**Topic: Norm Circulation and Responsibility to Protect (R2P): A Retrospective Analysis of the 2011 Libyan Intervention**


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# List of Acronyms

| | |
|---|---|
| **AU** | African Union |
| **CoI** | Commission of Inquiry |
| **EU** | European Union |
| **ICISS** | International Commission on Intervention and State Sovereignty |
| **IMM** | Independent Investigative Mechanism for Myanmar |
| **NATO** | North Atlantic Treaty Organisation |
| **OAU** | Organisation of African Unity |
| **OIC** | Organisation of Islamic Cooperation |
| **R2P** | Responsibility to Protect |
| **RWP** | Responsibility While Protecting |
| **UNGA** | United Nations General Assembly |
| **UNHCR** | United Nations Human Rights Council |
| **UNOHCR** | United Nations Human Rights Office of the High Commissioner |
| **UNSC** | United Nations Security Council |
| **UNSG** | United Nations Secretary General |
| **US** | United States |
| **WSOD** | World Summit Outcomes Document |

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## Abstract

The United Nations Security Council (UNSC) invoked the Responsibility to Protect (R2P) during the Libyan crisis of February and March 2011. R2P was activated through Resolutions 1970 and 1973 on 26 February and 17 March 2011 respectively. Resolution 1973 authorised a North Atlantic Treaty Organisation (NATO) intervention in Libya. The consequence was that many states, especially in the developing world, became concerned that R2P had been misused when NATO extended its mandate to ensure a regime change agenda. This led to the emerging narrative that R2P as a norm, like its predecessor on humanitarian intervention, is susceptible to abuse and misuse and that the potential risks associated with invoking R2P are too great. In the immediate aftermath of the Libyan intervention, Brazil proposed the Responsibility While Protecting (RwP) as a means to strengthen accountability measures and prevent future abuse of R2P. This study examines R2P as a norm and argues that the norm circulation model explains the emergence and evolution of norms in a way that is consistent with the evolution of R2P. This study contends that the norm lifecycle model is inadequate to address norm dynamics in their totality. The norm circulation model is for this study a critical tool of analysis to determine R2P's status since the Libyan intervention. The model combines localisation, internalisation, and contestation of the norm to examine both the norm dynamic, and the evolution of a norm as it looks at agency and feedback that are considered central to the evolution of norms. This study contends that R2P is alive and remains an important part of the deliberations of the United Nations despite ongoing contestation on the implementation of R2P, especially in respect of pillar three, that provides for military intervention. Unlike humanitarian intervention, R2P is premised on the nexus between the state's responsibility to its population and the sovereignty of the state. R2P provides a broad spectrum of options and interventions, apart from military intervention, which is a last resort. This study will however, through a retrospective analysis, of the NATO led 2011 Libyan intervention, examine the use of R2P and will argue that R2P at the United Nations continues to evolve as a norm within the international community.

# CHAPTER ONE

# INTRODUCTION: PURPOSE, JUSTIFICATION AND RATIONALE OF THE STUDY

## 1.1    Introduction

This study advances the argument that the Responsibility to Protect (R2P) is a norm that has emerged and continues to evolve. There remains a persistent perception that R2P has lost its relevance mainly due to the March 2011 NATO intervention in Libya. The reluctance of the UN to consider R2P during the Syrian conflict, immediately after Libya, supports that perception.  Alternatively, there is suggestion that the intervention in Libya was also an important part of the evolution of R2P. Brockmeier et.al, argue that R2P has not experienced an uncontested victory, but that neither is R2P dead. This perspective reflects that as a norm, R2P continues to emerge, and it supports the argument that R2P has continued to evolve even after the Libyan intervention. (Brockmeier, Stuenkel, Tourinho, 2016)

The emergence of R2P was in response to the appeal by the late former United Nations Secretary General (UNSG) Kofi Anan, in his 2000 Millennium Report, *We the People: The Role of the UN in the 21st Century*. This report challenged the international community to prevent atrocities committed by the state against its people. Annan famously said, "*But to the critics I would pose this question: 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 offend every precept of our common humanity?*" (Annan, 2000).  The appeal was based on the mass atrocities committed in Rwanda in 1994, and Srebrenica in 1995, where the international community was unable or unwilling to act. The slaughter of the Tutsis in Rwanda in 1994 exposed the weakest period of UN peacekeeping. Within months, after Rwanda, a further blow was dealt when, in 1995, Dutch peacekeepers failed to stop the massacre of 8,000 Muslim men in Srebrenica resulting in a unilateral NATO intervention.

Based on Annan's passionate appeal, the Canadian government initiated a process which resulted in the 2001 *Report of the International Commission on Intervention and State Sovereignty (ICISS)* which created the basis and framework for responsible sovereignty upon which R2P is premised. The international debate on the report continued until 2005, when the UN World Summit Outcomes Document (WSOD) was adopted (Hurrell, 2012). Between the launch of the ICISS report and the 2005 World Summit Outcomes Document, a number of developing states challenged the report as being grounded within the Humanitarian Intervention Model which was seen as a proxy for regime change. his remained a central concern especially among post-colonial developing states (Thakur, 2013 pp 65-66)

However, Thakur (2013 pp 65-66) points out that in 2004 the ICISS report was endorsed by the UN High-level Panel on *Threats, Challenges, and Change.* However, a major endorsement came from China's acceptance of R2P in its official paper on UN reforms, published on 7 June 2005. The document noted *that ''[e]ach state shoulders the primary responsibility to protect its own population ...When a massive humanitarian crisis occurs, it is the legitimate concern of the international community to ease and defuse the crisis.''* (Thakur, 2013 pp 65-66)

The 2005 WSOD was a breakthrough in institutionalising R2P. However, as Zähringer observes, that Paragraphsn138 and 139 of the WSOD severely 'diluted' the intentions of the ICISS report by limiting the scope within which military intervention would have been possible, by referring to a states action as 'manifestly' failing in its responsibility to protect populations at risk. The word manifestly, or clear and obvious, widens the requirement for the international community to intervene, it becomes difficult to determine the point at which the intervention is considered acceptable.

However, what the WSOD did achieve was to provide a consensus among UN member states to accept the values and principles inherent within the ICISS report. The WSOD toned down the language on intervention by replacing, 'a State being 'unwilling or unable' to protect its population to 'manifestly failing' thus creating a threshold at which point the international community could

intervene'(Bellamy, 2008, pp. 625-627) (ICISS, 2001) (UNGA,2005). Responsible sovereignty remains an uncontested pillar of R2P, as it constrains the state by requiring it to protect its population, and preventing it from committing atrocity and genocide. The WSOD introduces the word *manifestly* in *paragraph 139* to establish the threshold or level at which a state can be considered guilty of neglecting its responsibility to protect its citizens. This paragraph allows the international community to authorise an external, and UN led military intervention.

In 2009, the UNSG Ban Ki Moon introduced his report on *Implementing R2P* UNGA A/63/677 which was adopted on 12 January 2009 during the 63rd session of the UNGA. The report outlined the implementation of R2P in relative detail and reaffirmed the WSOD, '*It should be underscored that the provisions of paragraphs 138 and 139 of the Summit Outcome are firmly anchored in well-established principles of international law. Under conventional and customary international law, States have obligations to prevent and punish genocide, war crimes and crimes against humanity* (A/RES/60/1, 2005)*.*

The report on the implementation of R2P is based on the three pillars of R2P which provide a comprehensive outline of what will constitute the application of R2P, and under what conditions. First, the state carries the primary responsibility to protect its population from genocide, war crimes, crimes against humanity and ethnic cleansing as well as the incitement of any of these crimes against its population; second, the international community has a responsibility to encourage and assist a state in fulfilling this responsibility; third, the international community has a responsibility to use appropriate diplomatic, humanitarian and other means to protect populations from these crimes. If a state is manifestly failing to protect its population, then the international community must be prepared to take collective action to protect that population - in accordance with the UN Charter (UNGA, 1945, pp6-7)

Pillar one of R2P, paragraph 14 of the UNSG Report, elaborates on the States responsibility to protect, which is first *and foremost, a matter of State*

*responsibility*,'' and that the protection of populations is a *defining attribute of sovereignty and statehood in the twenty-first century* (UNGA, 2009, pp 10, para 14) .'' The idea that prevention is a much broader and long-term process is further captured in paragraph 14 where the report specifies that responsible sovereignty is in fact demonstrated by the ''*building of institutions, capacities and practices for the constructive management of the tensions* so often associated with the uneven growth or rapidly changing circumstances that appear to benefit some groups more than others (Bellamy, 2015)

Paragraph 17 of the report, as a first step, requires states to join the '*relevant international instruments on human rights, international humanitarian law and refugee law, as well as to the Rome Statute of the International Criminal Court* (UNGA, 2009, pp 12-13 para 17).' With this the UNSG advocates for the strengthening of international instruments and institution that will ultimately ensure the prevention of genocide and atrocity crimes.

Pillar two of R2P, paragraph 28 of the report, draws on the responsibility of the international community to support States to exercise their responsibility to protect. Paragraph 139 of the WSOD the international community pledges that "*we also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out* (WSOD, 2005, pp, 30, para 139)".

The UNSG goes further to interpret the above by stipulating that the international community must firstly, encourage States to meet their responsibilities under pillar one. This should be done by assisting with capacity building to mitigate against threats even before a crisis can occur. The underlying sentiment captured is based on '*mutual commitment'* and an *active partnership between the international community and the State.* (UNGA, 2009\, pp 15 para 28)

Paragraph 29 makes the point that if the State is determined to commit crimes and violations relating to R2P, '*then assistance measures under pillar two would*

*be of little use and the international community would be better advised to begin assembling the capacity and will for a "timely and decisive" response, as stipulated under paragraph 139 of the WSOD.'* (UNGA, 2009, pp 15, para 29). Paragraph 30 of the report requires States to meet their obligations relating to R2P through persuasion, education, training and/or assistance to ensure that conflicts that lead to genocide can be averted.

The UNSG's Report on the implementation of R2P (UNGA, 2009, A/63/677) proposed *five capacities* listed in paragraph 45 of the report that are based on existing and accepted methodologies by the member states, these capacituies can be listed as follows. First, the report recommends *conflict-sensitive development analysis* this is required to build capacity within national institutions to analyse issues and tensions that are emerging and in proactively formulate programmes that are sensitive to potential threats and will therefore mitigate against risks. Second, to use Indigenous *mediation capacity* aims at ensures that processes and institutions are seen as credible, using both traditional and contemporary methods to conflict prevention in both Government and civil society. This approach promotes credible reconciliation and mediation frameworks that are sensitive to local and indigenous customs, practices and systems. Third, *consensus and dialogue* which requires processes that are inclusive and participatory that encourage dialogue with neutral or unbiased platforms and forums to address contentious issues through dialogue and engagement. Fourth, is the *building of local dispute resolution capacities* with an infrastructure/architecture that allows for peace at both the national and local levels. Such mechanisms assist in managing disputes over key conflict triggers that include land, resources, religion, ethnicity or leadership succession in a sustainable manner before they lead to conflict. Fifth, the need to build capacity to replicate capacities which should become part of the social, political and economic rubric in a society to ensure lasting, intergenerational peace through existing skills to prevent a society from degenerating into war conflict that leads to genocide and atrocities (UNGA, 2009, pp 20, 45).

Pillar three of R2P, paragraph 49 of the report, is unambiguous, in that paragraph 139 of the WSOD renders pillar three integral to implementing R2P. The report proposes that firstly the peaceful measures envisaged in chapters VI and VIII of the charter, which include diplomatic assistance and/or humanitarian aid, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity should be implemented. Paragraph 139 of the WSOD also draws attention to the spectrum of actions that may be peaceful or non-peaceful. The latter, according to paragraph 139 of the WSOD, would be implemented if two conditions are met: First, *"should peaceful means be inadequate"*, and second when "*national authorities are manifestly failing to protect their populations"* (UNGA, 2009, pp 4, para 1). This then empowers the UNSC to take collective, timely, and decisive action that will be in accordance with the UN Charter, including Chapter VII. Each issue will be evaluated on the merits of each case and intervention will be based on cooperation with relevant and appropriate regional organizations (UNGA, 2009, para 49).

Paragraph 52 and 53 of the UNSG's (2009) report that investigations are part of, and cannot replace "*timely and decisive*" action that must be undertaken when responding to a crisis. Under Article 34 of the Charter, the Security Council "may investigate any dispute, or any situation which might lead to international friction (UNGA, 2009, pp52, 53). When the threats to a population in a state start to emerge, diplomatic representatives should initiate diplomatic efforts to persuade influential stakeholders, by delivering messages to key decision makers on behalf of the larger international community, to avoid destructive action that could result in violation of international law, genocide, and other atrocities. The emphasis here in that there is wide acceptance that sovereignty does not imply impunity by the perpetrators of crimes relating to the responsibility to protect. (UNGA, 2009, para 54).

