The doctrine of the responsibility to protect has recently gained the status of an “emerging norm”, as it was described in some key documents in the last decade. The crucial relationship between sovereignty and responsibility faces a dramatic challenge when human rights and fundamental freedoms are at stake. The Report presented by the International Commission on Intervention and State Sovereignty (ICISS) in 2001, its following endorsement by UN bodies and its adoption by the World Summit of 2005 mark an historic step in modern international order, stressing that there is a necessary re-characterization involved: from sovereignty as control to sovereignty as responsibility in both internal functions and external duties.

UN practice is evolving accordingly, and the dramatic events of 2011 in Arab Mediterranean countries offered an opportunity to test the doctrine of R2P. In the case of Libya, the UN Security Council expressly referred to R2P as a political, moral and legal ground for the authorisation of the use of force by States.

The Responsibility to Protect (R2P) in the ICISS Report

At the United Nations General Assembly in 1999 and in 2000, Secretary-General Kofi Annan strongly asked the international community to address a key issue:

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

In response to this challenge, the Government of Canada, together with a group of foundations, announced at the UN General Assembly in September 2000 the establishment of the International Commission on Intervention and State Sovereignty (ICISS), an independent body of distinguished personalities, chaired by Gareth Evans and Mohamed Sahnoun. The ICISS Report, issued in December 2001, is about the so-called "right of humanitarian intervention", or

1 ICISS, The Responsibility to Protect - Report of the International Commission on Intervention and State Sovereignty, International Development Research Centre, Ottawa 2001. A supplementary volume to the Report (410 pages) collects "research, bibliography and background". T. MERON, The Humanization of International Law, Leiden-Boston 2006, referring to the proposals for rule-making and suggested guidelines, mentions the ICISS Report as «perhaps the most prominent of such proposed guidelines» (p. 525). The acronym R2P is now broadly used, and has the advantage of being read the same way in English and in
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“droit d’ingérence”: «the question of when, if ever, it is appropriate for States to take coercive – and in particular military – action, against another State for the purpose of protecting people at risk in that other State». At least until the terrible attacks of 11 September 2001 brought to centre stage the international response to terrorism, the issue of intervention for human protection purposes has been seen as one of the most controversial and difficult of all international relations questions.

The central theme of the ICISS Report, reflected in the title, is “The Responsibility to Protect”, that is the idea that sovereign States have a responsibility to protect their own citizens from avoidable catastrophe – from mass murder and rape, from starvation – but that when they are unwilling or unable to do so, that responsibility must be borne by the community of States. The nature and dimensions of that responsibility are argued out, as are all the questions that must be answered about who should exercise it, under whose authority, and when, where and how.


In 2007, the Société Française pour le Droit International has significantly dedicated her annual congress to the R2P. The interesting proceedings are in SFDI, La responsabilité de protéger, Colloque de Nanterre, Paris 2008. The general report is by P. DAILLIER, La responsabilité de protéger corollaire ou remise en cause de la souveraineté?, pp. 41 ss.

1 See M. BETTATI, Le droit d’ingerence. Mutation de l’ordre international, Paris 1996. C. FOCARELLI, La dottrina della “responsabilità di proteggere” e l’intervento umanitario, in «Rivista di diritto internazionale», 2008, pp. 317 ss is of the opinion that the doctrine of the R2P is basically a new presentation of the problem of the admissibility of humanitarian intervention and, therefore, as such is being understood by States and – by most of them – strongly opposed. On the relationship between humanitarian intervention and R2P, «sur le fond, la C.I.L.S.E. renouvelle la reflexion et d’abord le vocabulaire. Au droit ou au devoir d’ingerence la C.I.L.S.E. substitue le concept de responsabilité de protéger, moins attenta- toile au principe de souveraineté nationale» (M. BETTATI, Allocution, in SFDI, cit., p. 11).

1 The situation is typical of weak or “failed” States.
The Commission’s Report appears fully aware of all these limits, and all these relevant open questions.

The key issue is, therefore, the meaning of sovereignty, which is closely linked to the norm of non-intervention. «Sovereignty has come to signify, in the Westphalian concept, the legal identity of a State in international law». It is a concept which is supposed to provide order, stability and predictability in international relations since sovereign States are legally regarded as equal, regardless of comparative size, military or economic power. The principle of sovereign equality of States is codified and enshrined in Article 2.1, right in the first place of the UN Charter. Internally, sovereignty signifies the capacity to make authoritative decisions with regard to the people and resources within the territory of the State. Externally implies in the first place independence.

