivoire was suspended from ECOWAS membership with calls for Gbagbo to step down⁴⁵ failure to which

³⁹ Agossou Lucien Ahouangan, ‘Conflict Resolution and the UN Peacekeeping Operation in Côte d’Ivoire’ (E-International Relations, 25 February 2019) <<https://www.e-ir.info/2019/02/25/conflict-resolution-and-the-unpeacekeeping-operation-in-cote-divoire/>> accessed 15 September 2024.

⁴⁰ Authorized by Security Council Resolution 1528 on 27 February 2004 to take over from MINUCI (United Nations Mission in Côte d’Ivoire) from 4 April 2004. The mandate was subsequently extended several times, including 31 October 2008, 31 January 2010, 27 May 2010, 20 December 2010, and most recently on 27 July 2011.

⁴¹ UNSC Res 99 (27 January 2003) UN Doc S/2003/99 (2003) (Linas-Marcoussis Agreement Cote d’Ivoire).

⁴² *ibid*

⁴³ Deniz Cil and Alyssa K Prorok, ‘Selling Out or Standing Firm? Explaining the Design of Peace Agreements’ (2020) 64 *Int’l Stud Q* 329–342 <<http://eds.b.ebscohost.com/eds/pdfviewer/pdfviewer?vid=2&sid=1609b128-3621-4252-ad8ef65935e1e53d%40pdc-v-sessmgr03>> accessed 15 September 2024.

⁴⁴ Human Rights Watch, ‘Côte d’Ivoire: Pro-Gbagbo Forces Abducting Opponents’ (23 December 2010), <<https://www.hrw.org/news/2010/12/23/cote-divoire-pro-gbabo-forces-abducting-opponents>> accessed 15 September 2024

⁴⁵ ‘Regional Body ECOWAS Deepens Integration in Cote d’Ivoire and Beyond’ (27 June 2020) <<https://oxfordbusinessgroup.com/analysis/stronger-together-regional-body-ecowas-has-deepened-localintegration>> accessed on 15 September 2024.

military interventions would be taken⁴⁶ as provided for in the UN Charter Article 41.⁴⁷

Evidently, in this case study, the intervention by regional organizations, the international community and finally the UN Security Council bore fruits. This played a big role in the protection of innocent civilians and saving of lives, which would have otherwise been lost, had the situation been left unattended to. There are misgivings with regard to the players having their own vested national interest, regime change accusation as well as the perceived rushed decisions to use the military, but the results outweighed the measures.

3 Successes in the application of the concept of responsibility to protect civilians

The Responsibility to protect principle has gained a plethora of successes by the UNSC in some nations with armed conflict. These successes will be examined in the cases of Mali, Libya and Côte d'Ivoire. The successful applications of the R2P principle in Côte d'Ivoire, Libya and Mali were due to one or a combination of the following three circumstances: the government committing mass atrocities did not obstruct the intervention, or if there was government obstruction an interested Permanent five member had the political will to overcome it; there was cooperation 'between regional organizations or neighbouring regional powers and the Security Council to coordinate the R2P response;' and the Council was able to respond to the perpetration of the mass atrocities in an efficient and effective way to protect civilians.⁴⁸ These successes will be examined under the cooperation between the international

⁴⁶ 'ECOWAS Bloc Threatens Ivory Coast's Gbagbo with force,' *BBC News* (25 October 2010) <<https://www.bbc.co.uk/news/world-africa-12077298>> accessed 15 September 2024.

⁴⁷ "The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the members of the United Nations to apply such measures. These may include complete or partial interruption of the economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations."

⁴⁸ Jared Genser, 'The UN Security Council's Implementation of the Responsibility to Protect: A Review of Past Interventions and Recommendations for Improvement,' *Global Centre for the Responsibility to Protect, Policy Brief* (September 2018) 2-5.

community and the state party, and the forceful role of the Security Council amid opposition from concerned state.

