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**The Responsibility to Protect in Libya and Syria**  
*The future of international law or an abuse of power?*

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## **Summary**

The Responsibility to Protect, or “R2P”, is a principle that has generated heated debate since its introduction in a report by the International Commission on Intervention and State Sovereignty (ICISS) in 2001. Having received an enthusiastic response from member states at the World Summit Outcome in 2005, the United Nations seemed to move into a new era of protecting humanitarian values: that of acting to protect the citizens of states when the states themselves proved unwilling or unable to do so. However, the practical application of R2P has raised questions about its meaning and its normative status.

This essay explores the meaning and use of R2P in regards to two situations: The Libyan uprising and Syrian Civil War of 2011. The essay departs from the mainstream ways of understanding R2P, studying the reasons for inaction and action by the international community in Libya and Syria from a postcolonial perspective. The essay also incorporates the understanding of R2P as a guarantor of political authority, and as such, as a tool to authorize humanitarian intervention into its perspective. Having outlined each countries’ historical context, the reasons for action and inaction from the international community are then analyzed by conducting a methodological comparison with the main features of postcolonial theory.

The investigation demonstrated that the use – and lack of use – of R2P in regards to Syria and Libya have strong connections to postcolonial features: the notion of statehood; the imperialist view of the target state as the primitive, uncivilized ‘Other’; the socioeconomic condition and the relationship with the West and influential powers within the international community. As a result of the investigation, questions are raised about R2P as a potential instrument for an abuse of power, or whether the notion still has potential to become a future norm of international law.

## **Sammanfattning**

Skyldigheten att skydda, eller "R2P", är en princip som har skapat vild debatt sedan den först introducerades av the International Commission on Intervention and State Sovereignty (ICISS) år 2001. Efter den positiva respons begreppet fick av FN:s medlemsstater under World Summit Outcome 2005 verkade det som att FN rörde sig mot en ny tidsperiod, där arbetet för mänskliga rättigheter även innefattade en skyldighet att skydda befolkningen i stater som visade sig ovilliga eller inkapabla att göra det själva. Den praktiska tillämpningen av R2P har däremot visat på det motsatta, vilket har väckt frågor kring begreppets egentliga innebörd och huruvida den utgör en folkrättslig norm eller inte.

Uppsatsen har till syfte att utforska R2P:s innebörd och tillämpning genom att jämföra dess användning i två situationer, nämligen inbördeskrigen i Libyen och Syrien under den arabiska våren 2011. Uppsatsen avviker till viss mån från huvudtolkningarna av R2P genom att utforska det internationella samfundets reaktion i fallen Syrien och Libyen från ett postkolonialt perspektiv. Det teoretiska perspektivet i uppsatsen inkorporerar även Anne Orford:s teori om R2P:s användning som en garant för politisk auktoritet, och därmed ett verktyg för att legitimera humanitära interventioner.

Efter en kort historisk kontext av Libyen och Syrien behandlar uppsatsen skälen till agerande och icke-agerande från det internationella samfundet i respektive land. Analysen genomförs genom att metodiskt jämföra skälen till agerande och icke-agerande med huvuddragen inom postkolonial teori.

Uppsatsen visar på att användningen av R2P – och bristen därav – i relation till Syrien och Libyen har starka kopplingar till postkolonial teori: uppfattningen av statsbegreppet; den imperialistiska synen på interventionsstaten som den primitiva, ociviliserade 'Andre'; de sociala- och ekonomiska förutsättningarna samt relationen till Väst och stormakterna i det internationella samfundet. Uppsatsen har väckt funderingar om huruvida R2P fungerar som ett eventuellt redskap för maktmissbruk eller om begreppet fortfarande har potential att verka som en bindande folkrättslig norm i framtiden.

## 1. Introduction

State sovereignty and the prohibition of the use of force have long been regarded as mutually inclusive norms under international law. The strength and significance of these correlative notions only increased during the period of decolonization after the Second World War, gaining powerful support from the newly independent states.<sup>1</sup> The *jus-cogens* status of the non-intervention principle is further confirmed by Art. 2 (4) of the UN Charter as well as international customary law.

International law – as well as the international community – have recognized at least two exceptions to this rule: the inherent right to self-defence, encapsulated by Art. 51 of the UN Charter, and when a Security Council (henceforth SC) resolution is adopted authorizing the use of force under Chapter VII of the Charter.<sup>2</sup> However, as the concept of human rights has gained a stronger foothold in the international arena, so has the idea of a possible third exception to the principle of non-intervention. Severe humanitarian crises such as that of Rwanda and former Yugoslavia and Kosovo in the 1990s are commonly used as mile-posts indicating the rise of a potential new norm under international law: “The Responsibility to Protect” (henceforth “R2P”).

In short, the notion of R2P translates sovereignty into a state responsibility, namely that of upholding the human rights of its citizens.<sup>3</sup> Whenever a state is unwilling or unable to do so, the responsibility to protect its citizens – at least from the most atrocious crimes under international law - is transferred to the international community instead.<sup>4</sup>

But in spite of the enthusiastic response the R2P-doctrine received during the World Summit Outcome in 2005, its meaning and application remains unclear. The notion of R2P has been mentioned in conjunction with numerous situation demanding action from the international community, but only been explicitly referred to in the case of Libya in

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<sup>1</sup> ICISS, 2001, p. 12.