UNSC Resolution 1970 which was adopted on 26th February 2011 (UNSC, 26 February 2011) was seen as the legal basis for the UN to authorise a NATO led military intervention in Libya. Resolution 1970 demanded 'an immediate ceasefire

in the Civil War in Libya' (UNSC, 26 February 2011). At the same time the UNSC was seized with authorising the international community to achieve the following, first, to establish a no-fly zone and second, to use all necessary measures to prevent the Libyan authorities from carrying out threats against the Libyan people. The arms embargo imposed by paragraph 9 of Resolution 1970 (UNSC, 26 February 2011) prevented arms being supplied to anyone in Libya. UNSC Resolution 1973 on 17 March 2011 merged with Resolution 1970 by adding the wording, "*all necessary measures,*" with paragraph 9 of resolution 1970, on the proviso that doing so would protect civilians. (UNSC, 26 February 2011) (UNSC, 17 March 2011). On 19 March 2011, NATO immediately established a no-fly zone over Libya. This was followed by airstrikes and the subsequent deployment of ground troops.

Adigbuo (2019) outlines the genesis of the Libyan intervention by drawing on the events that followed after December 2010, where Arab leaders in Tunisia, Egypt, Libya and Yemen were removed as a result of protests that that had started under the broader rubric of the Arab Spring (Adigbuo, 2019)

The sequence of events in Libya that started on 14 January 2010, in Al Badya, protests against the Gaddafi regime had begun and started to spread through the country. The regime responded with the military being ordered to target the protesting communities with maximum force, resulting in what was emerging as a humanitarian crisis. On 23 February 2011, the AU's Peace and Security Committee convened, and a delegation was dispatched to Libya to formulate an assessment of the situation. The 261st Session of the Peace and Security Council of the AU condemned the use of excessive force against unarmed peaceful protestors which was in violation of the established humanitarian laws. The PSC and noted the legitimate aspirations of the Libyan population to realise '*democracy, political reform, justice, and socio-economic rights be respected'* (PSC/PR/Comm CCLXI 2011) (Adigbuo, 2019: pp 122).

Adigbuo correctly observes that the Libyan intervention '*raises lots of dust'* and that the credibility of R2P (especially the implementation of Pillar Three) allowing

for military intervention started to expose the traditional divide between the postcolonial South and the North especially in respect of military intervention and the concern that R2P and humanitarian intervention are very similar.  This divide was also reflected at the UNSC, where the Russian Foreign Minister, in response to the establishment of the no-fly zone, accused the West of using the UN Resolution 1973 to implement a regime change agenda (Adigbuo 2019: pp 125)

R2P is crucial for the following reasons. First, R2P remains an important feature of the global governance framework and the practice of international relations since it ensures that the sovereignty of a state and its duty to protect its population are inextricably linked; second, R2P is based on 'responsible sovereignty and the prevention of mass atrocities and genocide. Therefore, R2P differs from the traditional humanitarian intervention, doctrine: thirdly, the limitation on sovereignty is fundamental to empowering states to protect their population, and if they are unable or unwilling to do so, the international community should intervene and use the wide range of legitimate options provided for.

## 1.2    Rationale and Justification for this Study

It is common cause that the association of the NATO led intervention in Libya with R2P impacted negatively on R2P as an evolving norm, with some arguing that this intervention 'killed' the norm. The Syrian conflict is often cited as test case for R2P and a reflection of the international community's reluctance to adopt R2P resolutions.

It is noteworthy that Zähringer 's (2021) approach is important to this study especially when looking at Acharya's (2015) Norm Circulation that includes norm contestation as an essential component. Wiener (2014) identifies a *legitimacy gap* that may exist between the *two ends of the norm spectrum*. According to Zähringer, Wiener's classification of fundamental *norms* are considered as having the lowest level of contestation, due to wider acceptance and applicability, while standardised procedures, which have a much narrower moral reach, lead to a high level of contestation. (Zähringer, 2021,pp 3). Arguably, R2P may have

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enjoyed a wider degree of support and the First two pillars enjoy a wider moral acceptance based on prevention and capacity building as opposed to what seems like traditional humanitarian intervention that has a narrow moral appeal, and that the Libyan intervention gave credence to.

With the unfolding crisis in Syria during March through April 2011, the UNSC first discussed the Syrian situation on 21 April 2011, during a meeting scheduled to discuss the Israel-Palestine negotiations. (Halliyadde, 2016 pp 216). The power dynamics at the Security played out on the discussion around the Syrian crises was unfolding just as the NATO campaign in Libya was already showing signs of an ensuing crises. The United States (US), the United Kingdom (UK), and France advanced the human rights crises that was unfolding while Russia was unwilling to consider any proposals resembling R2P whilst citing the sovereignty of Syria and the principle of non-interference in the internal affairs of a state (Halliyadde, 2016 pp 215-6).

The Syrian government's response to protests that started to spread throughout the country, prompted the UNSC to hold its first session on Syria on 27 April 27 2011. During the session, the reported human rights violations were condemned whilst the need to assist Syria to prevent further violence was generally accepted by all delegations (Halliyadde, 2016 pp 215-6).

This resulted in a flurry of meetings debates and discussion on the unfolding humanitarian crises in Syria which as resisted by mainly nations of the South. The narrative remained that the Syrian crises was an internal matter and therefore did not warrant any external interference.

On 21 July 2011, Francis Deng, the UN Secretary General's Special Advisor on the Prevention of Genocide, and Edward Luck, the UN Secretary General's Special Advisor on R2P, issued a statement on Syria. The statement emphasised the nature of the reported atrocities and the gravity of the human rights violations. The statement specifically cited Syria's responsibility to protect its population. The statement cited R2P and read as follows, '*The Government of Syria is reminded of its responsibility to protect its population, as all heads of*

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*State and government pledged to do in the 2005 Summit Outcome Document'*
(Deng and Luck, 2011)

Brockmeier et al (2016) argues that despite the criticism the Libyan crisis killed R2P, it in fact served to reignite debates on R2P, thus ensuring the ongoing evolution of the norm. It can be further argued that the Syrian conflict, which also started in March 2011, as part of the Arab Spring uprisings, became the main casualty of the Libyan intervention. The international community's concerns over R2P, and especially the potential for R2P to be misused by more powerful, developed states was affirmed by the initial unwillingness to invoke R2P during the early stages of the Syrian conflict. More specifically, the Libyan intervention, in fact resulted in proposed resolutions concerning R2P in Syria being rejected at the UN when proposals to halt the Syrian crises were being deliberated (UNSC, 4 October 2011) (UNSC, 4 February 2012) (UNSC, 19 July 2012). Despite the humanitarian crises resulting from the conflict in Syria, R2P did not feature in UN debates on Syria until 2014 (Brockmeier, Stuenkel, Tourinho, 2016, pp. 18-21).

The general scholarly debates on R2P can be summarised as follows: First, that R2P is now 'dead' since it was a casualty of the Libyan intervention. Second, that R2P is 'not dead,' but that it has experienced a major setback since the Libyan intervention in 2011. It is further argued that R2P has since recovered from that setback and has again become part of the UNGA discussions as well as the global discourse, both scholarly and in general. Third, that R2P has witnessed a renewed interest at the UN since the aftermath of the Libyan intervention in 2011. This suggests that the Libyan intervention played a role in the evolution of the norm. It is true however that pillar three of R2P however remains highly contested. There are ongoing concerns, mainly by UNSC raised by China and Russia, about its implementation. These concerns were also apparent at the outset of the Syrian conflict where UNSC resolutions on R2P were regularly vetoed. The most worrying aspect for many states is the existing provision for military intervention under pillar three of R2P. These resolutions are often rejected despite the wide range of options that are provided for in respect of

timely and decisive responses. These may include, but are not limited to, embargoes sanctions, fact finding missions, and military operations such as no fly zones as well as monitoring and civilian defense operations (ICRtoP, 2014).

This study will employ the norm circulation model to analyse the status of R2P as a norm within the international community. Amitav Acharya's norm circulation model helps to explain how norms, including R2P, continue to evolve and develop through processes of contestation. This is important in providing an analysis, that R2P continues to evolve and that the contestation is part of how the norm is strengthened.

In its most elementary form, international norms, including R2P, can be described as accepted, appropriate or agreed to standards of behavior with a shared understanding by members of the international community of what responsible sovereignty entails. International norms are not always governed by international rules or law. Norms, including R2P are based on persuasion and cooperation among states. As much as R2P is generally accepted, within the international community, as an international norm, it has no way of being enforced yet it remains a standard of appropriate behavior that is expected of states in respect of protecting populations especially in line with the '*five crimes of genocide, war crimes, ethnic cleansing, and crimes against humanity* (UNGA, 2009, pp. 4-5)*.*'

Welsh (2019) emphasises that UN statements on R2P by representatives of governments at annual UN dialogues has increased, noticeably in recent years. The fact that '*more states are actively engaging with the UN Secretary-General's reports, and requesting to take the floor on R2P debates, demonstrates the continued relevance and validity of R2P as an evolving norm'* (Welsh, 2019: pp58).

Welsh further notes that states who originally expressed their concerns about R2P, such as China, Iran and Malaysia have increasingly come to agree on many of R2P's core tenets. This understanding is based on an agreement that the primary responsibility to protect a population lies with the state itself, and that

this responsibility must be supported by international assistance and diplomatic efforts with, early warning to ensure "timely and decisive response." Concerns about the possible abuse of R2P are however exposed when it comes to implementing pillar three of R2P, specifically the activation of external military intervention. There exists a preference in the international community for a broader range of available options under pillar three as opposed to authorising the use of force unless it is considered as a last resort. This range of options must include diplomatic, political, humanitarian measures, and measures that involve the use of force which should employed after all measures have failed (Welsh, 2019: pp58).

The immediate aftermath of the Libyan intervention created a legitimate concern amongst developing nations that Western powers could use R2P as an opportunity to effect regime change under the guise of protecting populations. This concern led to several UN member states rejecting any attempt to invoke R2P references or language in draft UN resolutions. This set the tone for the contestation of R2Pas a norm in the immediate aftermath of the Libya intervention. The central concerns, raised mainly by developing nations, were based on the violation of Libya's sovereignty, given the suspicions of a regime change agenda that resembled the classical humanitarian intervention doctrine implying that R2P was vulnerable to such misuse.

However, Francis Deng et al (Deng FM, et al 1996) in the publication, *Sovereignty as Responsibility, Conflict Management in Africa* emphasised that "*those governments that do not fulfil their responsibilities to the people must forfeit their sovereignty*" and that *"under normal circumstances, strive to ensure for their people an effective governance that guarantees a just system of law and order, democratic  freedoms, respect for fundamental rights, and general welfare"* (Deng, et al 1996, pp. 223). R2P thus created a paradigm in which intervention is evoked to protect a population at risk, especially when the state is unwilling or unable to (execute its responsibility) and protect its population.

In light of the above, Smith (2016) points out that R2P can be traced back to the comments by the Salim Ahmed Salim, Secretary-General of the OAU from 1989-2001 who suggested that "*the OAU should take the lead in transcending the traditional view of sovereignty, building on the African values of kinship and solidarity and the notion that "every African is his brother's keeper""* (Smith, 2016, pp 293). Smith further asserts that South Africa's active role in infusing the AU's approach to peace, security and stability with the principles of responsible sovereignty and contributing to transforming the language of *non-interference* to that *non- indifference.* This was reflected in article 4h of the AU's Constitutive Act (2000) which allows member states of the AU  "*..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."* Despite the ongoing challenges in respect of implementing R2P as a norm, African states have been able to, in principle, retain the idea of responsible sovereignty (Smith, 2016, pp 293-294).

Amvane (outlines the historical context resulting in the main criticism against the OAU member states, the principle of non-interference resulted a passive approach to dealing with atrocity crimes and this resulted on constant failure on protecting populations. It was within the new peace and security architecture of the AU that the norm of a responsibility to protect was embedded. Acting under this norm, the AU intervened in crises in Burundi and Darfur region of Sudan in 2003. Thus, by 2005, when R2P was adopted at the United Nations a normative basis had been set for the congruence between R2P and Article 4(h) (Amvane, 2015).

Against this backdrop, the AU has confronted a variety of crises and has been reluctant to intervene. Amvane (2015) argues that the AU could have intervened in the Darfur, Libyan, Egyptian, Central African Republic or Burundi but chose not to act in line with Article 4 (h) of the constitutive act which has come to reinforce the same criticism against the AU as was the OAU in respect of its inability to respond to emerging humanitarian crises (Amvane, 2015, pp 298).