A condition of any one State’s sovereignty is a corresponding obligation to respect every other State’s sovereignty: the norm of non-intervention is enshrined in Article 2.7 of the UN Charter, the one concerning the so-called “domestic jurisdiction”. A sovereign State is empowered in international law to exercise exclusive and total jurisdiction within its territorial borders. Other States have the corresponding duty not to intervene in the internal affairs of a sovereign State. If that duty is violated, the victim State has the further right to defend its territorial integrity and political independence. In the era of decolonisation, the sovereign equality of States and the correlative norm of non-intervention received its most emphatic affirmation from the newly independent States.

At the same time, while intervention for the sake of human protection purposes was extremely rare, during the Cold War years State practice reflected the unwillingness of many countries to give up the use of intervention for political or other purposes as an instrument of policy. As it is stressed in the Report, leaders on both sides of the ideological border decided to heavily intervene in support of friendly regimes against local populations, while also supporting rebel movements in States to which they were ideologically opposed.

The established and universally acknowledged right to self-defence, embodied in Article 51 of the UN Charter and fully recognised by customary law, was sometimes extended to include the right to launch punitive raids into neighbouring countries that had shown themselves unwilling or unable to stop their territory from being used as a base for cross-border armed raids or terrorist attacks. But even in such a situation, the many examples of intervention in State practice throughout the 20th century did not lead to an abandonment of the general norm of non-intervention.

In the United Nations, according to the Report, sovereignty has become «the organising principle». Membership of the United Nations was «the final symbol of independent sovereign statehood and thus the seal of acceptance into the
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community of nations». The UN also became the principal international forum for collaborative action in the shared pursuit of the three goals of State building, nation building and economic development. The UN was therefore the main arena for the jealous protection of State sovereignty, and not the framework for its limitation.

The UN is an organisation dedicated in the first place to the maintenance of international peace and security on the basis of protecting the territorial integrity, political independence and national sovereignty of its member States. But the overwhelming majority of today’s armed conflicts are internal, not inter-state. Moreover, the proportion of civilians killed in them increased from about one in ten in the First World War, to one in two in World War II and finally to around nine in ten in the Balkan Wars at the end of the 20th century. This, according to the ICISS Report, has presented the Organisation with a major difficulty: how to reconcile its foundational principles of member States’ sovereignty and the accompanying primary mandate to maintain international peace and security («to save succeeding generations from the scourge of war») with the equally compelling mission to promote the interests and welfare of people within those States («We the peoples of the United Nations», is the emphatic incipit of the Charter, always left without practical consequences).

But here we come to the key assumption, which is based on a new reading of sovereignty: Sovereignty as Responsibility. As a matter of fact, the idea is not entirely new, as the history of modern age shows that political movements, principles and rules aim at shielding the individual from the arbitrary exercise of State authority. Moreover, sovereignty has always faced quite a number of duties (and therefore limits) in the framework of an international legal order. The UN Charter is itself an example of an international obligation voluntarily accepted by member States. On the one hand, in granting membership of the UN, the international community welcomes the signatory State as a responsible member of the community of nations. On the other hand, the State itself, in signing the Charter, accepts the responsibilities of membership arising from that signature. There is no transfer or dilution of State sovereignty. But there is a necessary re-characterization involved: from sovereignty as control to sovereignty as responsibility in both internal functions and external duties.

According to the ICISS Report, thinking of sovereignty as responsibility, in a way that is being increasingly recognized in State practice, has a three-fold significance. First, it implies that the State authorities are responsible for the functions of protecting the safety and lives of citizens and promotion of their welfare. Secondly, it suggests that the national political authorities are re-

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6 See C. STAHN, Responsibility to Protect..., cit., p. 11.
sponsible to the citizens internally and to the international community through the UN. And thirdly, it means that the agents of State are responsible for their actions; that is to say, they are accountable for their acts of commission and omission. The case for thinking of sovereignty in these terms is strengthened by the ever-increasing impact of international human rights norms, and the increasing impact in international discourse of the concept of human security.

The meaning and scope of security have become much broader since the UN Charter was signed in 1945. Human security means «the security of people – their physical safety, their economic and social well-being, respect for their dignity and worth as human beings, and the protection of their human rights and fundamental freedoms».