<sup>2</sup> Art. 42, UN Charter.

<sup>3</sup> Pattison, 2010, p. 3.

<sup>4</sup> ICISS, 2001, p. 11.

2011, where the SC adopted resolution 1973 authorizing the use of force in order to “protect the Libyan population”.<sup>5</sup>

As a result of its uneven application, the views of legal scholars within international law differ in regards to the normativity of the R2P-doctrine. At the same time, humanitarian crises such as those in Syria and the Central African Republic continue to escalate and demand action from the international community.

The circumstances leading up to the UN intervention in Libya in 2011 and those in contemporary Syria show many similarities. Yet, the international community has failed to take action in Syria, in spite of many arguing that the situation calls upon the international community to act in accordance with the R2P-doctrine.

What the reasons for inaction and action are in both cases as well as what it entails for the status and meaning of R2P is what spiked my interest in pursuing my essay question. The purpose of this essay is therefore to investigate the notion of R2P by conducting a comparative analysis of the situation in contemporary Syria and that of Libya in 2011.

### **1.1 Research contribution**

The notion of R2P has been widely debated by legal scholars. Most of the research conducted in the last few years seems to agree upon that the meaning and status of the R2P-doctrine remains unclear. Anne Orford presents an alternative way of processing the concept of R2P, as well as the context in which it is applied. An example of this is her understanding of humanitarian interventions in a postcolonial context in *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law*.

Drawing upon Orford’s alternative considerations of the notion of R2P, this essay seeks to further explore the meaning of R2P by analyzing its use in contemporary Syria and Libya in 2011 respectively. As such, this essay hopes to contribute to the research on

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<sup>5</sup> S/RES/1973 (2011).

whether the R2P holds any normative status today, but also test whether the reasons for inaction and action in Syria and Libya fit into the postcolonial theory described by Orford.

## **1.2 Formulation of the issue and question formulations**

Against this background, the main issue of interest is to investigate the reasons for inaction in contemporary Syria in comparison to those for action in Libya in 2011: Why was the R2P-doctrine used to legitimize the UN intervention in Libya but not in the case of Syria?

In order to aid me in the pursuit of answering my essay question, I have formulated a set of question formulations: What are the reasons for inaction in contemporary Syria in relation to Libya? **Förtydliga**. Are there any similarities or differences in the respective situations? How do the reasons for inaction and action relate to a post-colonial perspective? What do the reasons for action and inaction in Libya and Syria convey about the normative status of R2P?

## **1.3 Theory**

I have chosen a post-colonial theory for my essay, as I believe a postcolonial approach will help to highlight the reasons for inaction and action in contemporary Syria and Libya. The majority of my theoretical perspective will be based on the postcolonial theory as described by Orford.<sup>6</sup>

I have also chosen to incorporate Orford's argument of R2P as a guarantor of political authority into my theoretical perspective, as I believe it will facilitate my understanding of the use of R2P in Libya and Syria but also help me to answer the question formulation on its normativity.

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<sup>6</sup> Orford, 2003.

#### **1.4 Method**

In order to pursue my essay question, I will first gain a thorough understanding of R2P and the chosen theoretical perspective before conducting the comparison between Libya and Syria. By studying the historical context of each country before looking at the reaction from the international community, I hope to facilitate an understanding of the reasons for action and inaction from a postcolonial perspective. The features of postcolonial theory will to some extent also function as my method, as I will analyse the reasons for action and inaction in Libya and Syria by seeing how well they fit into to the key features of postcolonial theory.

#### **1.5 Material and limitations**

Most of the material consists of academic articles and literature on R2P. A large part of the material also consists of SC resolutions, seeing as these are the primary instruments that will be studied when looking at the reasons for action and inaction from the international community.

Due to a limited amount of space, I will focus on the response from the international community as expressed in SC resolutions. For the same reason, I have chosen to give an in-depth understanding of R2P and postcolonial theory as provided by Orford, instead of providing a more general account of the different views on R2P by legal scholars. I have also chosen to limit the historical context provided for each country to only encompass the most recent historical events that might be relevant for the analysis from a postcolonial perspective. I am aware that some of the material is written in a different time period and consequently might present views or facts that are not relevant today, which is why I have studied various amounts of material to get a more wholistic understanding. Lastly, due to a limited amount of space, I will not delve into the most recent years concerning the Islamic State and its involvement in the Syrian Civil War. I will instead focus on the first years of the civil war, namely 2011-2014.



## **1.6 Outline**

The following chapter will provide a thorough understanding of R2P, presenting a background of the notion and the context in which it first appeared. After that, the main features of postcolonial theory and the understanding of R2P as a guarantor of political authority will be presented. The third chapter will examine the reasons for inaction and action in Libya and Syria respectively. The relevant historical contexts of Libya and Syria will first be presented, followed by a short description of the uprisings and the reaction of the international community, concluded by a short summary of the reasons for action and inaction. Chapter four will analyse and compare the reasons for action in action, looking at how well they fit into the postcolonial theory outlined in order to answer the essay question. The investigation ends with a conclusion where the answer to the question formulations will be presented.