Although by no means a new development, the UNSG's *Millennium Report* (Annan, 2000) raised fundamental questions about the atrocities witnesses in the 20th Century with specific examples. This was met by a narrative wherein the legitimacy and sovereignty of a state was linked to the extent to which a state was prepared to protect its population as fundamental prerequisite of statehood and sovereignty.

In 2009, the UNGA adopted the UNSG'S *Report on the Implementation of R2P* (UNGA, 2009, A/63/677) and consolidates the R2P principles adopted during the World Summit of 2005 with inherent framework of international law. UNSG Ban Ki Moon's report on the implementation of R2P states that *"….based on existing international law, agreed upon at the highest level, and endorsed by both the General Assembly and the Security Council, the provisions of paragraphs 138 and 139 of the Summit Outcome define the authoritative framework within which member states, regional arrangements and the United Nations system, and its partners, can seek to give a doctrinal, policy and institutional life to R2P. The task ahead is not to reinterpret or renegotiate the conclusions of the World Summit but to find ways of implementing its decisions in a fully faithful and consistent manner."*

It is generally accepted that the aftermath of the Libyan intervention created a reluctance by developing nations to adopt R2P language during the unfolding Syrian conflict in 2011 confirmed the suspicion that R2P may be used to enforce a regime change agenda was clear. The trend has been for the UNSC to veto any action in Syria by the international community, the reality of the Syrian conflict is arguably the failure of the UNSC to evoke R2P to minimize the humanitarian crises. According to the Global Center for the Responsibity to Protect, the conflict is ongoing for eleven years between the government and opposition groups in Syria that has resulted in least five hundred and eighty thousand deaths (580,000) deaths, more than 130,000 arbitrary detentions, abductions or disappearances attributed to the Syrian Government, thirteen

million people have been displaced, with nearly seven million Syrian refugees (Syria - Global Centre for the Responsibility to Protect (globalr2p.org)

In response to this the Brazilian government proposed a framework called Responsibility While Protecting (RwP) in November 2011. RwP emerged after the Libyan conflict and during the unfolding crises in Syria. This proposal outlined the need to firstly, formalize the sequencing of R2P's three pillars; secondly, to increase restrictions on military intervention and the use of force; and third, to formulate mechanisms for a more rigid UNSC monitoring system to ensure that the R2P guidelines and mandate were clearly reflected in operations (Avezov, 2013).

According to Tourinho, et al., (2016) RWP met with criticism and it has been unable to gain much leverage. The RWP was generally seen as pacifist, that it aimed to improve on the implementation of the coercive measures under Pillar Three.  According to Tourhino et al, the acceptance of RWP by NATO members would have been an admission that the implementation of R2P under UN Resolution 1973 was a failure and that it served to dilute the aims and objectives of protecting populations(Tourinho, et al., 2016). The inference here is that the R2P is not and never was pacifist in its approach and that RWP by its very nature would hinder interventions in situations where risks to populations are high.

Despite this criticism, Gareth Evans commented that Brazil's major contribution was the recommended adoption of guidelines on R2P with attendant monitoring mechanisms. For Evans, effective monitoring of the implementation of R2P resolutions would ensure that the implementation would not veer away from the principles and precepts of R2P. This approach is therefore seen to mitigate against the risk of R2P being misused as was alleged in the Libyan intervention (Evans, 2012). Evans argument recognises that RWP has emerged as an important element in the development of R2P as a norm.

## 1.3    Aims and objectives of this study

First, this study aims to outline the evolution of R2P as a norm since the NATO led Libyan intervention in 2011. Second to determine relevance of R2P since that intervention, third to demonstrate that R2P as a norm continues to evolve, albeit with caution or limitations on authorising possible military intervention as required in pillar three of R2P.

The main objective of this study is to demonstrate that R2P is indeed alive and actively engaged as an international norm. Acharya's (2013) norm circulation model provides a framework through which the constraints, mainly with respect to the implementation of R2P's pillar three and its option of military intervention. This can be explained, through Welsh's (2019) catagorisation of R2P as a complex norm, without resorting to the binary logic of the norm being either 'alive or dead.' This approach renders military intervention is only one part of preventing atrocities, while a range of options are provided for by R2P.

In respect of R2P's status as a norm, this study will examine and explain the norm dynamics associated with R2P as it circulates through the stages of its emergence, diffusion and acceptance. The ICISS (2001) report touches on the extremely sensitive areas of sovereignty, regime security, humanitarian intervention as well as the just war tradition which had become synonymous with developed states undermining the sovereignty of developing states under the banner of humanitarian intervention. Early concerns about regime security, and the undermining of sovereignty of states became rooted in the Cold War context among newly decolonized states. Post-colonial states, due to their historic experiences were suspicious of any Western attempts to compromise their sovereignty, therefore rendering a norm, such as R2P highly contested. Thakur and Samford (Thakur and Samford, 2015, pp. 48-49) explain that state sovereignty was the bedrock of the international system, but that the intention of R2P is not to weaken the state, rather its envisaged intention is to strengthen state institutions to render them legitimate and empowering.

The debates around the 'death' or 'survival' of R2P have demonstrated that the Norm Lifecycle model seems inadequate to explain the emergence, diffusion, acceptance, and establishment of R2P. The idea that the norm was contested after the NATO-led Libyan intervention and the inability of the UNSC to invoke R2P in response to the deteriorating conditions in Syria, did not necessarily imply that the norm ceased to exist. The alternative argument is that the 2011 Libyan intervention was important for the evolution of "R2P." This argument is central to Brockmeier et al who argue that although R2P has not experienced an uncontested victory as yet, nor has it been fully accepted in the international community does imply that R2P is dead. This perspective reflects R2P as a norm that continues to emerge and it supports the argument that R2P has continued to evolve (Brockmeier, 2015; Stuenkel, Tourinho, 2016; Acharya, 2015; Kuperman, 2013)

Acharya's norm circulation model better explains the processes that occur when states, or actors with less influence feel marginalised from the process of formulating or creating norms. In certain instances, such as the implementation of UN Resolution 1973, in 2011 on Libya, less powerful states felt betrayed by more powerful actors in the implementation of the norm.

In 2013, Acharya explained norm circulation, in the context of R2P with the critical question of 'whose norms matter'? Especially as this relates to agency and feedback that a given state may enjoy. (Acharya, 2013, p. 467). Acharya's question is sensitive to the mistrust that exists between developed or western states and developing countries, especially on the question of humanitarian intervention. Acharya indicates that arguments that have a close association with human rights and humanitarian intervention is often associated with Western ideology and agency since they tend to impose the positions of developing nations. The very fact that "*there was a Canadian hand behind the creation of the ICISS report*, 'has led to a very understandable association of R2P with the western imposition of views (Acharya, 2013, p. 468).

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Perceptions can impact on how a norm is received as well as the acceptance or legitimacy that the norm might enjoy in a specific context. Acharya specifically mentions the high visibility of Gareth Evans in the ICISS. For Acharya, these observations might have "reinforced perceptions of Western centrism in R2P." This could therefore impact on the structure and agency of a norm, and how it is implemented once established. Acharya argues that "*New international norms are more likely to spread if the responsibility for their creation and diffusion is seen to have been more broadly shared than being credited to any particular group.*" (Acharya, 2013, pp. 466)

For Acharya, the question of 'how norms travel' requires a more inclusive set of analytical methods and tools to understand norms. This is especially so of R2P to assess and understand to whose norms matter in the international community. Acharya notes that the prominence of western scholars involved in the R2P process has fueled mistrust among developing nations (Acharya, 2013, 2015).

Importantly, for this study, Acharya's argument that localisation processes are required to shape the norm, mainly through contestation. This helps to avoid the potential risk of adopting a norm that the norm taker does not fully identify with, especially those that do not reflect the individual circumstances unique to each norm taker. These processes, according to the norm circulation model involves the norm being "offered through transnational moral actors." The norm is then localized through processes of diffusion and contestation, which then reflects the cognitive priors of the norm taker. The norm is then repatriated to the "global context" along with other locally constructed norms. The norm circulation model, when used to evaluate R2P, implies that the norm is subjected to these ongoing processes and therefore cannot be understood as alive or dead (Acharya, 2013, pp469).

The objective of this study is therefore to demonstrate that the norm circulation model assists in explaining the evolution of the norm in two distinct ways. First that the norm is strengthened by including less powerful states into the process of shaping an international norm. Second, this approach reduces the likelihood of

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the norm losing its status as it may not be advanced of defended by states that may have felt isolated from the norm creation process(Acharya, 2013, pp 469).

## 1.4     The research problem: norm circulation as a lens through which the relevance of r2p since the 2011 Libyan intervention could established?

Suspicions regarding R2P as an extension of traditional humanitarian intervention, was seen as a means by more powerful states to undermine the sovereignty of weaker states. R2P and the notion of responsible sovereignty was seen as a break from that history. However, shortly after the 2011 NATO led intervention in Libya, concerns were articulated mainly by developing nations whose identities remain linked to the post-colonial world order. Threats to a state's sovereignty is not taken lightly given the history of colonialism; especially when former colonial states are seen to be or alleged to be perpetuating regime change agendas. The objectives of the Libyan intervention in respect of the protection of the Libyan population became unclear in terms of the R2P principles. This became pronounced when the NATO states exceeded their mandate with targeted airstrikes and the deployment of ground troops in Libya.

Russia and China had abstained from resolution 1973 which reflected the sense of ambiguity and possible reservations concerning resolution 1973.  While this may have been the case, the idea of responsible sovereignty, which is fundamental to R2P, provides for the moral standing of R2P. (Brockmeier, Stuenkel, Tourinho, 2016). The Libyan intervention has without doubt triggered persistent concerns about the potential threat to vulnerable states that creates the tensions around R2P. However, this study takes the position that such tensions and disputes don't necessarily kill a norm, but may contribute to shaping and strengthening the norm.

There is a real perception among some scholars like Paris and Hehir who bring to the fore the structural concerns with respect to R2P and conclude that R2P's structural deficiencies were exposed during the Libyan intervention resulting in the perceived death of R2P. Such observations are primarily informed by NATO's implementation of Resolution 1973 and the no fly-zone over Libya. This has

served to perpetuate the traditional and widely criticised humanitarian intervention doctrine and therefore the legitimacy of R2P has become questionable.

This argument can be challenged with the following points: first R2P was first formulated to become the better option. Second, R2P is a norm that is undergoing an evolutionary process and it continues to develop as a norm. Importantly, unlike humanitarian intervention R2P is not premised on The Hague, Geneva or ICC conventions and treatise. Third, since R2P is a norm it has no legal framework, and as with norms in general, it is based on the values and principles shared by states; fourth, R2P is not solely based on military intervention but instead on a wide spectrum of preventative options (Acharya, 2015) (see also Evans, 2011, Thakur and Samford, 2015, UNGA, World Summit Outcomes 24 October 2005).

NATO member states justified their intervention in Libya, in March 2011, on the grounds that there was an escalating threat against the Libyan population by the Gadhafi regime. Much of the worlds media covered the Libyan leaders reference to antigovernment protesters as cockroaches a world that was used on the Rwandan genocide with reference to the Tutsis. Given the gravity of the threat posed by the Libyan regime to its population, the international community efficiently adopted UN Resolution 1970 and later 1973. However, a number of developing nations were convinced that the NATO intervention was made possible by exaggerating the threat to the Libyan population as these threats were already constrained by UNSC Resolution 1970. Also, statements made by the Libyan authorities indicated that resolution 1970 would be implemented before the adoption of Resolution 1973 and the subsequent intervention (Welsh, 2019; Kuperman, 2013; Averre, 2015).

Kuperman (2013) argues that the capacity for the Libyan regime to initiate a massacre was in fact largely overstated. He therefore argues that Resolution 1973 did not meet the criteria for intervention under R2P, since the resolution did not adequately reflect the three pillars of R2P. Furthermore, R2P in practice, can

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only be evoked based on threats posed to a population where the state is either unwilling or unable to act. This study therefore does not dispute the fact that the reputational impact of the Libyan intervention on the credibility and legitimacy of R2P has been significant. However, to suggest that R2P has died would be equally inaccurate subsequently been some momentum in recent years and R2P has again become part of the UN program of debate and it is this that will be examined this more closely.

The crux of the matter is that both the challenges – (theoretical and practical) that R2P presents result in it being often seen as either 'dying' or 'dead' as a norm and therefore the argument that it is no longer evolving or spreading. It is better to study R2P as a complex and robust norm (Welsh, 2019) (see also Deitelhoff and Zimmerman 2013).