3.1 Cooperation between the international community and the State Party

In Côte d'Ivoire, following the November 2010 election of a new president, the former president refused to accept the legitimate election results. Supporting factions for each side began a violent military clash that led to war crimes and crimes against humanity committed by both factions. In response, and through the ensuing and escalating crisis, the UNSC issued a series of resolutions culminating in Resolution 1975. It authorized the acting UN peacekeeping mission to use 'all necessary means to protect civilians under imminent threat of physical violence . . . including the prevention of the use of heavy weapons against the civilian population.' The resolution also allowed the use of targeted sanctions against the former president and his group for the 'commission of serious violations of human rights and international humanitarian law.'⁴⁹ Although the illegitimate government objected to the Council's intervention, the legitimate government accepted its assistance.⁵⁰

In 2012, a coup succeeded in taking control from a newly elected president in Mali, exacerbating an already existing situation with various rebel groups. One rebel group eventually claimed control of northern Mali and began a reign of war crimes and crimes against humanity involving civilians.⁵¹ In September of 2012, the UNSC adopted Resolution 2085, which took the following three actions; authorized the deployment of an African led International Support Mission (AFISMA); re-emphasized the Malian government's responsibility to protect civilians under pillar one, and; granted AFISMA 'all necessary measures to support the Malian authorities in their primary responsibility to protect the population.'⁵²

⁴⁹ UNSC Resolution 1975 (30 March 2011) UN Doc S/Res/1975.

⁵⁰ Jared Genser, 'The UN Security Council's Implementation of the Responsibility to Protect: A Review of Past Interventions and Recommendations for Improvement,' (2018) 18 *Chicago J Int'l L* 435-440.

⁵¹ *ibid* 445-449.

⁵² UNSC Res 2085 (20 Dec 2012) UN Doc S/Res/2085.

3.2 The forceful role of the Security Council amid opposition from concerned state

In early 2011, the Arab Spring began in Libya with protests against the four-decade rule of Muammar Al-Qaddafi. These demonstrations spread throughout the country, leading Al-Qaddafi to respond with extreme brutality including air bombing and heavy artillery against his own citizens.⁵³ The Security Council, supported by the Arab League, issued a press statement condemning Al-Qaddafi's actions and calling on the Libyan government 'to meet its responsibility to protect its population.'⁵⁴ When Al-Qaddafi's assault on his citizens continued, on February 26, 2011, the Council unanimously adopted Resolution 1970 which 'condemned the violence and use of force against civilians,' stating that such 'may amount to crimes against humanity.'⁵⁵

In addition, the Council adopted the use of measures including an arms embargo, travel bans, and asset freezes against senior leadership of the government, and referred the situation to the International Criminal Court (ICC) for investigation.⁵⁶ The imminent threat of a massacre by Al-Qaddafi's forces against rebels in Benghazi in March 2011, caused the Gulf Cooperation Council (GCC) and the Arab League to urge the Security Council to act.⁵⁷ Thereafter, the Council adopted Resolution 1973 authorizing member states 'to take all necessary measures to protect civilians and civilian populated areas under threat of attack' and established a no-fly zone to help protect civilians.⁵⁸

The Libyan situation differed from that of Cote d'Ivoire because Libya's acting government, Muammar Al-Qaddafi, objected to the intervention authorized by the UNSC and continued to perpetrate mass atrocities against civilians.⁵⁹ These three cases show how the UNSC successfully implemented the principle of responsibility to

⁵³ Anne Peters, 'The Security Council's Responsibility to Protect,' 8 *Int'l Org L Rev.* 440-445.

⁵⁴ *ibid* 441.

⁵⁵ UNSC Resolution 1970 (26 February 2011) UN Doc S/Res/1970.

⁵⁶ *ibid*

⁵⁷ *ibid* 442

⁵⁸ *ibid*

⁵⁹ Genser (n 50) 3.

protect to shield civilian populations from on-going or imminent mass atrocities to preserve the international peace and security.⁶⁰

4 Shortcomings in the application of the concept on the responsibility to protect civilians during armed conflict

In spite of the successes achieved in the application of the R2P civilians during armed conflicts, a number of challenges are also imminent. These challenges include, among others; the legal structure of Responsibility to Protect Implementation, the Structure of the UN Security Council (amongst which include; the composition of the UN SC, Lack of sufficient resources to cater for effective operations of the UNSC, Rivalries amongst permanent members of the UNSC, and stalemate between veto members, each will be treated in turn.