The Commission is of the view that the debate about intervention for human protection purposes should therefore focus not on “the right to intervene” but on “the responsibility to protect”. The proposed change in terminology is also a change in perspective, reversing the perceptions inherent in the traditional language, and adding some additional ones:

• First, the responsibility to protect implies an evaluation of the issues from the point of view of those seeking or needing support, rather than those who may be considering intervention. The focus should therefore move to the duty to protect communities from mass killing, women from systematic rape and children from starvation.
• Secondly, the responsibility to protect acknowledges that the primary responsibility in this regard rests with the State concerned, and that it is only if the State is “unable or unwilling” to fulfil this responsibility, or is itself the perpetrator, that it becomes the responsibility of the international community to act in its place. In many cases, the State will seek to acquit its responsibility in full and active partnership with representatives of the international community. Thus the “responsibility to protect” is more of a linking concept that bridges the divide between intervention and sovereignty; the language of the “right or duty to intervene” is intrinsically more confrontational.
• Thirdly, the responsibility to protect means not just the “responsibility to react”, but the “responsibility to prevent” and the “responsibility to rebuild” as well.

The Commission believes that responsibility to protect resides in the first place with the State whose people are directly affected. This fact reflects not only international law and the modern State system, but also the practical realities of who is best placed to make a positive difference. «The domestic authority is best placed to take action to prevent problems from turning into potential con-
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When problems arise the domestic authority is also best placed to understand them and to deal with them. «When solutions are needed, it is the citizens of a particular State who have the greatest interest and the largest stake in the success of those solutions, in ensuring that the domestic authorities are fully accountable for their actions or inactions in addressing these problems, and in helping to ensure that past problems are not allowed to recur».

Finally, while the State whose people are directly affected has the default responsibility to protect, a residual responsibility also lies with the broader community of States. According to the Report, «This fallback responsibility is activated when a particular State is clearly either unwilling or unable to fulfil its responsibility to protect or is itself the actual perpetrator of crimes or atrocities; or where people living outside a particular State are directly threatened by actions taking place there». This responsibility also requires that in some circumstances action must be taken by the broader community of States to support populations that are in jeopardy or under serious threat.

One crucial element in the Report is that the so-called right to intervene belongs to any State. On the other hand, the R2P belongs to every State. This element seems to link the concept to the obligations erga omnes.

Another relevant document reflects the same approach, and has clearly inspired ICISS. The Rome Statute of the International Criminal Court, in Article 17, addresses inability and unwillingness as situations in which the ICC may be called to act.

Substantial Elements of the R2P

The substance of the responsibility to protect is the provision of life-supporting protection and assistance to populations at risk. This responsibility is an “umbrella concept”, embracing three integral and essential components:

1) the responsibility to prevent: to address root and direct causes of internal conflict and other man-made crises putting populations at risk;
2) the responsibility to react: to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention;

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3) *the responsibility to rebuild*: to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert.\(^{10}\)

The responsibility to react appears the very heart of the Report. Intervention – even in a preventive form – is only admissible in cases in which peaceful measures are insufficient (§ 4.1 of the Report), that is when the international community faces violations that «genuinely shock the conscience of mankind» (§ 4.13).

As the Commission clearly stressed, changing the terms of the debate from “right to intervene” to “responsibility to protect” helps to shift the focus of discussion where it belongs – on the requirements of those who need or seek assistance. But while this is an important and necessary step, it does not by itself resolve the difficult questions relating to the circumstances in which the responsibility to protect should be exercised – questions of legitimacy, authority, operational effectiveness and political will.

The Impact of the R2P on Some Relevant Documents: from Concept to Policy and Law

The Report produced by the ICISS in 2001 represents a new conceptual approach to the question of the humanitarian intervention legitimacy. Since 2004 various UN documents mentioned the R2P and the attention for the concept has grown among international institutions and also the civil society.

The first relevant document mentioning the R2P is the report by the High-level Panel on Threats, Challenges and Change, *A more secure world: our shared responsibility*, published in 2004. The Panel has been invited by Secretary General Kofi Annan «to examine the current challenges to peace and security; (...) to consider the contribution which collective action can make in addressing these challenges; (...) to review the functioning of the major organs of the United Nations and the relationship between them and to recommend ways of strengthening the United Nations through reform of its institutions and processes»\(^{11}\).