Genser (2018) provides a comprehensive, 13-year review of R2P since the WSOD in 2005, and specifically on the implementation of R2P since 2009, on cases that involve the successful implementation and non-implementation of R2P. These will be outlined in chapter three if this study. Genser makes an important point that "*while the Security Council's inaction regarding the crisis in Syria stands front and center in recent memory, a more comprehensive analysis of Security Council implementation of R2P reveals that there is more to R2P than this notable failure might suggest. As is evident in the preceding analysis of Security Council implementation of R2P since its codification in 2005, certain conditions must be present to allow for successful implementation, and there is much that can be done to foster the presence of those conditions* (Genser, 2018, pp 501).

Importantly, this study examines R2P through Acharya's norm circulation framework which helps explain how R2P emerged through the various stages of both contestation and cooperation. This study therefore uses norm circulation to address the arguments that R2P is dead and will no longer exist in its envisaged form.

According to Finnemore and Sikkink's,' Lifecycle Model' norms emerge among norm makers, or norm initiators, who are traditionally wealthy, developed and more powerful states. The norm is then promoted by norm entrepreneurs at the international level. This is known as the norm diffusion process. At some point the norm is then internalised among the 'norm takers' or 'norm receivers' it is then assumed that the norm is institutionalised as a standard for appropriate and acceptable conduct in the international community (Finnemore and Sikkink, 1998).

The major shortcoming of the Lifecycle Model is that it assumes that the norm is initiated, promoted and then absorbed into the international community without contestation. The Lifecycle Model assumes that a norm is readily accepted by the norm taker accepts the norm without testing its validity or relevance through contestation.

This study therefore argues that Acharya's Norm Circulation model addresses this shortcoming. Acharya, in his model demonstrates that the norm taker is critical in shaping a norm. The inclusion of the norm taker therefore encourages wider participation in the shaping of the norm. This then will make the norm more acceptable to a broader international community. This study will demonstrate that R2P, when analysed through the norm circulation model, allows for a more accurate picture of R2P's status as an evolving norm albeit that it remains contested (Acharya, 2013:2015). This study therefore supports the idea that a norm such as R2P cannot be subjected to binary descriptions that render the norm either 'alive or dead.'+

To address the perception, this study views R2P is a norm that is undergoing several diffusion processes that continue to shape the norm. When examined from Finnemore and Sikkink's (1998) norm lifecycle model it would be reasonable to assume that the norm is dead, as the lifecycle model assumes that the norm taker either accepts the norm or does not. However, this study demonstrates that when examined from the lens of Acharya's (2013) norm

circulation model, R2P continues to be subjected to diffusion processes, as then norm is that continue to shape the norm.

The research problem that this study engages is the persistent and ongoing perception that firstly, R2P is dead, and secondly, that R2P perpetuates the traditional and widely criticised humanitarian intervention doctrine. Both these perceptions are a consequence of the NATO led Libyan intervention, where the United Nations Security Council (UNSC) resolution 1973 was allegedly used as a pretext by NATO to secure the toppling of the Ghaddafi regime.

The primary research question is, did R2P 'die' after the 2011 NATO led intervention in Libya? The secondary question is, does R2P continues to evolve, despite ongoing contestation around pillar three?

## 1.5    Outline of the methodology

This study will be conducted as a retrospective case analysis to demonstrate that R2P was firstly, negatively impacted during the aftermath of the NATO-led Libyan intervention in 2011; and secondly the study asserts that assumptions about the 'death' of R2P even after Libya are not justified especially when examining the discourse that continues to surround R2P, especially at the UN. This study will further demonstrate that R2P continued to evolve as part of the international agenda on the protection of civilian populations which is the basis of responsible sovereignty. Further, this study will demonstrate that the evolution of theR2P is subject to an ongoing process of diffusion which will be analysed through the norm circulation model. The norm circulation model was developed by Acharya to explain the diffusion process of R2P, as a norm, to show that it continues to be subjected to processes of contestation- especially in respect of the third pillar of R2P that allows for military intervention.

Street and Ward argue that all retrospective case studies have three factors in common (Street and Ward, 2012 pp. 169). First data has been collected after the events have already occurred; second that researchers have access to both first-person accounts and archival data, and third, that the final outcomes are known

when data collection takes place (Street & Ward, 2012, pp 169-170). Therefore, the retrospective case study design allows for data triangulation, to verify information from articles and reports arising both from the primary and secondary sources.

For this study, there has been a sufficient lapse of time between the Libyan intervention and this study. Therefore, there is ample scope to retrospectively assess the evolution of R2P since the Libyan intervention in March 2011. This study will therefore reinforce the argument that R2P is not dead, rather it continues to evolve and is subject to ongoing processes of diffusion.

### 1.5.1 Methods

When it comes to research and inquiry, there are two types of sources; namely primary and secondary sources. Primary sources are first-hand accounts of a topic, while secondary sources are published research, newspaper articles, and other media. Secondary sources can, however, cite both primary and secondary sources. (Wallace & Poulson, 2011)

To develop a clear understanding of the connection between the Libyan intervention and its impact on R2P through the norm circulation model, the study will require a critical appraisal of the primary sources which include UN Statements, UN Reports as well as country statements and reports-including those of interest groups and NGO Statements such as the Global Centre for the Responsibility to Protect. Secondary sources included available literature and publications, these include books, media and analysis that have been documented since the Libyan intervention. This study draws on a diversity of views that are inherent within scholarly discourse on R2P to formulate an analysis of events that impacted on R2P during the aftermath of the Libyan intervention.

### 1.5.2 Retrospective and Critical Case Study Analysis

There is an abundant supply of literature on the R2P, its origins and its implementation. The retrospective and critical analysis of the findings in respect

of the evolution of R2P since the Libyan intervention is inclusive of a wide spectrum of views. It is generally accepted that R2P emerged out of a process of norm diffusion and multiple sources such as the ICISS, 2001, UNGA, 24 October 2005, WSOD 2005, UNGA Report on the Implementation of R2P on 12 January 2009, within the international community. This method allows for the norm diffusion process to be examined from a perspective that includes the processes of localisation and contestation that are important to ensure a norm that is more widely accepted such as R2P. These views are reflected in the diverse array of primary and secondary resources which are accessible.

## 1.6    Structure of the Study

**Chapter one** will introduce the study and its core elements by outlining the purpose, justification and rationale of the study, discuss and clarify the  research problem that this study will engage, and the relevance of R2P since the NATO led Libyan intervention  as well as the rationale and justification for this Study. This chapter will then discuss the aims and the objectives of the study and then outline the methodology that will be used to realise the stated aims and objectives.

**Chapter two** will provide a theoretical framework that will involve a discussion on constructivism, identities, norms and define R2P as a norm. To this end, this chapter will then examine the evolution and structure of norms, with a closer examination  of R2P as a Norm. This chapter will the outline the critical views of R2P that can be seen through the Paris-Thakur debate which provides a perspective on  R2P's structural problems. This Chapter will then delve into the norm lifecycle and circulation frameworks.

**Chapter three** outlines the conceptual framework within which norms, including R2P are placed. This is achieved through an examination of the impact of the Libyan Intervention on R2P and UN Resolution 1973. This chapter will especially form the basis of the retrospective analysis as it will outline the impact of the Libyan intervention on R2P.  This chapter will examine the implications of the

language used in UNSC Resolutions 1970 and then 1973. This chapter will then outline the controversies and contestations is in respect of pillar three on military intervention, albeit as a last resort. This chapter will introduce the study by Maggie Powers research on R2P voting patterns at the UN between 2011 and 2015. This period was significant in the evolution of R2P as it was here that the immediate aftermath of the Libyan intervention and the hesitation to evoke R2P during the Syrian conflict. However, Powers outlines a positive picture for R2P as her study goes through the initial skepticism and the gradual return of R2P on the UN agenda. This chapter will provide a background and outline of the NATO led Libyan intervention in 2011 based on UNSC resolution 1973. Jennifer Welsh's study on robust norms, explains the complexity of R2P and that in the last decade R2P there are clear references and active engagement on R2P with through a multitude of UN debates and resolutions. Welsh's work supports the Norm Circulation Model and helps explain the limitations on implementation, especially pillar three on intervention, yet the norm remains relevant. This chapter will then draw on Acharya's Norm Circulation lens given that Finnemore and Sikkink's Lifecycle Model, for R2P at least, is inadequate in explaining why a norm like R2P continues to be actively engaged and contested.

**Chapter four** will examine three examples of states in which populations are either victims of ongoing atrocities or at risk of atrocities. This study examines Syria, Myanmar and South Sudan are appropriate for the following reasons. First, this study is aimed at a providing a retrospective analysis of R2P since the Libyan intervention in 2011, these three examples fall within this timeframe. Second, this study challenges the idea that R2P is dead, and that Acharya's (2015) norm circulation framework provides a tool of analysis that sees R2P as a norm that is being subjected to various forms of localisation and contestation as it is diffused in the international community. Third, in addition to Acharya, Welsh's (2019) presentation of R2P is a complex and robust norm explains how the preventative methods that include sanctions, arms embargoes, judicial measures and diplomatic isolation render military intervention but one part of the R2P's rubric.

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**Chapter five** and concluding chapter will demonstrate that R2P is relevant, alive, and that the narrative that R2P is dead, is factually misleading. This will draw on the various arguments in the preceding chapters. The conclusion of this study will outline how and why R2P from the norm circulation framework continues to develop and strengthen and may well be on its way to becoming a settled or established norm.

**CHAPTER TWO**

**LITERATURE REVIEW**

## 2.1    Introduction

The chapter is structured as follows. First, this chapter provides a conceptual analysis on responsible sovereignty, norms and identities, norms and R2P and the evolution of norms. The chapter then provides a context for the evolution of R2P, ie an outline of the constructivist paradigm, and broadly outlines how norms, interests, and identities are manifestations of an actor's understanding of its identity as a defining characteristic of an individual, group or the state as an actor (Wendt, 1992, 1994). A formed identity ensures that a state is reluctant to contradict that identity (Wendt, 1994). It therefore follows that if norms of protection, such as R2P become defining part of a state's identity, then that state would be expected to maintain that position, an example of South Africa and its commitment to human rights after the dismantling of apartheid.

Second, this chapter will contextualise R2P as part of the complex, array of theoretical, intersubjective, and social paradigms whilst drawing on distinctions between the constructivist from realist and liberal paradigms. Locating R2P within the constructivist paradigm. R2P has challenged the traditions notions of humanitarian intervention and the Just War doctrine which formed the basis of the traditional framework for humanitarian intervention. This chapter strives to highlight the paradigm in which R2P is best located.

Third, this chapter will conduct a critical literature review of the debates on R2P, although there are several critiques including Hehir. This study will however expand on the critique formulated by Roland Paris and the response to that critique by Ramesh Thakur. The Thakur-Paris debate is important within the context of this study as the arguments zoom into the very structure of R2P. Thakur's response challenges the foundational basis of Paris's arguments. (Paris, 2014; Thakur, 2015). This debate is important as it draws out key issues

in respect of R2P and provides an example of R2P as a norm and the role of contestation in shaping norms as they circulate.

### 2.1.1 Conceptual Framework

This study analyses R2P from the perspective of norm circulation as a framework with which to explain the evolution of R2P. R2P is based the following responsibilities: responsibility to prevent, responsibility to react and responsibility to rebuild.

First, R2P remains an important feature of the global governance framework and the practice of international relations. The challenge to humanity raised by former United Nations Secretary General (UNSG) Kofi Annan in his Millennium report, *We the People: The Role of the UN In the 21st Century* (Annan, 2000) are still very pertinent. Second, R2P is rooted in notions of responsible sovereignty while it attempts to meaningfully contribute to the prevention of mass atrocities and genocide by ensuring that states enforce their sovereign duty to protect their populations.   Importantly, it represents a departure from the contentious humanitarian intervention framework, which was inconsistently applied and was based on the principles of Just War which is seen by a several former colonies to undermine and threaten to their sovereignty through the use of force. Third, R2P requires that state sovereignty be linked to a state's responsibility to protect its population, and that should a state be unable or unwilling to do so, and the international community should intervene (ICISS, 2001) (UNGA, 24 October 2005) (UNGA, 12 January 2009).

The idea of responsible sovereignty is concerned with the protection of populations. The responsibility of the state to ensure this protection is not a new concept. The idea that sovereignty, responsibility, and protection are western notions is often attributed to the development of the Westphalian state system in 1648, which set the basis for a secular state and the removal the divine right of the sovereign to rule. The pre-Westphalia order was based on sovereignty that was bestowed by divine right to a ruler and the people were expected to serve that ruler with the divine right to rule. The post-Westphalia order initiated the idea

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of a secular state, with the ruling class to serve the population which Thakur and Samford call the *Feuerbachian* inversion (Thakur and Samford, 2015; 2015; Acharya, 2015).