## **2. The Responsibility to Protect**

This chapter will explore the notion of R2P, aiming to provide a deeper understanding of the concept and its meaning before analysing its use in Libya and Syria. Initially, a short background of how the concept came to be will be provided, looking briefly at some of the situations that triggered talks of R2P and humanitarian interventions. After that, two central standpoints within critical legal studies on understanding and reading R2P will be presented: firstly, postcolonial theory and its key features, as well as the position it holds within the larger context of the legal research conducted on R2P; secondly, understanding R2P as an enforcer of political authority and the notion that R2P is not a new concept which also form the theoretical perspective of the comparative analysis to be carried out later.

### **2.1 Background**

As previously mentioned, the post-Cold War climate in the 1990s marked the beginning of a change within international law. This period can be regarded as the soil from which concepts such as humanitarian intervention – and later on the concept of R2P – started to grow. The delayed action from the international community in Rwanda in 1994 and the

NATO intervention in Kosovo in 1999 are often referred to as markers of these changes. Regarding NATO's forceful action in Kosovo, Louis Henkin argues that the intervention constituted "a step toward a change in the law, part of the quest for developing 'a form of collective intervention' beyond a veto-bound SC."<sup>7</sup> Indeed, Kofi Annan - Secretary-General of the UN at the time - was a strong advocate for a new doctrine under international law, which would allow the international community to take action against atrocities in the form of humanitarian intervention.

The International Commission on Intervention and State Sovereignty (ICISS) issued a report in 2001 that elaborated on this wish, namely by speaking of a "Responsibility to Protect" (R2P) that would fall upon the international community in certain situations of humanitarian crises:

Where a population is suffering serious harm (...) and the state in question is *unwilling or unable* [my italics] to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.<sup>8</sup>

The report underlined that a military intervention on the basis of R2P was an "exceptional and extraordinary measure", and consequently could only be invoked when a large scale loss of life or ethnic cleansing was occurring or apprehended to occur.<sup>9</sup>

The principle of R2P would later on receive high appraisal and support at the 2005 World Summit Outcome, with all heads of state and government committing themselves to uphold the principle. In doing so, they confirmed the primary responsibility of states to protect their own citizens as outlined in the 2001 report by ICISS, but also the collective responsibility of the international community of taking timely and decisive action should the state be unwilling or unable to protect its citizens.<sup>10</sup> Furthermore, the World Summit

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<sup>7</sup> Henkin, 1999, pp. 824–825.

<sup>8</sup> ICISS, 2001, p. 11.

<sup>9</sup> Ibid., p.12.

<sup>10</sup> Welsh, 2016, pp. 75–87.

Outcome outlined the scope of the R2P-principle to four crimes, namely crimes against humanity, genocide, war crimes and ethnic cleansing.

Before moving on to a deepened understanding of R2P, it is important to understand how it relates to the notion of humanitarian intervention. As explained above, R2P refers to the invocation of a collective obligation for the international community to act in order to protect populations from severe humanitarian atrocities. Closely related to the principle of R2P is therefore the concept of humanitarian intervention, resulting in both terms often appearing when one is brought up. R2P could be expressed as the principle, or doctrine, authorising forceful action – or a ‘humanitarian intervention’ - from the international community in certain situations. As a result, the forceful intervention has a humanitarian purpose, consequently being regarded as a ‘humanitarian intervention’.

## **2.2 Postcolonial Theory**

In order to compare the reasons for action and inaction in Libya and Syria in regards to the R2P-doctrine, it is essential to understand the postcolonial theory from which the investigation will be conducted. Postcolonial theory is one of the main theories within critical legal studies, and a central critical approach of understanding humanitarian interventions and R2P. In spite of its central position within critical legal studies, it is of importance to mention that postcolonial theory departs from the orthodox means of interpreting international law. As such, Orford’s approach of reading humanitarian interventions also departs from that of many international lawyers. However, its critical use and cultural methodology to read legal texts serves as a tool for understanding “issues of capitalism, globalisation, neoimperialism and militarism (...) within international law”<sup>11</sup>, which is primarily why it was chosen as the theory for the investigation.

The different positions on humanitarian intervention by international legal scholars are mainly two-thronged. The conservative camp argues that the formation of the notion of humanitarian intervention into a larger principle under international law would constitute

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<sup>11</sup> Orford, 2003, p. 52.

a threat to the principle of sovereignty, the independence of decolonised states and consequently to ‘weaker states’ in relation to stronger ones.<sup>12</sup> On the other hand, advocates of humanitarian intervention consider the idea entirely separated from the colonialism of the past, arguing that human rights themselves have become an enforceable field which the international community has a duty to uphold should a serious violation occur.<sup>13</sup> Orford however aligns with the legal scholars reading international law as “intimately connected with (...) colonialism”, instead of a field separated from the era of colonialism.<sup>14</sup>

Postcolonial theory suggests that imperialism continues to exist today, but in the form of a “‘largely economic’ enterprise (...), in the form of the exploitation of the colonised, their land and resources.”<sup>15</sup> Orford argues that economic imperialism functions as a form of intervention that precedes a military one, existing in the form of pre-conflict aid programmes as well as post-conflict reconstructions. Thus, a different kind of relationship between the coloniser and the colonised is created, where ‘stronger states’ exploit the resources of ‘weaker states’ for economic gain.<sup>16</sup> Consequently, humanitarian intervention from a postcolonial theory is viewed as a component of global imperialism, rather than a new principle under international law free from the colonial strings of the past.

