

## THE SYRIAN CONFLICT: THE LEGITIMACY AND LEGALITY OF R2P

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*Abstract: The International Commission on Intervention and State Sovereignty launched the concept of "responsibility to protect", concept that over the years transformed into the new doctrine of humanitarian intervention. However, in Libya and in the Syrian ongoing conflict, the intervention of international community brought into attention the old controversies regarding legitimacy and legality of a military intervention. Hence, our article investigates if the doctrine of responsibility to protect can be used as a legal and legitimate tool in crises management.*

*Keywords: R2P, human rights, legitimacy, legality, humanitarian intervention, Syria*

### **Introduction**

The subject of humanitarian intervention is sensitive, as it calls into question state sovereignty on the one hand and moral, ethical principles on the other hand<sup>1</sup>.

The concept of sovereignty has evolved with the changes occurring in the international system architecture. If traditionally, the external interference within a state was not accepted whatever its purpose, the principle of non-intervention being the basis of relations between the great powers, today, sovereignty can be seen as a responsibility<sup>2</sup>, a responsibility to defend and support the fundamental human rights.

The concern of the international community regarding the security of civilians is not new, but with the events which occurred since the 90s, (events in Iraq with Kurds, in Somalia 1992-1993, Bosnia-Herzegovina 1993-1995) it worsened.

Over time, the international community's humanitarian interventions on behalf of human rights have created much controversy; the "right to intervene" underlying the doctrine of Responsibility to Protect (R2P), emphasizes the responsibility of states.

According to the new doctrine of humanitarian intervention, the doctrine of R2P, while the state does not protect the rights of their own citizens (genocide, war crimes, ethnic cleansing and crimes against humanity) the international community must act and respond firmly to any mass infringement of fundamental human rights.

<sup>1</sup> Gareth Evans, *The Responsibility to Protect. Ending Mass Atrocities Crimes Once and For All*, Brookings Institution Press, Washington, D.C, 2008, p. 4.

<sup>2</sup> Francis Deng, "From 'Sovereignty as Responsibility' to the 'Responsibility to Protect'", *Global Responsibility to Protect*, Volume 2, Issue 4, 2010, pp. 353 – 370.

However, the humanitarian interventions under the auspices of the new doctrine have produced doubts about their legitimacy and legality. Some experts have condemned the international community and called into question the legality of such interventions. In this context, what legitimizes a humanitarian intervention? To answer this question we divided the work into two parts, in the first part we shall discuss the Syrian crisis, and in the second part we shall analyze the legitimacy and legality of humanitarian intervention under the auspices of R2P.

### **The Syrian Conflict**

The results of the Syrian conflict are devastating. After five years, more than 250,000 civilians are dead and 12 million were forced to leave their own country.<sup>3</sup> The use of Chemical Weapons and the international community's inability to respond promptly questioned the effectiveness of R2P doctrine.

For many, the actions of the international community in Libya through the United Nations (UN) and the North Atlantic Treaty Organization (NATO) represented symbolically, the validation of the new doctrine of R2P, through the Resolution 1970 and later through the Resolution 1973 of the Security Council, which authorized foreign intervention to protect civilians in Libya.

Instead, skeptics see R2P as a dangerous, imperialist doctrine which undermines the sovereignty and political autonomy of weaker states. They believe that R2P represents a threat to state sovereignty.<sup>4</sup>

Alex Bellamy states that the intervention in Libya was absolutely necessary, but admits at the same time, it was problematic, failing to guarantee long-term stability of the region.<sup>5</sup> Thomas Weiss is more prudent, and he believed that in time, the success in Libya has helped to strengthen the R2P doctrine, but the many critics on the intervention merely question the legitimacy of this doctrine.<sup>6</sup>

Although considered a success by the actors who led the intervention, only time will show the results and efficiency of applying R2P doctrine, as it is impossible to know what would have happened if there had been no intervention.

Instead, the conflict in Syria illustrates perhaps the best the inability of the international community to reach a consensus and act in a spirit of shared responsibility. During the five years of conflict, the great powers have misinterpreted the issue of the Syrian crisis.