4.1 Challenges from the legal structure of Responsibility to Protect implementation

One of the most fundamental challenges of R2P implementation is State sovereignty as enshrined in the UN Charter given that no State is supposed to intervene in other States' matters without the approval of the UN Security Council.⁶¹ All the States are meant to be anarchic with no overall boss. Even though the permanent members in the UN Security Council have the right to intervene in any country without waiting for approval unless it is militarily, this has also been applied discriminately. Swifter actions in Libya and Ivory Coast and not so much for Yemen and Syria lay a basis for non-uniformity.⁶²

Protecting this fundamental right of each State Charter of the UN and many related documents prohibited States from threatening or using force, except in self- defence or pursuant to Security Council authorization. Central concepts of international law (sovereignty,

⁶⁰ *ibid*

⁶¹ Sandra Fabijanić Gagro, 'The Responsibility to Protect (R2P) Doctrine' (2014) 3 *Intl J Soc Sci* 1, 2

⁶² Anthony H Cordesman, 'Afghanistan, Iraq, Syria, Libya, and Yemen: The Long-Term Civil Challenges and Host Country Threats from 'Failed State' Wars' (Report by Centre for Strategic and International Studies, 25 October 2019) < <https://www.csis.org/analysis/afghanistan-iraq-syria-libya-and-yemen> > accessed 26 August 2024.

territorial integrity, non-intervention, self-defence, etc.) rely on the exclusive or dominant role of the State.⁶³

A challenge that emerges with non-cooperation from some States is their passing of immunity of heads of States as a buffer mechanism in case the ICC takes action against them. For example, a dictator leader who does things carelessly, and many people are killed by his actions, would not want interference.⁶⁴ In such cases, when other countries or organizations come in to protect the people from the atrocities, the leaders would argue that every nation is sovereign and free from external interference.⁶⁵

In military intervention, the approval process, in most cases, takes a long time.⁶⁶ Thus, when a country is in a state of war, the intervention from outside its borders could tarry, and therefore, the delay leads to more casualties.⁶⁷ For instance when the US, Russia, Egypt, and Saudi Arabia intervened in both Yemen and Syria conflicts, it was a bit late since hundreds of thousands of the civilians had already been killed millions of poor people had already been displaced from their homes.⁶⁸

Another fundamental challenge is implementing the R2P is its limited application on the crime against humanity, ethnic cleansing, and genocides.⁶⁹ The law does not cover other risks that endanger the lives of people. In other words, the international community is only required by the law to intervene when there is a crime against humanity, genocides, or ethnic cleansing. However, when the civilians are faced with other life-threatening risks, the international community is not permitted to intervene. Many people lose their

⁶³ *ibid*

⁶⁴ *ibid*

⁶⁵ Henry F Carey, Stacey M Mitchell et al, *Understanding international law through moot courts: genocide, torture, habeas corpus, chemical weapons, and the responsibility to protect* (Lexington Books 2014) 45.

⁶⁶ Christine Longo, 'R2P: An Efficient Means for Intervention in Humanitarian Crises: A Case Study of ISIS in Iraq and Syria' (2016) 48 *George Washington Intl Rev* 894

⁶⁷ *ibid*

⁶⁸ *ibid*

⁶⁹ Brian Barbour and Brian Gorlick, 'Embracing the "Responsibility to Protect": A Repertoire of Measures including Asylum for Potential Victims' (2018) *Intl J Refugee L* 536.

lives from other risks that are not concerning the concept of R2P.⁷⁰ The international community should be allowed to intervene in other matters other than the crime against humanity, genocides, and ethnic cleansing.

4.2 The Challenge from the Structure of the Security Council

Challenges stemming from the structure of the UNSC include, among others, the composition of the UNSC, lack of sufficient resources to cater for effective operations of the UNSC, and the rivalry among the permanent member States in the UNSC. The composition of the UNSC is regarded as one of the biggest reasons as to why the implementation of the R2P is a challenge.⁷¹ By virtue that the permanent members hold veto power, the action or inaction of the UNSC determines the failure or success in a situation needing intervention.⁷² The UNSC being one of the six major organs of the UN specializes in international security.⁷³ It has been tasked under Article 24 of the UN Charter to be a gatekeeper for maintenance of international peace and security. Further, its resolutions are binding to the UN members States. Examples of provisions in the UN Charter that gives the UNSC powers over world peace are Articles 39 and 46. Article 39 provides:

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

However, such important decisions affecting security issues in the entire world are decided by both permanent and non-permanent members of the UNSC. While 15 members of the Council have the vote, five permanent members (China, France, Russia, the United

⁷⁰ Anne-Marie Judson, *Where is R2P grounded in international law?* (University of Otago Press 2002).