A second key feature of postcolonial theory is that of reading humanitarian interventions in the context of its imperial culture. This involves the portrayal of ‘stronger states’ as representatives of the international community with a following right to intervene in the target states, which are ‘uncivilised’ and ‘primitive’ in contrast, and effectively separated from the international community by their depiction as the ‘Other’. Orford describes how legal texts and doctrine help to create these identities by the description and juxtaposition

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<sup>12</sup> Orford, 2003, p. 41.

<sup>13</sup> Ibid., p. 40.

<sup>14</sup> Ibid., p. 47.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

of the collective ‘Self’ of the international community with the target states, forming the separated ‘Other’.

Lastly, postcolonial theory as outlined by Orford views international law as a form of pedagogy, where humanitarian interventions function as ‘civilising-missions’ of the peoples and territory where the intervention takes place. Orford argues that particularly post-conflict reconstructions, or ‘peacebuilding’ phases, after an intervention has taken place enforces the relationship between the international community and the “people of states subject to intervention (...) as one of tutelage”, where the intervener(s) function as more civilised educators.<sup>17</sup>

### **2.3 R2P and Political Authority – Not A New Concept**

As previously mentioned, the R2P-doctrine has largely been treated as a new concept under international law. However, Orford argues that the ICISS report in 2001 and the World Summit Outcome in 2005 simply provided a theoretical explanation for a practice that has long preceded the notion of R2P.

Orford suggests that the political authority of international organs has been used to intervene in state affairs on the basis of protecting life and upholding international peace and security since the era of decolonisation after 1945 – long before talks of R2P had even begun. Decolonisation meant instability and the existence of power vacuums, leading the UN to increase its executive role in order to fulfil its duty to maintain peace and security.<sup>18</sup>

The need to formulate a concept that justified involvement in the form of humanitarian missions didn’t arise until the 1990s, when local actors started to question the international authority of international organs and the legitimacy of their actions.<sup>19</sup> The

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<sup>17</sup> Orford, 2003, p. 55.

<sup>18</sup> Orford, 2011, p. 5.

<sup>19</sup> Ibid., p. 7.

notion of R2P consequently served as a means of justifying the long used practice and authority of the UN:

The responsibility to protect concept can best be understood as offering a normative grounding to the practices of international executive action that were initiated in the era of decolonisation and that have been gradually expanding ever since.<sup>20</sup>

However, the development of the notion “R2P” still meant a concrete change to the meaning of state sovereignty. Where a state’s sovereignty was previously recognized on the basis of effective control over a territory, R2P instead contributes to a view where the essence of state sovereignty lies in the responsibility to protect its citizens.<sup>21</sup>

The consequence of this change is that a state’s authority is determined as legitimate after its capability of guaranteeing protection, and as such, “the failure to protect a population is a factual matter that can be determined by the international community.”<sup>22</sup> As a result, the notion of authority becomes grounded on the responsibility to protect, which gives the international community the power - or authority - to take that role upon itself when it determines that a state has failed to protect its citizens.

What this understanding of R2P means for the concrete cases of Syria and Libya – and the normative status of R2P - will be investigated below. The comparison of the reasons for inaction and action in both countries will consequently be conducted from the postcolonial perspective outlined above, bearing in mind Orford’s understanding of R2P as a guarantor of political authority.

### **3. Libya and Syria – Action and inaction**

This chapter will investigate the R2P-doctrine and its use regarding the action and inaction from the international community in Libya and Syria. In order to conduct a

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<sup>20</sup> Orford, 2011, p. 10.

<sup>21</sup> Deng, 1996, p. 1.

<sup>22</sup> Orford, 2011, p. 16.

comparative analysis of both situations later on, each country and the respective reasons for action and inaction will be investigated separately. To enable an understanding of the reasons for action and inaction from a postcolonial perspective, the historical context containing the most relevant recent historical events from each country will first be provided. A short account of the uprising/civil war will follow, thereafter looking at the reaction from the international community, which will primarily focus on the resolutions carried out by the UN SC.