According to O' Hagan, modern statehood has its roots in the post Westphalian which was further shaped by the revolutions in the United States of America in 1776 and France in 1789. These events helped to consolidate the idea that the authority of the state and sovereign cannot be determined by divine ordinance but instead premised on the law, based on the will of the people, as opposed to the sovereign, with individual citizenship, rights, and liberties. These events were significant in the process of unleashing historical events, revolutions and philosophical paradigms that forged the contemporary western idea of statehood, based on the notion of citizenship through law, premised on rights, liberties, and responsibilities of the state to the citizen (O'Hagan, 2015; Glanville, 2010; Reus-Smit, 2001).

However, ideas of responsible sovereignty have a much longer historical pedigree. O'Hagan draws on China's Confucian traditions, where imperial China was based on the duties of the state, '*mandated by the heavens*,' to protect the citizen and society. The Chinese Philosopher Mencius wrote "*that war could be waged upon a tyrant by other benevolent rulers to punish tyranny and bring comfort to the people*" (O'Hagan, 2015, pp 285-304). Similar examples of the state's legitimacy based on a sense of responsibility and duty to the people, are also recorded in India's ancient Mauryan Empire. Emperor Ashoka issued edicts through the Empire that his rule and system of governance was linked to law and administrative systems that were based on the interests of the citizen. (Thakur and Samford, 2015). Thakur (2015) argues that Asia has a *'rich history'* of the state having to ensure the responsibility to and protection of the people. Such frameworks are found in Islamic, Buddhist, Abrahamic and many other ancient traditions and faiths. The dictum for compassion, benevolence and protection of vulnerable peoples has, for many centuries certainly existed in word, and sometimes in practice. (Thakur, 2015) (O'Hagan, 2015) (Glanville, 2010).

Ancient systems were designed along feudal lines, the idea that the sovereign or the ruler was required to ensure the protection of populations was inherent, there were no consequences for noncompliance. The post Westphalian era, as argued by Thakur and Samford (2015), takes a crucial step in defining the role and responsibilities of a sovereign to its population as opposed to the populations duties to the sovereign and dependence on the sovereigns benevolence to ensure protection.

The aforementioned regional and historical context assists, at least in part, to explain the link between the general acceptance of R2P by the international community in for the following reasons; First, the adoption of norms in general and R2P in particular are not in isolation of the *cognitive priors* which shape the identity of a given actor ie community, society, or state (Wendt, 1992, 1994). Second, norms, according to Acharya's norm circulation model (2013, 2015), are shaped primarily by processes of a norm being received, localised, contested and then repatriated, and in the case of R2P, it would be repatriated to the international community. Third, R2P would have been subjected to this process in the years between the 2001 ICISS report and the 2005 WSSD Outcomes Document and the UNSG Report on the Implementation of R2P in 2009. Fourth, the contestation and localisation of R2P within developing states would have assisted in shaping the characteristics of the norm and based on the identities of the states accepting the norm.

R2P is concerned with the protection of citizens both within and outside of a state. It is important to note that R2P is not necessarily linked to any of the ancient cultures and traditions, but would it be reasonable to suggest that modern states, in certain contexts may identify with R2P and the need for it by referencing a higher purpose associated with R2P. Amitav Acharya (2015) notes that the laws that govern the responsibilities of the state are rooted in the Greco-Roman traditions which are rooted in Christian ethics. The Just War tradition, the Hague (1907) and Geneva conventions (1949) are tied in with the western philosophical paradigm that formed the basis of humanitarian law.

This historical trajectory that shaped the modern state and notions of statehood continued into the 20th Century as suggested by Francis Deng et al (Deng, et al 1996). The publication *Sovereignty as Responsibility, Conflict Management in Africa* firmly and radically redefined sovereignty by adding responsibility to protect populations as a requisite (Deng, et al 1996). R2P thus created a paradigm in which intervention is evoked to protect a population at risk when the state is unwilling or unable to (execute its responsibility) and protect its population. In an article in the Economist on 16 September 1999, former UNSG Kofi Annan reinforced the view that responsibility is a requisite for sovereignty.

Annan, in his 1999 article in the Economist argued that State sovereignty, in its most basic sense, is being redefined— "……*States are now widely understood to be instruments at the service of their peoples, and not vice versa. At the same time individual sovereignty—by which I mean the fundamental freedom of each individual, enshrined in the charter of the UN and subsequent international treaties—has been enhanced by a renewed and spreading consciousness of individual rights*." He then linked the UN charter to his argument that, "*When we read the charter today, we are more than ever conscious that its aim is to protect individual human beings, not to protect those who abuse them*" (Annan, 1999). This may well have served as the precursor to his Millennium Report a year later that provided the directive for the ICISS report on R2P in 2001.

R2P must also be understood in the context of the UN Charter. Article 2(4) poses a conundrum for R2P as it prohibits threats to the territorial integrity or the political independence of a state in any manner that is inconsistent with the purposes of the UN There are only two reasons why the use of force can be condoned; Firstly, by UNSC Resolution, that is in line with Chapter VII, of the UN Charter that authorises such an act; or second in self-defense as stated in Chapter VII Article 51 of the Charter (UNGA, 1945,).  According to Byers, only UNSC authorisation allows for the application of R2P, while the UNSC powers to act are already detailed in Chapter VII of the charter.  This empowers the UNSC

to determine the existence of a threat to peace, or an act of aggression(Byers, 2015).

Dickson Kahama (2015) in his dissertation makes an important point that R2P does not create an obligation on the UNSC to act when there is a threat to peace or a threat to a population. However, article 24, along with other articles, does create an obligation for the UNSC to act in cases where the peace is threatened (Kahama, 2015). Kahama's argument does veer into then terrain of Humanitarian law and its application, the reference to R2P as a 'doctrine' as opposed to a 'norm' demonstrates the inclination to examine R2P a legal as opposed to the normative component of R2P. The deficiencies in international Humanitarian law, is what gave effect to the UNSG's Millennium Report and the establishment of the commission on R2P creating the normative status of R2P.

This distinction is emphasized by Loiselle (2013) who interrogates the argument that R2P has the 'potential to develop into a legal norm.' She argues that '*Article 38 (1) (b) of the Statute of the International Court of Justice requires for the creation of a new norm of customary international law the evidence of a general state practice based on the belief that the actions are required by law'* (Loiselle 2013, pp 326) she also draws Gareth Evans argument that there is a potential for R2P to be absorbed into international law based on the aforementioned provisos(Loiselle 2013,pp 318)

R2P represents a departure from the existing legal paradigms of humanitarian intervention and Just War that dominate the Geneva, the Hague Conventions as well as the International Criminal Court. The lack of a legal standing have potentially hindered the swift emergence and evolution of R2P as a norm. The NATO intervention in Libya had clearly raised the ire of UNSC members Russia and China fueling suspicion of western interventions, especially military interventions associated with R2P.

It is important to determine the status of R2P as a norm, it could be argued that if R2P is not dead, then surely it must be invoked? To achieve this R2P as norm will be examined, this to outline the wide spectrum of interventions apart from

military intervention. To achieve this a retrospective study on the discourse around R2P since the Libyan intervention is necessary, this will provide an understanding of the complexity of the norm and how some elements, such as protection are favored over others. The international community must be understood as heterogeneous and complex. For Acharya, the paradigm contrast between the developed north and developing south impacts on the understanding of the role of the state, sovereignty, and its responsibility to protect its people(Acharya, 2013). The modern state has abandoned the "heavenly mandate" and the codes of conduct ascribed to by religions injunctions. Instead, the modern, post-Westphalian state derives its mandate from law.

Roberta Cohen (2012) points out that R2P originally included a responsibility to prevent and a responsibility to rebuild, this framework requires states to take preventive actions against genocide, war crimes, ethnic cleansing, and crimes against humanity and importantly the international community is required to support such initiatives. Cohen further draws on UN Secretary-General Ban Ki-moon who observed that the responsibility to protect "*grows from the positive and affirmative notion of sovereignty as responsibility, rather than from the narrower idea of humanitarian intervention*" which is widely understood as a right to intervene in the affairs of any state(Cohen, 2012 pp 5).

She argues that these provisions under the state's responsibility to protect populations from atrocity crimes are not new as they reflect the Guiding Principles on Internally Displaced Persons (IDP's). Cohen adds that IDP's are among the victims of a state's failure to protect and therefore resonates well with the implementation of R2P as they begin with steps to prevent displacement, and include processes to protect and assist IDPs, and conclude with the *'return, resettlement and reintegration* of IDP's' (Cohen, 2012 pp 15).

Nathalie Tocci (2014) highlights the following key statements that initially endorsed the UNSC resolution 1973 as a successful  implementation of R2P. The UNSG Ban Ki Moon legitimized a no-fly zone over Libya R2P, the UN Secretary General (UNSG) stated that "Resolution 1973 (2011) affirms, clearly

and unequivocally, the international community's determination to fulfil its responsibility to protect civilians from violence perpetrated upon them by their own government." In addition, Gareth Evans, co-chair of International Commission on Intervention and State Sovereignty (ICISS), stated that "the Libyan case was, at least at the outset, a textbook case of the R2P norm working exactly as it was supposed to," Noteworthy, was the fact that all five "BRICS" (Brazil, Russia, India, China, and South Africa) were represented in the Council at the time, while only South Africa voted for the resolution, none vetoed the resolution" (Tocci, 2014 see also UNSG statement, 2011) (Evans, 2011).

On 3 August 2011, the UNSC adopted a presidential statement expressing grave concern about the deteriorating humanitarian situation in Syria. With that the UNSC further qualified the statement by citing the sovereign rights, independence, and territorial integrity of Syria as well as the need for a Syrian led solution to the crises. The statement further called on the need for safe access for humanitarian workers. It is notable that R2P was not mentioned (S/PRST/2011/16).

Zähringer (2021) in her endeavor to determine a framework that assists in formulating a typology of norms. To this end, Zähringer explains that R2P as a well researched norm that provides the complex nuances that range from the *regulative*, *constitutive* and e*valuative* aspects of the norm which renders it ideal to formulate a typology of norms in general, with the test case being R2P (Zähringer, 2021:pp3).

Zähringer (2021) examines both Wiener (2014) who examines norms as being classified as *'fundamental norms, the principles and rules of global governance*,' which are widely recognised and considered *just and legitimate*. Additionally, Duffield (2007) presents the idea of procedural *norms* that works between what Zähringer refers to as the constitutive and regulative divide, and cites Duffield who further narrows regulative norms into: *'prescriptive (requiring or prohibiting certain behavior) or permissive (allowing optional action).* (Zähringer,2021:pp3-5). (Duffield, 2007: pp 14).

## 2.2 Constructivism, Identities, Norms and R2P

The study of norms is associated with the constructivist theoretical framework in International Relations. This study therefore examines R2P as a norm, and as norms are constructivist in character, it is important to understand constructivism and the assumptions that have shaped constructivist thinking.

This is especially important when assessing the status of norms, such as R2P, in the international community. Adler's assertion is that constructivism in international relations is not a theory of politics, instead, it is informed by the many theoretical frameworks in international relations theory, and draws on a multitude of disciplines (Ruggie, 1998) (Adler, 1997, 2013).

The constructivist conceptualisation of norms is reflected in Finnemore and Sikkink's argument that constructivism is particularly concerned with how the conduct of agents can generate outcomes (Finnemore & Sikkink, 1998,2001). It is here that constructivism takes on a perspective on world politics, that places an emphasis is on both the normative, as well as material structures, in the international community. This ultimately informs both the interests and actions of actors (Price & Reus-Smit, 1998, p. 259) (Wendt, 1992, 1999, p. 391).

For constructivists, a society can be influenced by identities, norms, and interests. States can have multiple identities that are socially constructed through interaction with various other actors. Identities are representations of an actors' understanding of who they are, which in turn signals their interests (Wendt, 1992, 1994). The importance of a formed identity is that in principle, a state will strive not to contradict its identity because this will call into question the validity of that identity (Wendt, 1994). This point is reinforced by Roberta Cohen who asserts that *'No government has explicitly challenged the concept of sovereignty as responsibility, mainly because doing so would compel the government to argue that sovereignty allows a state to deny life-sustaining support to its citizens. At the same time, governments like China have insisted that no state should interfere in the internal affairs of another state in the name of humanitarian action.* (Cohen, 2012 pp 16).

For Thomas Kuhn, his groundbreaking work on the choice of a paradigm represented the consensus of the community of scientists. The process of accepting or rejecting a paradigm is social as well as logical. A paradigm, according to Kuhn includes ideas, methodologies, language, and accepted theories with a community. Progress of science according to Kuhn is dependent on paradigm which informs the nature of the enquiry and the outcome of that enquiry '*no natural history can be interpreted in the absence of at least some implicit body of intertwined theoretical and methodological belief that permits selection, evaluation, and criticism.*'(Kuhn, 1970, pp 16–17)

Thomas Kuhn's ideas on paradigms, highlights the theoretical understandings on paradigms that are integral parts of international relations theory. This becomes crucial when attempting to understand the contexts that the theory or knowledge emerges from. Locating R2P within the constructivist paradigm is important to locate R2P within the constructivist literature (see Kubalkova, 1998, 34-37).