⁷¹ Justin Morris and Nicholas Wheeler, 'The Responsibility not to Veto: A Responsibility too Far' in Alex J Bellamy and Tim Dunne (eds), *The Oxford Handbook of Responsibility to Protect* (OUP 2016) 38-68

⁷² Nawaz Shamsa, 'Violation of the UN Resolutions on Kashmir: India's Quest for UNSC Permanent Membership' (2018) 38 *Strategic Studies* 1, 145-162.

⁷³ UN Charter art 24.

Kingdom and the United States) hold veto powers, meaning they can block resolution, even if all other members agree. The ten non-permanent members are elected for two-year terms and do not have veto power and the candidates are distributed in all regions across the world as provided for in the UN Charter. Article 23 provides that the non-permanent members of the UNSC shall be elected for a term of two years. In the first election of the non-permanent members after the increase of the membership of the UNSC from eleven to fifteen, two of the four additional members shall be chosen for a term of one year.

Since inception, more than 50 States have never been members of the UNSC.⁷⁴ The inadequate implementation of the R2P by the UNSC can therefore be attributed to the structure of the UNSC itself. It has been over 70 years when the design of the UNSC was formed. Having permanent and non-permanent members in this Council contribute to its inefficiencies and with the knowledge that permanent members are the ultimate decision makers.⁷⁵ They have the power to dictate what resolution should be adopted. Each of the permanent members is not precluded from only supporting resolutions that take care of their interests.⁷⁶ Permanent members remain the ultimate decision makers who always act based on their respective interests which hampers intervention.

4.3 Lack of sufficient resources to cater for effective operations of the Security Council

Resolutions by the UNSC are enforced with the support of member States in terms of offering military forces as part of UN Peacekeeping mission.⁷⁷ Article 43 of the UN Charter provides:

⁷⁴ *ibid* art 46.

⁷⁵ A Hehir, 'The Permanence of Inconsistency: Libya, the Security Council, and the Responsibility to Protect' (2013) 38 *Intl Sec* 137-150.

⁷⁶ Matthew Gould and Matthew Rablen, 'Reform of the United Nations Security Council: Equity and Efficiency' (2017) 173 *Public Choice* 1/2, 145-168 <<http://eds.a.ebscohost.com/eds/pdfviewer/pdfviewer?vid=4&sid=66a04950-7509-4d36-916e-23c2ee81d866%40sdc-v-sessmgr03>> accessed 25th August 2024.

⁷⁷ *ibid*

The responsibility to protect civilians

All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rites of passage, necessary for the purpose of maintaining international peace and security.

On its part, Article 44 provides;

When the Security Council has decided to use force, it shall, before calling upon a Member not represented on it to provide armed forces in fulfilment of the obligations assumed under Article 43, invite that Member, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces.

Article 46 further provides that: 'Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee.'

The UNSC might be unable to implement R2P efficiently since the current world faces a high rate of conflicts than at any other time in history.⁷⁸ For instance a budget of '\$6.37 billion for 12 Peacekeeping Missions from July 2021 to June 2022'⁷⁹ was approved on 29 June 2021 by the UN General Assembly. This is a drop compared to the over 80 peace keeping missions world-wide which cannot function without adequate resources⁸⁰ both in terms of manpower and financial.⁸¹

⁷⁸ Vesselin Popovski, Sampford CJG et al, *Norms of Protection: Responsibility to Protect, Protection of Civilians and their Interaction* (UN University Press 2012) 201.

⁷⁹ UNGA, 55th session GA/AB/4368 <<https://www.un.org/press/en/2021/gaab4368.doc.htm>> accessed 26 August 2024.

⁸⁰ Paul D Williams, 'The Security Council's Peacekeeping Trilemma' (2020) 96 *Intl Affairs* 2, 479-499 <<https://eds.b.ebscohost.com/eds/pdfviewer/pdfviewer?vid=12&sid=c4cf1f68-c52a-4da7-af25-2e6adc47a5a6%40pdc-v-sessmgr03>> accessed 26 August 2024.