As Frederic Pichon was also saying, Syria is different from the rest of the countries in the Middle East.<sup>7</sup> The mix of ethnic and religious elements (Sunni Arabs, Alawites, Christians, Armenians, Kurds) and the divisions created have produced a split of the population. According to Valentin Naumescu "the Alawites would support a secular regime, such as the Arab socialism inspired by the Ba'th Party, while the Sunni fighters in Syria are more inclined to install an Islamist

<sup>3</sup> <http://www.un.org/press/en/2015/sc12008.doc.htm>, accessed 30.08.2016, 21.25 h.

<sup>4</sup> Noam Chomsky, "Humanitarian Imperialism: The New Doctrine of Imperial Right", *Monthly Review*, September, 2008.

<sup>5</sup> Alex Bellamy, *Global Politics and the Responsibility to Protect: From Words to Deeds*, Routledge, New York, 2011, p.7.

<sup>6</sup> T. G. Weiss, "RtoP Alive and Well after Libya", *Ethics & International Affairs*, Vol. 25, No. 3, 2011, p. 287.

<sup>7</sup> Frederic Pichon, *Siria: de ce s-a înșelat Occidentalul*, Editura Corint, București, 2015, p. 15.

revanchist political regime, above all existing the consistent suspicion that among the opposers radical religious or even terrorist groups might also exist.”<sup>8</sup>

Unlike Syria, Libya lacked allies in the region, and therefore, the intervention was backed by the Gulf Cooperation Council, the Organization of the Islamic Conference and the League of Arab States. In this context, we should be quite careful when talking about the importance of applying the R2P doctrine. Arguably, the intervention would have had the same purpose without making a statement on the R2P legitimacy?

The fact that an intervention took place in Libya surely is also a result of geopolitical interests. Libya is located on the Mediterranean coast, close to Europe, with potential security implications for countries such as France and Italy.

Bashar al-Assad enjoys strong support on the part of Russia, which supported the supply of refined petroleum products and air defence systems<sup>9</sup>, but also on the part of Iran. Thus, the strategic interests seem to prevail, affecting the whole stability of the region and creating tensions between the great international players.

### **The Legality and Legitimacy of Humanitarian Intervention under the auspices of R2P**

R2P doctrine has emerged in the context of the tragedies that occurred in the early 90s, the ethnic cleansing in Bosnia-Herzegovina, Rwanda (mass murders of Tutsi population) have determined the need for a paradigm shift in the international community. With the emergence of new realities and challenges, new requirements for action and new standards of behavior in domestic and international affairs also emerged. Thus new constructs have been created, but their capacity has not kept pace with current expectations of the international community.

Basically, the emergence of modern warfare has provided new grounds for the international intervention to maintain its presence and long-term commitment after conflicts end. In this context, human rights violation is not only a consequence, but also a cause of instability, insecurity and crisis.

In the early 2000s the foundations of R2P doctrine are laid down. According to the report of the International Commission on Intervention and State Sovereignty (2001), the Responsibility to Protect consists of three pillars: *responsibility to prevent, responsibility to react and responsibility to rebuild*. According to the doctrine if a State or any other non-state entities cannot protect civilians or threaten the safety and lives of their own citizens, the international community has a responsibility to act through collective measures to protect the civilians<sup>10</sup>. This type of action is coercive, the aim being to prevent and put an end to massive human rights violations.

However, the concept is poorly defined in international law, the notions of state sovereignty and the principle of non-intervention remaining dominant.<sup>11</sup>

<sup>8</sup>Valentin Naumescu, *Teme de politică internațională. Conflicte, tensiuni, dezbateri*, Editura Fundației pentru Studii Europene, Cluj-Napoca, 2014, p.194.

<sup>9</sup>Frederic Pichon, *op.cit.*, pp. 70-71.

<sup>10</sup>ICISS Report, “The Responsibility to Protect”, *International Development Research Centre*, Ottawa, Canada, 2001, pp. 10-18.