### **3.1 Libya – Historical context**

Libya did not initially form a part in the scramble for Africa that occurred after the fall of the Ottoman Empire. Its difficult agriculture and the fact that large territories are located in the Sahara desert meant that the area did not hold the same economic interest for the colonial powers as some of its neighbors.<sup>23</sup> It wasn't until the discovery of oil in 1959 that Western involvement became more prominent in Libya, the United States being one of the powers that invested in oil companies in the region.<sup>24</sup>

At the end of the 19<sup>th</sup> century, Italy got its eyes on the territory, finally colonizing – and unifying - the territories of Cyrenaica, Tripolitania and Fezzan into Libya in 1911.<sup>25</sup> In spite of its unification in 1911, the Libyan population was largely divided, existing as various tribes scattered over the former three territories. Furthermore, Libya's contact with a 'modern European state' such as Italy did not improve its conditions of developing into a modern statehood, as Italy largely failed in creating a united identity of the country.<sup>26</sup> As a result, a common identity – and integrated territory - of the nation was difficult to establish.<sup>27</sup> This lack of nationhood continued, and was later on reinforced, in expressions of statelessness by the country's authoritarian leader Muammar al-Gaddafi.<sup>28</sup>

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<sup>23</sup> Vandewalle, 2012, p. 17.

<sup>24</sup> Ibid., p. 133.

<sup>25</sup> Ibid., p. 22.

<sup>26</sup> Ibid., p. 34.

<sup>27</sup> Ibid., p. 23.

<sup>28</sup> Ibid., p. 102.

Independence in 1951 didn't necessarily equal improvement for Libya. The relationship with the West was turbulent, resulting in the United States undertaking extensive economic sanctions that further impaired Libya's economy. After 1986, the situation had escalated to such a degree that Libya was left completely "diplomatically and economically isolated" from the West.<sup>29</sup>

In spite of Libya's gradual reintegration into the international community from 2003 and onwards, its relationship with the West was on the whole strained. One of the main reasons for this was Gaddafi's open disdain of the West, often referring to the damaged relationship and the injustices suffered on its behalf as a tool to instill a sense of unity amongst Libyans.<sup>30</sup> The result of Gaddafi's outspoken dislike of the West, support of international terrorist groups and active involvement in attacks against the US, the UK, France and Germany was a deepening of the ridge between Libya and the West, creating a unanimous aversion towards the leader that would last for almost two decades.<sup>31</sup>

### **3.1.1 The Libyan uprising in 2011**

Since the beginning of Muammar al-Gaddafi's rule in 1969, the Libyan population had been subject to numerous human rights abuses, described as "massive and systematic".<sup>32</sup> When mass demonstrations began in January and February of 2011, the violence from the regime intensified, responding by carrying out bombing raids as well as firing and executing unarmed civilians. The lethal force used upon the peaceful protests triggered concerns that the "arbitrary killings, arrests and detentions, as well as torture and enforced disappearances" could amount to crimes against humanity.<sup>33</sup> As Gaddafi used the word "cockroaches" to describe the rebel groups in Benghazi, fear of a potential massacre reminiscent to that of Tutsi opponents in Rwanda escalated within the international community.<sup>34</sup>

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<sup>29</sup> Vandewalle, 2012, p. 98.

<sup>30</sup> Ibid., p. 123.

<sup>31</sup> Hehir & Murray, 2013, p. 2.

<sup>32</sup> Payandeh, 2012, p. 372.

<sup>33</sup> Ibid., p. 374.

<sup>34</sup> Zifcak, 2012, p. 76.



The opposition forces had soon organized themselves into a Transitional National Council (henceforth TNC) that declared itself the sole representative organ of the Libyan people. The TNC was shortly recognized as the legitimate government of Libya by countries like France, Great Britain, the United States and members of the Libya Contact Group that amongst others included the European Union and the UN.<sup>35</sup> As violence was escalating, discussions about a potential military intervention in Libya were growing, and a response from the UN SC and in the international community appeared imminent.

### **3.1.2 Reaction from the international community**

It wasn't until the protests against the regime occurred in January and February in 2011 that discussions about R2P and potential action from the international community started. During the brief honeymoon period of Libyan reintegration into the international community preceding the uprising, non-governmental organizations were reporting of systematic human rights violations that were met by a blind eye from “members of the EU and the USA (...) in order to further national interests.”<sup>36</sup>

#### *Resolution 1970*

However, once the Libyan uprising was a fact, the reaction from the international community and the UN was “unusually rapid and robust.”<sup>37</sup> Having already condemned the violence and use of force against civilians in a press statement, the SC unanimously adopted Resolution 1970 in February 26, 2011 – only eleven days after the start of major protests.<sup>38</sup> The resolution underscored the condemnation of the human rights violation by other international organs and the fact that the attacks might amount to crimes against humanity. Furthermore, the resolution reminded the Libyan authorities of their “*responsibility to protect its population* [my italics]” and the corresponding responsibility of the UN for the maintenance of international peace and security under its Charter. The

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<sup>35</sup> Vandewalle, 2012, p. 204.

<sup>36</sup> Hehir & Murray, 2013, p. 3.