Hoyoon Jung (2019) draws on Price and Reus-Smit's (1998) three factors that helped to develop the constructivist paradigm out of critical theory in international relations. First was a general understanding that the reflectivist, critical theorists, who focused on transformative as opposed to traditional theory, which provided alternative insights into the intersubjective basis of IR. The second factor, the end of the Cold War which exposed the fundamental shortcoming in dominant rationalist theories in trying to explain such a dramatic international change. The third was a generational change the emergence of scholarship that was influenced by critical theories. (Price and Reus-Smit, 1998) (Jung, 2019, pp 1-2)

An important contribution by Onuf, is the understanding that constructivism is "*a way of studying social relations— any kind of social relations. Whilst constructivism draws from a variety of ways when studying a broad and complex subject, it stands on its own as a system of concepts and propositions.*" (Onuf, 2012, pp. 3-5; Constructivist thinkers argue that constructivism is not a theory in the traditional sense, it does not explain what human actions are, or why societies have differing approaches on a variety of issues. Nor does it explain

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how the international community responds in given situations. Rather, constructivism is a tool of analysis that makes it possible to draw on unrelated concepts. Onuf proposes that constructivism is widely applicable across the spectrum of social enquiry and makes the point that when constructivism is used 'systematically,' it finds value in diverse disciplines and connects dots that may have seemed impossible (Onuf, 2012).

Examining the emergence if constructivist thinking required a glimpse into the early discourse that started to shape the discourse around constructivism and norms. Although critical of constructivism, Maja Zehfuss (2002), provides significant insights into the emergence and evolution of constructivism. To illustrate the origins of constructivist thinking in international relations, I am deliberately citing, what Zehfuss calls the three constructivism's starting with Onuf, Wendt and later Kratochwil and Ruggie (1986), notwithstanding the obvious historical growth in constructivist literature, in the last two decades. Nicholas Onuf (1989) first introduced the term constructivism to explain the complexity of the international order. In his 1989 work the *World of Our Making*, published during the last days of the Cold War, he brought together matters which at first seem unrelated from multiple fields of social enquiry.

Zehfuss's point by suggesting that Onuf recognised the need to create a new paradigm in international relations which could contribute to social studies in general. Therefore, Onuf's important contribution to the constructivist paradigm is twofold; first, society (structure) and the individual (agent) mutually construct the world. Therefore, the agent structure dynamic is highlighted as ongoing two-way process. Second, he examines how rules regulate and create guidelines on how people should conduct themselves, and that it is this conduct that ultimately creates common interests (Zehfuss, 2002) (Onuf, 1989).

Onuf further includes the importance of the use of language, to show how a performative act such as speech can evoke action. Onuf proposes that speech follows a pattern. He identifies three categories of speech, these being assertives, directives and commissives. The success of speech is measured by

the action taken by the addressee, thus if frequently repeated, with comparable consequences it can become a convention. (Onuf, 1989; 2012)

Although Onuf (2012) places great importance on rules as well as norms, he departs from the positivist paradigm which rigidly emphasises properly codified rules and laws. According to Onuf, "*international regimes are said to consist of principles, rules, norms and procedures. By whatever name, these are all categories of rules*" (Onuf, 2012, pp. 13-15). He argues that rules and norms can be distinguished by the level of their formality; with norms *"being sufficiently informal"* (Onuf, 2012, pp. 13-15). It must be noted that Onuf does not suggest that a *rule becomes a norm* or a *norm becomes a rule*. For Onuf, these are treated as part of cluster of terms used by international regimes interchangeably.

He further suggests that norms cannot be distinguished from rules unless one observes how other agents respond to those norms. He argues that rules can be subject to manipulation as they could lead to an uneven distribution of benefits. The positivist paradigm, which has been the bastion for international law results in rules being manipulated to secure individual interests, it becomes difficult to contest a rule or law outside of a court, as is with norms. He further argues that rules are directly linked to the resources of the agents, or that  the better resourced will benefit more through legal processes (Onuf, 2012).

I believe that it is important to revisit Onuf's work as the reasoning provided by Onuf's early literature helps us understand one of the major criticisms of the NATO intervention in Libya in 2011. It is often suggested that the mandate provided by UNSC Resolution 1973 was extended by NATO to conduct an invasion. This reasoning that the suspicions around R2P, like humanitarian intervention, could be manipulated and used to undermine the sovereignty of weaker, less resourced states became very real and the objective of the NATO intervention was to remove the Libyan regime and that UNSC Resolution 1973 could have been manipulated by more powerful states to meet individual objectives rather than the protection of Libyan citizens. Onuf's argument that

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rules inadvertently turn individuals into agents who, through their compliance create a material reality.

Knud Eric Jørgensen (2010, pp 156-158) refers to Richard Ashley's critique of state centric dogma that neorealism came to signify, followed by Freidrich Kratochwil and John Ruggie (1986) who challenged the dominant positivist epistemological approach to theorising International Relations. This critique was primarily based on the ontological approach to norms, values, identities, and rules, which arguably that these could not be understood through positivist epistemological enquiry. Wendt (1987), in his work the *Agent-Structure Problem in International Relations Theory*, provides a framework for understanding constructivism. Wendt also provides a meta – theoretical approach, as opposed to pure empirical critique of international relations theory which is dominated by Liberalism and Realism (Armstrong, et al., 2012) (Wendt, 1998; 1987). For Wendt, the ontological understanding of agents and structure is more fundamental to understanding the nature of both agents and structures and, because they are in some way mutually implicated their interrelationship.

Constructivism and critical theory challenged the basis on which neoliberal and neorealist theories were being advanced in International Relations. Both neoliberalism and neorealism share common meta-theoretical premises, ontologically, both treat states as unitary rational and self-interested actors and they consider the international system to be anarchic. Domestic factors have little or no significant impact on the international scale according to these dominant theories. Epistemologically, both test theoretical assumptions by observing the behavior of the state actors in question. Methodologically, both are committed to identifying and collating empirical data, and processes this data in similar analytical methods, to prove their respective hypothesis. (Cox, 1981) (Armstrong, et al., 2012)

Constructivism has grown and developed in the post-Cold War era, particularly during the 1990s. For constructivists, the material world of states and the rational action of actors only makes sense when located in a social world that gives

meaning to states as actors, and by defining what is rational in given circumstances.

Whereas rationalist scholars concede a role for ideas and rules that guide the actions of a state, constructivism gives ideas a more fundamental role than rationalists. Constructivists argue that ideas are what comes to shape actors and action in world politics. Constructivism further highlights the role of action among in social structures which are comprised of identities and norms, and a broad range of normative actors in world politics. As such constructivism offers a fresh perspective on the formation and workings of international law (Annan, 2000) (Onuf, 2012).

## 2.2.1  Evolution and Structure of Norms

The study of international norms is located within the constructivist paradigm which is premised on the idea of international community which is based on cooperation among states. Cooperation, collaboration, and solidarity distinguishes constructivism from the dominant realist theory in International Relations. Primarily, constructivists interpret the world as an *international socie*ty, as opposed to the realist view of an *international system*. R2P, as a norm, emerged out of consensus based on cooperation among states. To understand R2P as a norm, we need to understand why and how norms come into existence, how they emerge, how they might become unstable and eventually, how do they become established or embedded within the international society.

Finnemore and Sikkink note that Realists in International Relations have not necessarily ruled out the significance of norms. They specifically draw on Hans Morgenthau's writings on how ideational and normative factors such as nationalism, morality, and international law potentially do limit a states' exercise of power (Finnemore and Sikkink, 1998).

Hurrell and MacDonald (2012) and Winston (2018) argue that determining "*appropriate behavior*" involves bridging the *constitutive and constraint functions of norms* (Hurrell & MacDonald, 2012). In this sense, R2P presupposes that

sovereignty cannot be infinite. Rather, R2P constrains sovereignty through the states responsibility to protect its population to ensure the prevention of genocide and atrocities. Second, R2P as a norm includes a value, (Winston, 2018) this would be the assurances that states will adhere to the principle of responsible sovereignty in respect of securing their populations. Third, a norm links a particular action to be taken to address the given problem. In the case of R2P's third pillar, the international community would intervene to prevent genocide or atrocities and to protect populations at risk. (UNGA, 12 January 2009).

## 2.3   R2P as a Norm

Katzenstein (1996) points out that for constructivists, norms revolve around two meanings. First, norms reflect actual patterns of behavior that are associated with expectations. These expectations reflect the idea of what will be done in practice in a particular situation. The expectation that states will be informed by the standard of acceptable behavior, and that their conduct is reflected by the identity of a state, and manifest through its population. The contestation around R2P is based on the expectations of the international community in respect of responsible sovereignty, which is defined by the protection of citizens from atrocity crimes. Contestation surrounding the third pillar of R2P seems fixated on the use of force, through external military intervention, despite the wide spectrum of options- apart from force which are provided for - before the UNSC considers authorising a military intervention. Second, is that social norms are central to constructivist thinking and they are defined as *'a standard of appropriate behavior for actors with a given identity'* (Katzenstein, 1996, pp1-32).

It therefore follows that social norm tend to imitate political norms by creating an expectation that some kinds of behavior and actions are more acceptable than others. This is captured through '*the logic of appropriateness.*' In constructivism where actors behave in certain ways because they believe that this behavior is appropriate, and that the appropriateness of their behavior is determined by the standards inherent within the norm (March, 1998, pp. 943-969).

R2P therefore sets the standard of appropriate conduct by how the state should respond when its population is under threat of atrocity crimes of genocide, war crimes, crimes against humanity and ethnic cleansing. If the state cannot and will not intervene to protect its population then the international community should intervene to protect the populations at risk (WSOD, 2005).

Winston provides a useful analysis of R2P in that it explains the reluctance of the international community to invoke pillar three of R2P. She argues that the structure of the norm is important to understanding how a norm diffuses. She proposes the concept of a 'norm cluster.'  R2P's three pillars can be analyzed as "a bounded collection of interrelated specific problems, values and behaviors that are understood to be similar enough that their adopters form a family group." (Winston, 2018, pp 645-647)

Winston argues when examining a norm from what she calls the concept of the norm cluster, the norm  *retains both the constitutive and constraint functions of traditional norm.* This implies that the state can source from a variety within the cluster, when it is constrained, allowing it to act within the parameters of *appropriate behavior.* (Winston, 2018, pp 647) (See also Busser, 2019)

Winston's concept of norm clusters is helpful when examining R2P from Acharya's norm circulation framework which assists in explaining how R2P as a norm is diffused as well as the status of R2P as a 'living' international norm. Acharya's approach is helpful, as it is specific to R2P and this  helps him to advance his norm circulation model. This model also supports the point that Finnemore and Sikkink's (1998) norm lifecycle model is inadequate in analyzing R2P since it excludes the role played by norm taking states in the evolution/diffusion of norms. The lifecycle model assumes that the norm is initiated, established, and then internalised by states without contestation and that a norm can belong to a cluster of norms which, through contestation and localisation helps to shape the norm (Acharya, 2013:2015). For example, there remains little contestation of the first two pillars of R2P but the third pillar remains contested, Pillar three is contested as the intervention requirement is closely

associated with humanitarian intervention and seen as part of the *cluster of norms* that is associated with a pattern of behavior that is seen, mainly among post-colonial states as inappropriate.

Drawing on Acharya's norm circulation model, this study aims to demonstrate how international norms, specifically R2P, emerge and continue to evolve as international norms. Rosert (2019) argues that various aspects of this question have been addressed in a wide range of literature including Finnemore and Sikkink's (1998) life cycle model and Risse, Ropp and Sikkink's (1999) spiral model. This study analyses R2P through the lens of Acharya's norm circulation, and holds the view that frameworks such as the norm lifecycle model are inadequate as these are focused on the norm sending states as opposed to the norm taking states.

According to Finnemore and Sikkink's leading work on the life cycle of an international norm the important foundation in explaining how a norm is diffused internationally, they highlight three phases in particular: First, the *emergence of the norm*, here the norm is promoted by the norm entrepreneur; second, norm *cascade or norm acceptance*, when several states absorb the new norm, irrespective of of the weather. Third, *norm internalisation*, when norms are established and successful.  This model requires that norm socialisation and compliance are successful when states believe that their identity is linked to international society. The international society influences state behavior because of pressure to place on the state to comply (Finnemore and Sikkink 1998, pp 895).