According to the Panel, there would be «a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large-scale killing, eth-

\(^{10}\) A step in this field is the creation of a Peace Building Commission in the institutional framework of the UN.

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Recent developments in Arab Mediterranean countries have raised questions about the adequacy of the international community’s response to crises that arise within their borders. The Responsibility to Protect (R2P) doctrine, which emerged in the wake of significant atrocities in the 1990s, has been described as an emerging norm.

In his Report *In Larger Freedom: Towards Development, Security and Human Rights for All*, Secretary General, Kofi Annan urged the Heads of State and Government to embrace the “responsibility to protect” as a basis for collective action against genocide, ethnic cleansing and crimes against humanity and agree to act on this responsibility, recognizing that this responsibility lies first and foremost with each individual State, whose duty it is to protect its population, but that if national authorities are unwilling or unable to protect their citizens, then the responsibility shifts to the international community to use diplomatic, humanitarian and other methods to help protect civilian populations, and that if such methods appear insufficient the Security Council may out of necessity decide to take action under the Charter, including enforcement action, if so required.

The concept of R2P has been considered under the Chapter “Freedom to live in dignity”, losing the strong link with the question of the use of force. This choice reflects the concerns for the risks connected with the implications of “responsibility” in terms of “automatic” use of force.

Again, the R2P is described as “an emerging norm”; as far as the contents of the doctrine are concerned, the Secretary General underlined that the responsibility lies, first and foremost, with each individual State, whose primary raison d’être and duty is to protect its population. But if national authorities are unable or unwilling to protect their citizens, then the responsibility shifts to the international community to use diplomatic, humanitarian and other methods to help protect the human rights and well-being of civilian populations. When such methods appear insufficient, the Security Council may out of necessity decide to take action under the Charter of the United Nations, including enforcement action, if so required.

The recourse to military action – through Security Council authorization – is an extreme measure.

The World Summit Outcome Document of 2005, adopted by the UN General Assembly, has recognized that “each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity” and that the international community should first and foremost “encourage and help States to exercise this responsibility and support the...
United Nations in establishing an early warning capability»

Should peaceful means be inadequate and national authorities unwilling or unable to protect their populations, the international community have to be

prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate.

Like in the Annan’s Report, the issue is considered not in the part devoted to the use of force, but in the section “human rights and the rule of law”.

One peculiar element is the fact that the so-called “ethnic cleansing” has been here introduced as a kind of new category, whose features are not well established in the various agreements and statutes of tribunals of the last decades. As a matter of fact, ethnic cleansing belongs to the families of crimes against humanity and genocide (probably the former rather than the latter), and was never before treated as an autonomous chapter of international crimes.

The World Summit Outcome does not refer to an “emerging norm”. States declare that they are «prepared to take collective action… through the Security Council» but «on a case by case basis». This formula means that States avoid to take obligations to act systematically. It is also consistent with the nature of the Security Council (and the General Assembly) as a political body.

Having established the four categories of mass atrocities, the document – unlike the preceding ones – leaves aside the conditions under which action should be decided.

Even if the Outcome is not an agreement concluded in due form, it can be considered an important assessment of the duties of the international community. Therefore, the reference to R2P is clearly relevant as far as it indicates a position shared by more than 170 UN members States, including the only superpower, the United States. «The largest gathering of Heads of State and Government the world has seen» solemnly declared: «We accept that responsibility and will act in accordance with it».

The R2P is clearly stated also in Security Council Resolution 1674 (2006), that is in a document adopted the only UN body entitled to decide and to take collective security measures binding upon member States. In this text, which concerns the protection of civilians in armed conflict, the Security Council

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14 UN General Assembly, 2005 World Summit Outcome, § 138.
15 ibidem, § 139.
16 W.A. SCHABAS, An Introduction to the International..., cit., pp. 98 and 105.
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reaffirms the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

It is not much, as far as the concrete consequence of a possible action is concerned, but it appears as a beginning of a UN practice.

Also regional practice reflects this trend towards the recognition of R2P. The African Union Constitutive Act, in Article 4 lett. (h), states that

The Union shall function in accordance with the following principles: (h) The right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity.