<sup>37</sup> Ibid., p. 4

<sup>38</sup> S/RES/1970 (2011).

resolution demanded an immediate cessation of the attacks and declared that it acted under Chapter VII of the Charter, imposing sanctions on the Gaddafi regime in the form of a travel ban, an asset freeze and an arms embargo.<sup>39</sup>

### *Resolution 1973*

In spite of resolution 1970, the violence from the Gaddafi government continued, resulting in calls for further action from the international community. Numerous international organizations referred to the principle of R2P, the African Commission on Human and Peoples' Rights, amongst others, declaring “the responsibility of the African Union, and the International Community to take all necessary political and legal measures *for the protection of the Libyan population* [my italics]”.<sup>40</sup>

The response was the adoption of SC Resolution 1973 on 17 March 2011, with ten states voting in favor while Russia, China, Germany, Brazil and India abstained. The resolution was significant in that it authorized member states to “take all necessary measures (...) *to protect civilians and civilian populated areas* [my italics] under threat of attack” and imposing a no-fly zone over Libya.<sup>41</sup> The aim to protect the civilian population by taking “All necessary measures” was interpreted generously, its vague formulation providing NATO with the legroom to expand its mission.<sup>42</sup>

The resolution didn't explicitly authorize a removal of the regime, but NATO nevertheless interpreted the principle of R2P as expressed in the resolution to include the mandate for a regime change. SC members such as China and Russia responded with heavy criticism, and the African Union called for an end to NATO's campaign by expressing that “it should be left to Libyans to choose their leaders and international actors should refrain from taking positions (...) that can only complicate the search for a

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<sup>39</sup> S/RES/1970 (2011), p. 2.

<sup>40</sup> Payandeh, 2012, p. 377.

<sup>41</sup> S/RES/1973 (2011), p. 3.

<sup>42</sup> Vandewalle, 2012, p. 205.

solution.”<sup>43</sup> Nevertheless, the end of the operation had resulted in Gaddafi’s death, and a new regime in power.

### **3.1.3 Short summary**

Libya provided the perfect opportunity to demonstrate that the R2P-principle was more than theory, but also to respond to the previous criticisms aimed at the SC after incidents like Rwanda by acting (unusually) quickly. The reasons provided for action by the international community were relatively clear-cut: having stated that the Libyan government was unwilling to protect its citizens and that the human rights violations could amount to crimes against humanity (a crime falling under the application of R2P)<sup>44</sup>, the R2P fell onto the international community. The pretext of intervening was consequently the R2P the Libyan citizens. What caused controversy was whether R2P also included the authority to cause a regime change in Libya, as this was not explicitly mentioned as one of the reasons for action in Resolution 1973 but was nevertheless the result of the involvement from the international community.

### **3.2 Syria – Historical context**

Syria as a state did not exist until after the end of World War I, having been under the rule of the Ottoman Empire from early 1516 up until that point.<sup>45</sup> The fall of the Ottoman Empire created a huge power vacuum and marked the beginning of European imperialism; the French and British division of power over the Levant resulted in Syria existing under French mandate during its first 26 years as a state, and as such, is sometimes described as an ‘alien creation’.<sup>46</sup>

The government by the French existed as a system of tutelary rule that had been authorized by the League of Nations.<sup>47</sup> Fearing opposition from a rising Arab

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<sup>43</sup> Payandeh, 2012, pp. 4–6.

<sup>44</sup> A/RES/60/1 (2005), para. 138, p. 30.

<sup>45</sup> McHugo, 2014, p. 163.

<sup>46</sup> Ibid., p. 163.

<sup>47</sup> Thompson, 2000, p. 1.

nationalism, the French displayed a favouritism of minorities. This was particularly expressed in its privileging of the Christian Alawites over Muslims into the military, which would ultimately facilitate the rise of the Alawite-dominated Assad regime.<sup>48</sup> This favouritism of Syrian minorities also enforced the sectarian differences in the country, which would grow in tension after Syria's independence in 1946.

The period after Syrian independence initially demonstrated a rather weak state, as it was marked by frequent coups to power and government changes. Syria was – at least at first – regarded as a state pertaining to the group of states of the global south that were described as 'less-developed', 'weak' and 'third world'.<sup>49</sup> Its economy was underdeveloped and essential institutional elements such as transportation facilities, water and sanitation provisions were non-existent. However, the years that followed showed a rapid growth of Syrian economy, marked by a series of socioeconomic reforms aimed at improving Syria's educational, social and economic situation.<sup>50</sup>

Syria's position in the international community is largely associated with its ties with Russia (formerly the Soviet Union), which predated the fall of the Ottoman Empire but became especially strong during the Cold War. The relationship is largely economical, Russia having sold arms to the Syrian government for many years. It is however also based in a shared view of the West; regarding the US support of Israel, Syria's anti-Israel position strengthened the relationship with its Soviet ally, as it fitted well into its anti-Western stance during the Cold War.<sup>51</sup> The Russian-Syrian relationship continues to be strong even today, and as will be further explored below, is a main reason as to why an intervention from the international community in regards to R2P continues to be absent.

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<sup>48</sup> McHugo, 2014, p. 164.

<sup>49</sup> Osman, 2016, p. 184.

<sup>50</sup> Ibid., p. 195.

<sup>51</sup> McNerney, 1992, p. 269.