## 2.4    A Critical View of R2P

In analysing R2P, Gareth Evans (2016) makes a useful assertion that '*R2P was designed for pragmatists, not purists and the objective of R2P was to change state behavior.'* For Evans, R2P is not concerned with rewriting international relations theory, but instead it is concerned with developing a *normative force and a framework* through which to protect populations under threat- using means that are both preventative and reactive. Importantly, Evans also notes that the

implementation of UNSC Resolution 1973, activating the NATO led intervention in Libya, resulted in a significant measure of mistrust in implementing R2P (Evans, 2016, pp1-3).

According to Evans, R2P and the ICISS marked a significant turning point in limiting sovereignty to the responsibility of protecting populations under threat of genocide and atrocities. He argues that the Libyan intervention has afforded R2P '*normative traction*' implying that R2P's potential as an international norm was subjected to increased visibility in the international community. Significantly, Evans holds the view that it has largely displaced the concept of '*humanitarian intervention*' (Evans, 2016, pp 3-5).

For Evans, the UNGA annual debates on R2P are the clearest indication that R2P remains on the UN agenda. The annual debates articulate views which demonstrates that the acceptance, at least on R2P as an evolving norm, remains as R2P has survived intense debate and disagreement in respect of the Libyan intervention in 2011 and it was assumed among many scholars and practitioners that R2P was to be buried. The reality however according to Evans, is that there is a still a need for the international community to respond with timely and decisive collective action to assist states in their responsibility to protect their populations, and that should a state not ensure the protection of populations within is territory, then the international community is required to act (Evans, 2016).

Flowing from Evan's assertion on timely and decisive action, pillar three of R2P remains contentious, and this often triggers intense debate, mainly on how the distinction between R2P and humanitarian intervention is blurred due to pillar three. This is especially true in the scholarly discourse where critics like Paris and Hehir bring to the fore the structural concerns with respect to R2P. However, Thakur, Acharya and Welsh have asserted that R2P is an evolving norm and that its normative evolution does in fact experience resistance/contestation as a requisite to the norm strengthen and stabilising as explained by acharya's norm circulation frame. But this is part of the evolutionary process of the norm. Thakur

for example, supports the view that the Libyan intervention resulted in difficult debates on R2P which are ongoing, and this is evidenced by the fact that R2P remains subject to a normative evolution. Unlike the norm lifecycle model, Acharya's norm circulation anticipates processes of localisation, resistance/contestation, and repatriation. The annual UNGA debates which Evans refers to is in fact part of this process. As R2P delves deep into sovereignty, the contestation, and the process of shaping the norm may be longer. (Evans, 2016) (Acharya, 2013, 2015)

Roland Paris (Paris, 2014) launched a major critique against R2P. His arguments were rooted in the structural deficiencies of R2P, especially the (third pillar on military intervention) which he likened to preventative humanitarian intervention. Ramesh Thakur responds to the critique highlighting the fundamental and foundational flaws in Paris' argument. For the purposes of this study, particular attention should be placed on the Thakur-Paris debate and will be elaborated upon in later in this chapter. (Thakur, 2015) (Paris, 2014).

According to Hehir and Pattison (2016), the Arab Spring in 2011 exposed the following in respect of R2P; First, R2P lacks the influence that it should command, second that R2P remains contested, and third that R2P has been unable to direct the behavior of states. They further argue that the manner in which the international community responded to Libya, Bahrain and Syria, were driven by narrow self-interest of states rather than the R2P norm. While Hehir and Pattison accepts that pillar one R2P is a strength of R2P, Hehir takes the view that the only potential value-add of R2P is in respect of the international remedial R2P. In his view pillars two and three are therefore more relevant. It is this aspect, he claims, that is crucially absent from UN Security Council resolutions related to the Arab Spring (Hehir & Pattison, 2016).

According to Hehir (2015) the '*viability*' of R2P is virtually non-existent since the *Responsibility to Prevent*, is limited and therefore ineffective. Hehir identifies two issues which impact on the efficacy of prevention. First, *causal indeterminacy,*

where causal factors that include prior events, conditions, or processes are required to *determine* an action and where these are not possible then indeterminacy is what occurs as the causal links are not easily determined. Hehir suggests that atrocity crimes, with an inability to predict or plan, is what makes for the following reasons. First, the second mechanisms for such acts, can be prevented especially in the early stages. For Hehir, the conditions under which atrocity crimes are firstly, perpetrated and the limited available instruments or mechanisms to prevent such acts are not conducive to ensuring the prevention of atrocities. Second, R2P depends ultimately upon the *political will* of states, and the individual national interests of the permanent five members of the UN Security Council. Therefore, this renders the implementation vulnerable should an R2P resolution come into conflict with the interests of the UNSC permanent members (Hehir, 2015, pp 85-86).

Glanville (2016) argues that R2P, as a norm, does have an impact on the behavior of states. Glanville distinguishes between the '*regulative' and 'constitutive'* effects of norms. *Regulative effects* constrain or encourage states to behave in certain ways, whereas the *constitutive effects of norms*, constitute identities and interests, through which states apply certain norms. We can observe the regulative impact of a norm, for example, when an actor discards an earlier policy of resistance and chooses to instead act for instrumental reasons within the parameters of socially acceptable behavior rather than accept the reputational costs of ongoing violation. Glanville cites the Russian and Chinese decisions to allow the Security Council to adopt Resolution 1973, authorising intervention in Libya, after years of refusing to authorize resolutions enforcing the protection of populations without the consent of the host state, might serve as an example of the regulative impact of norms (Glanville, 2016, pp 189-190).

The constitutive impact of a norm is reflected '*when an actor chooses to comply with the expectations of the norm, even when there is no social pressure to act*,' to this end Glanville argues that President Obama's decision to drive Resolution 1973 through the Security Council was an example of the constitutive effects of

R2P as a norm. Despite the political risks and costs of action, Obama's decision to advance UNSC Resolution 1973 seemed to be driven by the need to protect Libyan civilians. Further, there appeared to be no direct interests or considerations that Washington had in respect of Libya and the international support for a 'strongly worded resolution' the decision, according to Glanville served not only a regulative but also a constitutive impact of the norm (Glanville, 2016 pp192-193).

Glanville's argument challenges Hehir's views that both these effects do have an impact on states' behavior and are not simply based on the domestic protection responsibilities of states as argued by Hehir. Yet, Glanville argues that R2P, as a norm does not compel the international community to be seen as responsible on being perpetually engaged in direct action to deal with ongoing mass atrocities. However, what is important is that R2P provides for the international community to try and act as opposed to doing nothing, which was the lament by UNSG Kofi Anan and formed the basis for the formulation of R2P, the UNSG Millennium Report and the ICISS Report, Glanville accepts that the international community has struggled to live up to the purposes that R2P's was intended to serve. where no action has been taken with the protection of civilians. However, this does not suggest that R2P is dead, and therefore the study of R2P as a norm that is evolving is important to demonstrate its relevance (Glanville, 2016, pp. 184-199).

Jess Gifkins (2016) challenges the claim that the R2P was weakened by the international response to the Libyan intervention. According to Gifkins, there is a general perception that the BRICS countries, especially Russia and China (as permanent members of the UNSC) were unhappy with the NATO-led bombing campaign in Libya. Especially in respect of the alleged misuse of Resolution 1973 to facilitate a regime change agenda against the Gadhafi regime. Gifkins further argues that R2P was in fact much more contentious within the Security Council prior to the Arab Spring. Gifkins argues that since the Libyan intervention, the Security Council supported R2P in resolutions more often in the

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two years after Libya than it had used it prior to 2011. She further argues that the frequent use and ease of adoption of R2P language in UN resolutions since Libya is indicative of wider acceptance of the norm. Gifkins does however accept that contestation around the implementation of R2P was more frequently highlighted since the Arab Spring. Gifkins therefore argues that the contestation has not deterred the Security Council to engage on R2P with an increasing recognition of its value in the international community (Gifkins, 2016, 148-149).

### 2.4.1  Roland Paris- R2P's Structural Problems

There are several critiques of R2P on both a structural and conceptual level. Roland Paris waged the most formidable critiques. His interpretation of R2P zoomed in on the core principles that are fundamental to the protection of populations under threat of genocide, as well as the coercive approach to intervention within R2P. For Paris, intervention, is the core structural weakness within R2P. Paris makes an important series of observations, and he provides for a critical framework that problematises the structural dimensions of R2P (Paris, 2014).

Paris observes the following, first that the NATO led Libyan intervention in 2011 was the first '*coercive intervention'* activated by R2P. Second, that this was demonstrated in the language used in UN Resolution 1973. Third, Paris notes that the World Summit in 2005 endorsed the responsibility to protect populations in respect of mass atrocities by the state, and the responsibility could be transferred to the broader international community (represented at the UN) 'should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity' (Paris, 2014, pp. 569).

Paris further argues that there is a need for the development of greater '*institutional capacity'* within international and regional organizations. This must further be complimented by national governments who may be required to respond to such emergencies. While he agrees that these factors are important, he says that they overlook the possibility that the greatest obstacle to the full

implementation of R2P may be what he calls '*the problematic strategic logic of preventive humanitarian intervention* (Paris, 2014, pp 572).

The use of force both within domestic and foreign jurisdictions, no matter how benevolent, enlightened, and impartial in intent, has empirical consequences. It shapes the domestic and international struggle for power and helps to determine the outcome of political contests. Therefore, this is inherently controversial, contentious, and contested. R2P does not and cannot escape this structural constraint, but it did not create it: the dilemma is inherent in the use of force. (Paris, 2014)

Paris outlines five structural problems with R2P which gives rise to dilemmas that impact on its implementation. First the *mixed motives problem* brings out the inherent contradiction between *altruistic intentions* and those governed by self-interest. For Paris, both can be necessary but serve as a liability for preventive humanitarian intervention. He makes the important point that to imagine a military intervention that is motivated solely by humanitarian considerations would be naive. Drawing on Thomas Weiss (Weiss et. al., 2010) who points out that altruism may well form a part of a basket of reasons for an intervention, but it is suggested that altruism is not sufficient to justify states to get involved in external interventions. This is based on reality, and the fact that with high risks high costs are involved and to mobilise resources, both the international and domestic political support is essential. Such a reasoning is reflected in a states intention to legitimise its involvement in intervention missions to demonstrate altruism alone, then interventions may have to face de-legitimisation as there will always be a measure of self-interest involved. (Paris, 2014, pp 572)

Second, the *counterfactual problem*. Paris draws on a methodological dilemma which makes it difficult to demonstrate the effectiveness of R2P being used for intervention. This is a very real challenge since the stated objectives for the intervention could not be justified due to the absence of any measure of how effective or successful the operation was. This proves to be a difficult argument, as it is difficult for political leaders to explain and not easily convince the skeptical

public on whether an event would have happened, if it were not for their timely intervention. (Paris, 2014, pp 573)

Third, the *conspicuous harm problem.* This draws attention to the costs that such a mission might incur as opposed to the benefits. Conspicuous harm is a problem for all military missions, but it is a special challenge for operations that base their legitimacy on the principle of preventing harm. Paris highlights the fact that intervening forces may run the risk of being held accountable for the conduct of groups under their protection. Paris suggests that military intervention in a civil conflict, can result in the intervening force likely to favor one party over another, thus raising issues of bias, despite attempts to remain impartial (Paris, 2014, pp 574).

Fourth, the *end-state problem*. This occurs when external forces achieve their initial objectives to secure the population under threat, the process of disengagement becomes complex especially if the intervening force wishes to ensure that the initial risk to the population from recurring and stay on longer than required (Paris, 2014, pp 575).

The fifth is the *inconsistency problem*. In many respects renders R2P vulnerable to criticism that its application of R2P may appear inconsistent. Problems arise from tensions in the strategic logic of preventive humanitarian intervention, which is at the core of R2P. It should come as little surprise, therefore, that they were also visible in the Libya operation and its aftermath. (Paris, 2014, pp 576)

Paris (2014) recognises that R2P is a complex norm and relies on a range of non-military interventions before a military intervention is sought. He argues that the Libyan intervention demonstrated that the five structural dilemmas are also inherent within the third pillar of R2P which allows for military intervention.

Paris further notes that R2P does enjoy international support, especially in respect of the first and second pillars of R2P, which allow for a range of preventative mechanism, apart from military intervention for humanitarian ends.

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These range from human rights monitoring to international assistance aimed at reducing the risks of mass atrocities occurring in the first place (Paris, 2014).

Paris repeatedly describes R2P as a doctrine and concedes that it prioritises peaceful over coercive methods, however he holds he view that the option to intervene rules out preventive humanitarian intervention, or military force by outside parties to avert mass atrocities, should all other methods fail. UN Security Council Resolution 1973, which authorised coercive intervention in Libya, invoked the language of R2P when it called on UN members to use 'all necessary measures … to protect civilians and civilian populated areas under threat of attack' in Libya (Paris, 2014). Addressing this issue is in fact fundamental to then purpose of this study.