⁸¹ *ibid*

4.4 The rivalry among the permanent member states in the Security Council

Rivalry is another factor that has been mooted as leading to inadequate implementation of the R2P. The last few years have seen the UNSC's permanent members fight each other either economically to politically.⁸² Russia, China, and the US are the main rivals in the equation. In most cases, when one of the members take a stand on a particular issue, the others would take the opposite stand bringing about a stalemate in implementation of R2P.⁸³ For example, UNSC as whole has done little towards the Yemen conflicts since the council has been voting several times on the resolutions, but sabotage comes from the permanent members.

5.5 Stalemate between members veto powers

The past fifteen years resolution have encountered challenges from veto acts as is, has stymied collective action to address atrocity crimes. Syria is the most high-profile instance of such a situation, but equally worthy of mention are Yemen, Myanmar, and the Democratic People's Republic of Korea all instances in which one or more of the crimes articulated in the World Summit Outcome Document has been documented.⁸⁴ The UNSC Permanent Five have been endowed with power to veto resolution regardless of circumstances.⁸⁵ Article 27 of the UN Charter provides for concurrence of all the permanent members with regards to decisions of the UNSC that is: each member of the UNSC shall have one vote, decisions on procedural shall be made by an affirmative vote of nine members, decisions on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter

⁸² Jennifer M Welsh, 'The Security Council's Role in Fulfilling the Responsibility to Protect' (2021) 35 *Ethics & Intl Affairs* 227-243.

⁸³ Alexander Skander Galand, *UN Security Council Referrals to the International Criminal Court: Nature, Effects and Limits* (Brill Nijhoff 2019).

⁸⁴ Welsh (n 82).

⁸⁵ Hardeep Singh Puri, *Perilous Interventions: The Security Council and the Politics of Chaos*, (HarperCollins Publishers 2016) 65-153.

VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.⁸⁶

The veto power is probably the UN Charter's most crucial distinction between the permanent members and the non-permanent members. Initially, the right to veto did not exist, but it was brought about following Russia's request at the Yalta conference also referred to as the Crimea conference in 1945 particularly when discussing the reorganization of Europe and Germany after World War II. Nevertheless, the veto has turned out to be a tool of rivalry among the five members; hence, it does not serve its purpose and expectation. The veto powers were created to maintain peace and international security yet voting against a resolution that is meant to bring peace, is working contrary to what is expected.⁸⁷ The right to veto has indeed paralyzed the UN Security Council. It is due to this reason that many scholars in the fields of international relations as well as international law have argued that the UNSC needs to be reconstituted and streamlined so that to make it more useful to be able to handle the modern conflicts.⁸⁸ Attaining world peace and security with the Security Council's current State would be quite tricky.

5 Conclusion and recommendations

The Responsibility to protect principle has been promoted to ensure peace and save life. Nevertheless, this concept has not been practiced well according to the Syrian and Yemen conflicts' stakeholders. These conflicts have lasted for almost a decade, and less has been achieved despite high numbers of killings and displacements. The UNSC has a huge task in practicing the Responsibility to protect concept, which is seen in the cases of Libya is wanting as far as the Syrian and Yemen conflicts are concerned. The Security Council has

⁸⁶ UN Charter art 27.

⁸⁷ Security Council Report, 'UN Security Council Working Methods: The Veto' (2023) <<https://www.securitycouncilreport.org/un-security-council-working-methods/the-veto.php>> accessed 23 August 2023.

⁸⁸ Sujit Datta, 'Humanitarian Military Intervention in Kosovo and Libya: An Assessment on Relevant Theories of International Relations' (European Scientific Journal Special Edition, May 2014) <<https://core.ac.uk/download/pdf/328024262.pdf>> accessed 4 March 2021.

the power to draft the resolutions to address any security threat in any country across the world. The UNSC intervenes in the security situations to protect the civilians in times when the local government has failed in protecting its civilians as in Libya. Although the justifications of the interventions come under a lot of criticism and scrutiny, the interventions in the nations of Mali, Libya and Côte d'Ivoire have yielded desirable results and especially in protect preserving humanity and promoting human rights.

The elements of timeliness and extent of intensity to approach an intervention are subject to improvement over time. It is unlikely that perfection is attainable. However, the UN's R2P prowess in the Syrian and Yemen wars has not been so far as evident and driven as in Libya and Côte d'Ivoire. Primarily, the reluctance in Syria and Yemen is because the Council attempted to present resolutions, but some Council members vetoed them. This slowed down the necessary response and urgency to the escalating killings in the Middle East countries and forms part of the shortcomings or challenges in the realization of the R2P principle under international law.