<sup>11</sup>Andreas King, *Motivations for Humanitarian intervention: Theoretical and Empirical Considerations*, SpringerBriefs in ethics, Springer, Dordrecht, 2013, pp. 8-16.

Although lawyers have worked to define the concept, the theorists of the just war theory have analyzed it from several angles.

The most important theories that have addressed the issue of the legitimacy of humanitarian military intervention are realism and liberal cosmopolitanism.<sup>12</sup> If for the cosmopolitans the individual and the individual rights are the essence of international relations, they seeing the intervention as the only solution to save the lives of citizens, the realists have a minimalist approach on the right of intervention, on solidarity, the state occupying the central position.<sup>13</sup>

We can say that from the perspective of the states the non-intervention is desirable, while from a personal perspective, which focuses on elements related to ethics and morality, the international community has the obligation to protect and defend the civilian population.

Of course the deployment of a humanitarian intervention has significant implications also on the dynamics of the international system. James Pattison states that an illegitimate intervention weakens the effectiveness and importance of international law, and more than that, destabilizes whole regions and areas, offering here the example of the massive flow of refugees.

Louise Arbour argues that the application of R2P should be regarded as a legal, moral responsibility to intervene.<sup>14</sup> Another author, Alex Bellamy wants to answer to those who criticized the legitimacy and legality of the new doctrine of humanitarian intervention, R2P doctrine. He pays tribute to this doctrine, arguing that although it has some shortcomings, R2P is the only coalition instrument of the international community against possible future atrocities.<sup>15</sup>

Bellamy argues the legality and legitimacy of R2P, appealing to constructivist logic. Thus, he reiterates the importance of ideas in modeling the behavior of states and the international community. Human nature, he says, has a certain tolerance for cruelty as genocide or war crimes<sup>16</sup>. Although we faced regularly situations that had a tragic ending, the case in which there have been interventions since 1945 to date have been quite a few (one in ten cases).<sup>17</sup> Of course other factors contributed to the state of "lethargy", the lack of clear political will and also a certain caution from international community.<sup>18</sup>

In this context R2P doctrine shows its usefulness and legitimacy, by achieving a global consensus to prevent and fight against future atrocities. It provides that framework in which individuals, state actors, governmental and nongovernmental organizations can mobilize their resources to work together and reach a consensus on preventive humanitarian intervention.<sup>19</sup>

States are the main actors of this approach, as the responsibility for the life of their own citizens belongs to them. How they manage to fulfill their task is varied, there is never a unique

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<sup>12</sup>*Ibidem*, p. 10.

<sup>13</sup>*Ibidem*.

<sup>14</sup> Louise Arbour, "The responsibility to protect as a duty of care in international law and practice", *Review of International Studies*, 34, 2008, p. 452.

<sup>15</sup> Alex J. Bellamy, *The Responsibility to Protect: A Defence*, Oxford University Press, Oxford, 2014, p.11.

<sup>16</sup>*Ibidem*, p.17.

<sup>17</sup>*Ibidem*, p. 50.

<sup>18</sup>*Ibidem*.

<sup>19</sup>*Ibidem*.

recipe. This diversity should be encouraged because it is imperative that the R2P objectives be contained in the rules, policies and strategies of state actors.<sup>20</sup>

Bellamy stresses the importance of regional organizations and civil society (NGOs, actors, academics, opinion leaders) to promote and propagate the objectives and values of R2P. Only through joint efforts structural changes that will allow the assimilation of R2P global objectives can take place.<sup>21</sup>

He also examines in detail the criticism of the R2P, dismissing them as unconvincing. The same tend to overestimate the role of the international law principles and to underestimate the importance of policies, he says.<sup>22</sup>

In his view, the moral dilemma of R2P doctrine has implications upon the way in which military force is used in humanitarian operations and upon the connection between R2P and peacekeeping operations. He states that there is no total solution to the dilemma, but certain measures can be taken to more or less counter-balance the existing weaknesses. It is imperative that in any humanitarian action, the response and the international community be individual and customized.