### **3.2.1 The Syrian Civil War**

The beginning of the Syrian civil war is reminiscent of that in Libya. Protests against the al-Assad regime began in February 2011, spreading across the country and increasing in size and force in March and April. The protests were met with brutal force from the regime, which responded with mass killings, arbitrary arrests, raids against hospitals and mosques.<sup>52</sup>

As opposition towards the regime grew, so did the brutality of the force used by the government. Within a couple of months, thousands of people had been killed and arbitrarily detained, with continuous reports of mass graves, torture and streams of refugees coming in.<sup>53</sup> The years that followed its start would be marked by thousands of deaths, the use of chemical weapons (a weapon forbidden by international humanitarian law) and millions of refugees being displaced. The pressure on the international community was unquestionably high – what should be done?

### **3.2.2 Reaction from the international community**

In spite of members of the SC expressing deep concern about the escalating violence in Syria, it quickly became clear that there existed strong differences in opinion on what action should be taken. Russia quickly opposed any suggestions of foreign involvement in the conflict, stating that the civil war was a domestic issue and that the sovereignty of Syria had to be respected.<sup>54</sup>

#### *Draft Resolutions (2011)*

A draft resolution<sup>55</sup> was introduced into the SC by France, Germany, Portugal and the UK at the end of May, which condemned the violations of the Syrian government, urged an immediate end to the human rights violations and reminded the Syrian government of

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<sup>52</sup> Zifcak, 2012, p. 73.

<sup>53</sup> Ibid., p. 76.

<sup>54</sup> Ibid., p. 75.

<sup>55</sup> A/HRC/RES/S-16/1 (2011).

its responsibility to protect its citizens.<sup>56</sup> The resolution was immediately subject to criticism, especially from Russia and China, who brought up their objections to the extensive way Resolution 1973 had been interpreted in the case of Libya. Meanwhile, a statement by the President of the SC on Syria was made, expressing concerns of crimes against humanity having been committed in the country. However, it also underscored the commitment of the SC to the sovereignty and independence of Syria.<sup>57</sup>

After five months of redrafting the resolution to receive a unanimous decision, a final draft was presented. However, the SC rejected the resolution; four countries abstained, while Russia and China issued their UN Charter-regulated right to veto, again referring to the respect for Syrian sovereignty and the non-intervention principle of the UN Charter.<sup>58</sup> This continued to be the pattern for the draft resolutions to come. In 2012, the UN General Assembly adopted a resolution that strongly condemned the “widespread and systematic” human rights violations in Syria, describing – without explicitly uttering – the criteria for crimes against humanity, a crime which falls under the mandate of R2P.<sup>59</sup>

#### *Resolution 2024 and 2043 (2012)*

Attempts to reach a unanimous decision in the SC continued – and failed - in spite of numerous calls from international organizations, representatives within the UN and member states to adhere to the R2P. In April 2012, consensus was however finally reached with the adoption of resolution 2024, which authorized a team of observers to report on the attempts to broker a ceasefire in Syria.<sup>60</sup> The resolution was quickly followed by resolution 2043 which expanded its mandate.<sup>61</sup> The mission was however quickly suspended due to the high levels of violence directed at the observers.<sup>62</sup>

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<sup>56</sup> Zifcak, 2012, 75.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid., p. 77.

<sup>59</sup> Breau, 2016, p. 261.

<sup>60</sup> S/RES/2024 (2012).

<sup>61</sup> S/RES/2043 (2012).

<sup>62</sup> Breau, 2016, p. 262.

Since then, other resolutions concerning the situation in Syria have been adopted, but as to date, the SC has not managed to reach consensus regarding an eventual military intervention in Syria in regards to R2P.

### **3.2.3 Short summary**

To conclude, the conditions invoking the mandate of R2P had been met in Syria; there was agreement upon crimes against humanity having been committed in the country, and beyond a question of a doubt that the Syrian government was unwilling to uphold its responsibility to protect its citizens. At a glance, the reasons for inaction in Syria can be summarized as the political unwillingness of Russia and China to allow for any form of intervention in the country. Since the start of the civil war in 2011, Security Resolutions 2024 and 2043 remain the only ones encompassing some form of action that have been passed, presumably due to their relatively innocent nature of observing missions.

## **4. Analysis**

Having studied the context and uprisings in Libya and Syria and the reaction from the international community, an analysis of the reasons for inaction and action will now be conducted from a postcolonial perspective.

The cases of Syria and Libya show some similarities. Both countries, at least initially, lacked a strong sense of statehood and national identity; both had been subject to the rule of Western powers; both were under the rule of authoritarian and repressive leaders with similar conditions leading to the uprising and civil war. In both cases, the attacks from the governments were strongly suspected to amount to crimes against humanity. Why then, considering these similarities, was the R2P-doctrine used to legitimize the UN intervention in Libya but not in the case of Syria?

Postcolonial theory as described above<sup>63</sup> consists of three main features. Firstly, it argues that imperialism exists today as an economic enterprise, where stronger states use

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<sup>63</sup> See pp. 9–11.

humanitarian interventions to exploit the resources of weaker ones for economic gain. Western powers had invested in oil companies in Libya – an investment that suffered from the oil boycott carried out by the US as relations with the Gaddafi-regime plummeted. One could therefore argue for a potential economic interest as one of the motivating factors behind the intervention in Libya, seeing as a removal of the Gaddafi-regime could mean a potential renewal of oil imports to the US. However, it must be added that this did not appear to be one of the main reasons for action at the time.