Moreover, according to Article 4 (j) of the Protocol establishing the Peace and Security Council,

The Peace and Security Council shall be guided by the principles enshrined in the Constitutive Act, the Charter of the United Nations and the Universal Declaration of Human Rights. It shall, in particular, be guided by the following principles (...) j. the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity, in accordance with Article 4(h) of the Constitutive Act.

This wording appears potentially even more effective than that of the UN, as it makes explicit reference to the “right to intervene”.

Libya 2011: a Paradigmatic Case for R2P

A wave of political protests and street riots demanding radical reforms and eventually a change of regime after 41 years of Muammar Gaddafi’s dictatorship started on February 15, 2011 in Tripoli, the Libyan capital. The regime responded with air indiscriminate attacks against unarmed civilian protesters. The turmoil and internal disturbances spread all over the country in the following weeks and the situation rapidly degenerated in a real civil war. Gaddafi, in a vehement speech on TV a week after the beginning of the uprising, promised to fight to the last and declared that he would rather die a martyr than surrender. He ordered his troops and militias to crush all protesters and «cleans Libya house by house». In a few days there was a raising in the numbers of people

See L. POLI, La responsabilità di proteggere e il ruolo delle organizzazioni internazionali regionali. Nuove prospettive del continente africano, Napoli 2011.
(tribal leaders, military units and even government officials) defecting to join the uprising, which rapidly became an insurgency. The pacific protest rapidly evolved in an extended rebellion. On February 26, 2011 a provisional government was formed, led by the former Minister of Justice Mustafa Abdul Jalil. This was transformed on March 5, 2011 in a "Transitional National Council", a de facto government that was recognised by a growing number of States, starting with France and Qatar. Moreover, also the European Union recognized this Council and the Arab League issued a statement in which the organisation stressed its will to cooperate with the new entity in the perspective of a proper form of recognition as the legitimate government of Libya.

The protests and the following extended bloody uprising quickly degenerated in a major humanitarian crisis. The UN Working Group on Enforced or Involuntary Disappearances reported to the Human Rights Council expressing concern for people who «might have been submitted to torture or other cruel, inhuman or degrading treatments or executed. In most of the cases reported, the fate and the whereabouts of these persons are still unknown»21. According to several reports by different sources (NATO, US government, European governments, UN agencies, NGOs), the casualties among civilians became increasingly high, and large part of the population in certain areas of the country were trapped in dramatic conditions, under heavy shelling by the armed forces still loyal to Gaddafi or under sniper fire in the cities and in a situation of chronic shortage of basic supplies.

Already on February 26 the UN Security Council adopted a resolution – n. 1970 (2011) – expressing «grave concern at the situation in the Libyan Arab Jamahiriya and condemning the violence and use of force against civilians» and deploiring «the gross and systematic violation of human rights, including the repression of peaceful demonstrators, expressing deep concern at the deaths of civilians, and rejecting unequivocally the incitement to hostility and violence against the civilian population made from the highest level of the Libyan government». Furthermore, the Security Council considered «that the widespread and systematic attacks currently taking place in the Libyan Arab Jamahiriya against the civilian population may amount to crimes against humanity»22.

A significant rather new element in Security Council practice is represented by its «recalling the Libyan authorities' responsibility to protect its population»,
which determined the decision to urge the Libyan authorities «to act with the utmost restraint, respect human rights and international humanitarian law, and allow immediate access for international human rights monitors» and even more decided «to refer the situation in the Libyan Arab Jamahiriya since 15 February 2011 to the Prosecutor of the International Criminal Court». Prosecutor Luis Moreno Ocampo’s investigation into Libya found evidence of the killing of civilians as a part of a plan to crush the protests.

In the following resolution n. 1973 (2011) of March 17 the Security Council deplored «the failure of the Libyan authorities to comply with resolution 1970» and expressed «grave concern at the deteriorating situation, the escalation of violence, and the heavy civilian casualties». Once more, the Council reiterated «the responsibility of the Libyan authorities to protect the Libyan population» and reaffirmed «that parties to armed conflicts bear the primary responsibility to take all feasible steps to ensure the protection of civilians». It also condemned «the gross and systematic violation of human rights, including arbitrary detentions, enforced disappearances, torture and summary executions» and expressed «its determination to ensure the protection of civilians and civilian populated areas and the rapid and unimpeded passage of humanitarian assistance and the safety of humanitarian personnel». The decision is to demand «that the Libyan authorities comply with their obligations under international law, including international humanitarian law, human rights and refugee law and take all measures to protect civilians and meet their basic needs, and to ensure the rapid and unimpeded passage of humanitarian assistance» and «to establish a ban on all flights in the airspace of the Libyan Arab Jamahiriya in order to help protect civilians». At the same time the Security Council reinforced the measures already taken in its previous resolution, such as the arms embargo and the implementation of the action by the International Criminal Court Prosecutor. But the real turning point is par. 4 on the protection of civilians, in which the Security Council