He still argues that whether appealing or not to *R2P* doctrine, any action must be adapted to the specific of the situation and of the area. The ultimate goal of the doctrine is to make the states conscious and responsible towards their duties to their own citizens and to other states.<sup>23</sup>

Alex J. Bellamy tries to defend the reputation of R2P doctrine, the same being among the authors who see this construct as a great revelation of the global community. Indeed R2P doctrine is in itself a significant ideological commitment of the United Nations, reflecting the recognition of the international community of their own responsibilities.

According to Roland Paris in the logic of humanitarian intervention there are five fundamental tensions seemingly irreversible, all expressing doubts about the feasibility, legitimacy and long-term prospects of R2P.<sup>24</sup>

The author calls these tensions, *structural problems of humanitarian interventions* and identifies five such problems: *the problem of mixed motives, the counterfactual problem, the inconsistency problem, the problem of obvious risks and the state problem.*<sup>25</sup>

*The problem of mixed motives* is considering the pretext underlying the decision to carry out a humanitarian intervention. Paris argues that it is impossible that behind such a judgment be only humanitarian reasons, the decision to intervene involving also a certain personal interest of the states engaged in the operation. Thus, humanitarian intervention under R2P umbrella will always generate political opposition, being delegitimized.<sup>26</sup>

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<sup>20</sup>*Ibidem*, p. 90.

<sup>21</sup>*Ibidem*.

<sup>22</sup>*Ibidem*, p. 97.

<sup>23</sup>*Ibidem*.

<sup>24</sup>Roland Paris, "Responsabilitatea de a Proteja (R2P) și problemele structurale ale intervenției umanitare preventive", *International Peacekeeping*, Vol. 21, Nr. 5, 2014, pp. 569-603.

<sup>25</sup>*Ibidem*, p. 570.

<sup>26</sup>*Ibidem*, p. 574-782.

*The counterfactual problem* refers to the inability to make accurate predictions about the success of such interventions, especially in relation to the number of human lives saved. It is impossible to predict whether the intervention was a success or not.<sup>27</sup>

Selective application, the decision to intervene or not in situations such as those in Libya and Syria, highlights the *problem of inconsistency*, while the emergence of collateral victims reveals the *problem of obvious risks*.<sup>28</sup>

The last problem, *the state problem* is about the way the international community can provide the reconstruction and later the stability of the states.<sup>29</sup>

According to Paris, these problems represent an insurmountable obstacle to the full implementation of R2P. They greatly complicate the conduct of humanitarian operations and together form the great dilemma of R2P.

In support of his thesis, Roland Paris analyses the intervention of the international community in the spring of 2011 in Libya, emphasizing that all five issues are addressed in this intervention.

Paris suggests that the R2P doctrine, however, is not yet doomed, at least not entirely. Non-military diplomatic methods, promotion of human rights and furthermore, the idea that countries have a duty to protect their own citizens, will continue to enjoy great international support.<sup>30</sup>

Roland Paris gives us a different perspective on R2P and although he is quite acid in relation to it, he emphasizes very well the existing problems in the doctrine. If we also apply the logic proposed by Paris in the analysis of the Syrian crisis we see that, like in the case of the Libyan conflict, the structural problems of the humanitarian intervention have created and continue to influence the decision on intervention.

## Conclusions

Given the above, we may say that R2P doctrine has some limitations. The doctrine application dependence on the political will, but also on obtaining the approval of the UN Security Council, affects its efficiency.

Moreover, political disputes at the levels of the makers of the Security Council, particularly the position of Russia, China, Brazil, India, South Africa and Lebanon have blocked the implementation of the R2P doctrine. It seems that uprisings like those carried out during the Arab Spring did not work also in the case of Syria, Bashar al-Assad's regime being also in power today.

With Russia's involvement in the conflict, the premises for the establishment of a climate of stability in the region seem increasingly remote. The failures of all diplomatic initiatives demonstrate that the major powers are not yet ready to assume the principles governing R2P doctrine.

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<sup>27</sup>*Ibidem.*

<sup>28</sup>*Ibidem.*

<sup>29</sup>*Ibidem.*

<sup>30</sup>*Ibidem*, p. 599-603.

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