In regards to Syria, the situation was the contrary; Russian arms trade with the Assad-regime meant that it had a strong economic interest of abstaining from intervention – and risking a regime change – in Syria. Based on the information provided, an economic interest in Syria is not apparent even from the states favouring action in the territory.

The second feature of postcolonial theory argues that intervention is conducted in states that are regarded as ‘uncivilised’ and ‘inferior’, consequently separated from the collective self of the international community by their depiction as the ‘Other’. This feature resonates well with the reasons for inaction and action in Libya and Syria.

One could argue that the lack of statehood and national identity in Libya in combination with its dire social and economic situation caused the international community to regard it as inferior. It did not fall under the definition of a ‘modern state’, and as such, one can question whether it was ever truly regarded as a sovereign state by the international community. The swiftness of the intervention in Libya, in combination with the open dislike towards Gaddafi and his ‘uncivilised’ methods – calling the people of Benghazi ‘cockroaches’ causing particularly strong reactions – suggest that this view of Libya was indeed a reason for action. The damaged relationship with the West can be argued to strengthen this view; Libya was effectively separated from the international community, existing as an uncivilised ‘Other’.

By contrast, Syria had a reasonably high educational standard and an improving economy in spite of its initial struggles. Its strong ties with Russia arguably also played an



important role in validating Syria as an equal sovereign power and state; through its alliance with a superpower like Russia, Syria formed a part of the collective ‘self’ of the international community. This argument is supported by the persistent Russian objections of intervention in Syria on the basis of respecting its sovereignty, but also from other – less biased – parties, such as the statement by the President of the SC, which, in spite of addressing the serious human rights violations, still underlined the respect for Syria’s sovereignty and independence. Similar references were not made in regards to Libya’s sovereignty, providing further evidence that the views of the respective countries played an important role in the reaction of the international community.

The third and last feature of postcolonial theory regards humanitarian interventions as ‘civilising-missions’ of the people and territory in the intervened state. Having already presented arguments suggesting that the international community viewed Libya as an inferior state, the fact that the intervention resulted in a regime change speaks strongly in favour of this being one of the reasons for intervention. This is particularly supported by the fact that the aim of SC Resolution 1973 was to protect the Libyan people, not explicitly authorising a regime change. Nevertheless, the intervention resulted in Gaddafi’s death and a new regime in power, which interestingly enough had been recognized as legitimate by the West preceding the intervention. Arguing that the West viewed the Gaddafi-regime as uncivilised and inferior, the use of R2P provided the perfect opportunity to cause his fall from power and attempt to reconstruct a ‘modern state’ afterwards.

In the case of Syria, one could argue that the country was already seen as relatively ‘civilised’, at least when looking at its educational and economic standard. This view of Syria might serve as a reason for inaction; it was not a country viewed as uncivilised or inferior, and as a result, the relationship between Syria and the international community was never one of a ‘civilised educator’ and its tutee.

## The Normativity of R2P

What does the response of the international community in Libya and Syria convey about the normative status of R2P? In spite of the excitement from R2P-proponents as the notion was used in the Libyan intervention, the complete inaction from the SC in regards to R2P in Syria suggests that its normative status remains unclear. Already in the situation of Libya, there were numerous countries abstaining in the vote of military intervention, Russia and China amongst them. Even though the use of veto was not invoked, the abstention indicates that there wasn't a unanimous disposition towards R2P at this time, which is enforced by the heavy criticism it received in conjunction with its liberal interpretation in Resolution 1973. The events of Syria demonstrate just how far the ways of understanding the notion differ; where Russia and China valued the principles of state sovereignty and non-intervention higher, the Western powers argued that these should yield to the R2P when a situation of humanitarian need is grave enough.

## **5. Conclusion**

In spite of the reasons for action and inaction in Libya and Syria not corresponding with every feature of postcolonial theory, the investigation has provided strong evidence that the use of R2P in each country has strong connections to how the countries are perceived from a postcolonial perspective. A comparison of Libya and Syria has demonstrated that aspects such as the notion of statehood, the countries' socioeconomic situation and relationship with the larger powers in the international community have had an impact on the use of R2P and the reasons for action and inaction.

The result has been an uneven application of the principle, raising questions about its real significance and future. What is clear from the investigation is that the R2P does not hold any binding normative status in the present day. Furthermore, the results of the investigation indicate that Orford's theory on R2P's use as a guarantor for political authority might be correct; its use being that of a tool authorising humanitarian interventions rather than a binding norm.

A potential consequence of this is that political authority legitimizing intervention can be granted on command by referring to the principle of R2P. As such, equal situations of humanitarian distress risk not being met by the same response from the international community, but rather depend on the interests at stake. Hopefully, the future will refer to Syria as an exception rather than the rule of R2P's application. Considering the limited times the principle has been used, it however remains to be seen whether R2P is indeed an abuse of power or the future of international law.

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