Authorsizes Member States that have notified the Secretary-General, acting nationally or through regional organizations or arrangements, and acting in cooperation with the Secretary-General, to take all necessary measures, notwithstanding paragraph 9 of resolution 1970 (2011), to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi, while excluding a foreign occupation force of any form on any part of Libyan territory, and requests the Member States concerned to inform the Secretary-General immediately of the measures they take pursuant to
the authorization conferred by this paragraph which shall be immediately reported to the Security Council.

In the practice of the Security Council and in the wording of its resolutions «all necessary measures» implies an authorisation to use force23. Thus the Security Council allowed coercive military action to enforce no-fly zones but also to protect civilians under threat of attack. Only a foreign occupation force – that is sending soldiers on the ground – was excluded. In practice, States were allowed to attack aircrafts or missiles, missile launch sites and anti-aircraft batteries. On the side of the protection of civilians the resolution implicitly authorised to attack tanks and troops moving towards Benghazi and the other towns or villages under the control of the rebels.

This is the first case in which the responsibility to protect doctrine has been expressly invoked in a Security Council resolution referring to a specifically identified country and not in general. In the case of Darfur – resolutions 1706 (2006) and 1755 (2007) the reference to R2P was through para. 138 and 139 of the 2005 Outcome Document. In the month of March a robust UN authorised international military intervention in Libya has been set up, with the participation of individual States (US, France and United Kingdom in the first place, followed by Denmark, Canada, Italy, Qatar, Belgium, Spain, Norway and the United Arab Emirates) and that of a relevant regional organisation, NATO, which on March 27 assumed overall responsibility for a UN mandated mission to implement resolution 1973. The Arab League had from the beginning taken a strong position against Gaddafi’s brutal use of force and already on March 3 had suspended Libya from the organisation and called on the Security Council to bear its responsibility.

The Security Council decision to authorise the use of force to protect a civilian population under wide and systematic attack (that is, victim of crimes against humanity) is an historic one and a great important precedent has been set. The R2P doctrine has been applied and the message is clear: States – in a correct exercise of their sovereignty which implies responsibility – don’t have the right to do as they please within their domestic jurisdiction. Governments (and even heads of State) are to be held accountable for their actions. Targeting of civilians, indiscriminate attacks in towns and villages with disproportionate force are war crimes. Widespread or systematic attacks against a civil-

ian population are crimes against humanity. The Russian Federation and China abstained on resolution 1973, thus seeming to implicitly accepting the application of the R2P doctrine. Curiously enough these two States had voted in favour of resolution 1970 and therefore to bringing the case before the International Criminal Court\(^2\).

This does not solve a problem. The R2P resolution 1973 authorises all necessary measure with the only purpose of protecting civilians. Any military action aiming actively helping rebels in their fight against the regime, and/or at the killing of Gaddafi or at forcing him into exile, with the consequent change of regime is not permissible under the legal terms of the resolution. The defeat of the regime’s forces, the killing of Gaddafi and the rise to power of a more acceptable and responsive government are indeed a possible result of an R2P UN authorised military operation but it cannot be its declared objective.

The application of R2P by a political body like the Security Council is necessarily selective and leaves room to criticism. But there is a moral, political and consequently a legal imperative: gross violations of human rights, war crimes, crimes against humanity and genocide have to be prevented; governments responsible for their commission must be the object of sanctions by the Security Council; and individual perpetrators, up to the highest level of command responsibility must be brought before justice. In this perspective, the Libyan case can set a precedent and an example to be followed.

Political and moral inspiration are needed. Crimes and atrocities imply three main categories of subjects: perpetrators, victims and by-standers. For too long we, «we the peoples» in the language of the UN Charter, have been among the by-standers, in full respect of an old conception of sovereignty. This is why it is probably time to let the “emerging norm” on the R2P emerge.

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\(^2\) C. FOCARELLI, *La crisi libica…*, cit.