Paris's argument in summary is based on the structural concerns in respect of the use of force, around R2P. For Paris there appears to create an expectation that R2P's evolution is at the same level as humanitarian law. The arguments form part of an important critique of R2P especially if it was anything but a norm. As Thakur (2015) points out the ideas that initiated R2P were based on the challenge that was born of the UNSG Millennium Report (1999) and was not an attempt to rewrite humanitarian law and intervention, but instead to build international consensus to prevent a recurrence of four atrocity crimes later articulated in the ICISS Report (2001) (Thakur, 2015)

## 2.4.2  R2P vs. Humanitarian Intervention, Protective or Otherwise Ramesh Thakur

In his detailed response to Roland Paris, Ramesh Thakur (2015) reminded Paris that the structural issues he highlights remain part of the normative evolution of R2P. According to Thakur the Libyan intervention was not a failure of R2P but instead an important milestone in the journey of the norm. Thakur further reminds Paris that R2P is attempting to find new consensus on humanitarian atrocities. Thakur argues that a growing number of individuals, organisations and countries make the point that military force is indeed the defining element of R2P, and that situations do arise when such intervention is both acceptable and necessary.

However, Thakur accepts that former UNSG Ban Ki-moon's first special report on R2P's implementation in 2009 did not use the opportunity to draw attention to the intervention pillar. Thakur notes that this in turn has negatively impacted on the general understanding of the rationale behind the intervention pillar of R2P (Thakur, 2015).

In addressing the preventative humanitarian intervention role of R2P, Thakur accepts that Paris makes a strong case. The argument that there is a strategic logic that informs preventive humanitarian intervention, and that the nexus between chosen actions of those planning the intervention and the desired outcome of that intervention is crucial. In the case of R2P, it is assumed, that military intervention is based on preventing mass atrocities or protecting a population at risk. Paris draws on important debates among both academics and practitioners who have suggested that there is a lack of 'political will' to act while others have called for improved criteria and processes to authorize the use of armed force for R2P purposes. (Paris, 2014) (Thakur, 2015)

According to Thakur, first, R2P is an attempt to find new consensus on humanitarian atrocities which remains an affront to the international community. Second, R2P remains conceptually contested and politically controversial. However, Thakur argues that it is accepted by policy practitioners but remains contested at the academic level. The only contention is how and when to implement R2P with appropriate oversight mechanisms to prevent the sort of abuse that continues to attract controversy. Third, Thakur suggests that although analytical consistency is a requirement of academic rigor, the real world of politics and policymakers often are not as clear or consistent. Policy decisions are based on trade-off between values such as solidarity and material interests Thakur goes further to state that *'a balance of interests'* is a more applicable than the outdated concept of 'the national interest. Policy inconsistency, for Thakur is in fact a norm, and he cites the example of the P5 demand the right to enforce non-proliferation on Iran, while hanging on indefinitely themselves to nuclear

weapons in defiance of their own obligations under Article VI of the Nuclear Non-Proliferation Treaty. (Thakur, 2015)

Fourth, although R2P and norm of the protection of civilians (POC) are important normative innovations, protection norms do not clarify how the international community should reconcile the many gaps in the norms of protection within the international system. Fifth, Thakur comments that Paris largely ignored the development of norms of protection from the critical 1991–2001–2005. This was the period in which the existing global normative consensus which severely impacted by NATO's unilateral intervention in Kosovo. Sixth Thakur reminds Paris those interventions were frequent even before R2P, he stresses the choice therefore is not between intervention and non-intervention, instead it will determine if the intervention will be ad hoc or rules based, unilateral or multilateral and divisive or consensual' (Thakur, 2015, pp. 11-25). Thakur makes it clear, that by design R2P, especially when legitimised by criteria that have been discussed and agreed in advance, will meaningfully shift the balance towards interventions that are rules based, multilateral and consensual. (Thakur, 2015)

Thakur reminds Paris that the term has a specific historical pedigree, discussion on R2P should not present the two concepts as the same. R2P was a departure from the language of humanitarian intervention and Thakur uses the example of Kosovo to highlight the fundamental difference between the two. Humanitarian intervention, by its very historic association with western colonialism is rejected by the global South. (Thakur, 2015)

Further, drawing on the fundamental distinction between R2P and humanitarian intervention. In essence humanitarian intervention, by virtue of its historical role, evokes fears among countries of the South in that the international power hierarchy would use humanitarian mechanisms for intervention to coerce developing states. R2P, on the other hand strives to balance national interests with international solidarity. R2P encourages that issues must be seen on behalf of those seeking or needing assistance, as opposed to the humanitarian

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intervention where decisions are taken by the intervening forces. Humanitarian intervention places emphasis on military coercion, whereas R2P embraces both preventive and reactive responses, decisions on coercive military action, through can only be premised on the extreme risk in each situation. (Thakur, 2015: 2016) (Guterres, 2018)

According to Thakur, the focus on the '*right to intervene*' does not adequately consider the prevention and follow-up assistance components of external action. Importantly, Mohamed Sahnoun assertion that in many ways R2P is a distinctly African contribution to global human rights, this was reinforced by the gravitas lent by South Africa, Nigeria and Algeria, at head of state level, to support initiatives to respond to the UNSG Kofi Anan's call in the Millennium report to prevent repeat of a Rwanda or Srebrenica. Thakur then outlines what the key questions are that will play a role in shaping the R2P these are: First the shared understandings and expectations among states around what constitutes the need to use of international force that is both legal and legitimate, and second, who should have the legal authority with the capacity to undertake R2P interventions? Thakur notes that emerging powers, especially the BRICS (Brazil, Russia, India and China) are the countries where R2P implementation remains controversial (Thakur, 2015).

Emerging powers play a mediating role between developing countries and the global North. they are largely responsible to mediate between global governance mechanisms and international accountability instruments that are: first, vulnerable groups are protected from predations by brutish rulers domestically; second weak countries are protected from the predations of regional or global major powers; and third violators of both sets of norms on the use of force are made to answer for their transgressions. (Thakur, 2015)

The historical context of humanitarian intervention, especially during the period of decolonization, after World War II is important. Former colonial states 'practices of governing' did not clearly define forms or bases of authority. Thakur argues that it fell to the ICISS which was expected to then provide 'a detailed normative

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articulation' of the 'international authority to undertake executive action for protective ends. (Thakur, 2015, pp. 13-15). R2P was required to fill the gap between evolving practice existing forms of formal authority. R2P does not address addresses the jurisdiction between states and international actors, while it preserves states sovereign responsibility to protect its own populations. This, in turn strengthens the UN's mandate to maintain its responsibility toward the international community.

In summary, the ICISS managed to achieve a fundamental paradigm shift because it was able to manage international consensus based on the core, sustaining idea of the state's responsibility to protect its population as opposed to the 'right to intervene' (ICISS, 2001)Thakur reminds Paris that R2P was initiated in order to formulate a means through which atrocity crimes could be eradicated and never repeated. To this end Paris highlights what he sees as the deficiencies of R2P and the structural components that relates to the expectations that R2P is an established norm. The Paris-Thakur debate is important to the evolution of R2P as it represents the contestation around R2P,  this contributes to the strengthening of the norm.

## 2.5   Norm Lifecycle Model

Fennemore and Sikkink developed the Norm Lifecycle Model, (Finnemore, Sikkink 1998) which served as a catalyst that brought Constructivism to the fore.This model explained the formulation and evolution of norms which offered international political theory a coherent and relevant methodology to understand how norms become established in the international community. According to Fennemore and Sikkink, a norm is established or fails to be established through a three-stage process.

The norm lifecycle model examines the role of international and regional norms that set standards for the appropriate behavior of states. It also emphasises how domestic norms, shape and are shaped in respect of international norms. (Finnemore, Sikkink 1998 pp 892-893).

The norm Lifecyle model recognises that in general, several international norms, at some points were domestic norms. These are infused into the international community by norm entrepreneurs. International norms are subjected to the influence of domestic structures and domestic norms. These processes result in important variations in compliance and interpretation of these norms as they are diffused. A very important factor is that international norms may seem to supersede domestic norms, however domestic "norm entrepreneurs" may be involved in advocating for less influential positions in a domestic context use international norms to strengthen their position in domestic debates. This often brings credibility to minority positions in a domestic context. Through this process domestic and the international norms are increasingly linked (Finnemore & Sikkink, 1998).

According to the norm lifecycle model, norm emergence is the first phase in the diffusion of the norm, the second involves norm acceptance or norm cascade; and the third stage involves norm internalisation. The first two stages are divided by a *threshold or tipping point*, at which a critical mass of relevant state actors adopt the norm.  According to Finnemore and Sikkink, norm emergence occurs through the persuasion by norm entrepreneurs, who attempt to convince a critical mass of states (norm leaders) to embrace new norms. This is in turn characterized by different actors, motives, and mechanisms of influence. (Finnemore & Sikkink, 1998)

Norms, according to the lifecycle model are shaped by agents who have strong notions about behavior that is appropriate or desirable in their respective societies. Those who exercise their human agency to achieve this end are called *norm entrepreneurs* and actively work toward the emergence of a norm (Finnemore & Sikkink, 1998).

It follows that the norm entrepreneur, in the lifecycle model, is critical for norm emergence. It is at this point that an issue is highlighted and, in some cases, even issues are formulated and presented by the norm entrepreneur. The language used by the norm entrepreneur "frames" the issue in a way that

highlights its relevance. Finnemore and Sikkink make a point that the cognitive frames that are advanced by the norm entrepreneur is an essential component of the norm entrepreneurs' political strategy. When successful, the new frames resonate with broader public understandings and are adopted as new ways of talking about and understanding issues. (Finnemore & Sikkink, 1998)

Norm cascade is the second stage of the Lifecycle Model, in order for this stage to be realised, norm leaders attempt to socialize other states to become norm followers. The socialisation of a norm is a primary or dominant component of this stage to establishing a norm, Finnemore and Sikkink draw on Kenneth Waltz suggestion that socialization in occurs through "emulation (of heroes), praise (for behavior that conforms to group norms), and ridicule (for deviation)" (Finnemore, Sikkink 1998, pp 902) (Waltz, 1979 74-76). Finnemore and Sikkink argue that socialisation therefore involves "diplomatic praise or censure, either bilateral or multilateral, which is reinforced by material sanctions and incentives." (Finnemore and Sikkink 1998, pp 902-903)

For norms to emerge and become established, a number of factors play a key role. Norm entrepreneurs, strategies and plans must be fully aware of the potential for contestation of the norm. However, Finnemore and Sikkink lack focus on contestation but instead in the socialisation of the norm and how conformity and esteem similarly play a role in the norm being accepted relationships between states and their "peers." Conformity or the compliance with norms involve states that comply with norms, to be part of a group of social environments. Along with conformity, our esteem is also related to the need for legitimacy. It is therefore possible to assume that states sometimes follow norms, only because they want others to think well of them, and that this then impacts on how they see themselves (Finnemore and Sikkink, 1998, pp 903).

The basis of the norm lifecycle model is that it assumes that many emergent norms may either fail to reach a tipping point, are less likely to succeed. It goes on to assume that internalized or cascading norms may eventually become the prevailing standard of appropriateness against which new norms emerge and

compete for support. The lifecycle model is further examined through the 'boomerang effects' which seeks to understand how norm diffusion occurs. Keck and Sikkink (1998) formulated this model to explain how cases where state actors such as governments are not responsive to civil society and its demands, domestic formations are able to connect to transnational allies, who will use principled concepts, ideas, and norms to put pressure on their own states or international organizations to bring the necessary attention to an intransigent state. (Keck & Sikkink, 1998).

As indicated earlier in this chapter, the critique of the lifecycle model is that it is inadequate in analysing R2P. Primarily, it excludes the role played by norm receiving states, who would contest the norm  as part of the evolution/diffusion of norms. The lifecycle model assumes that the norm is initiated, established, and then internalised by states without contestation.

## 2.6    Norm Circulation

Norm diffusion is the process by which a norm is transferred within the international community to, from and via political actors. This understanding is central to explaining why R2P is alive and continues to be subjected to the diffusion process. Acharya's norm circulation model brings to the fore the two essential elements of norm localisation and subsidiarity. These were precursors to his norm circulation model and are concerned with the power relations between states that allow local actors 'autonomy' from dominance, neglect, violation, or abuse' by more powerful actors (Acharya, 2004:2011). Acharya localisation, where transnational norms are aligned to the cognitive priors or prior local beliefs of a society.  When combined with subsidiarity this extends norm diffusion beyond critiqued the assumptions of the lifecycle model.   The application of norm subsidiarity assists Acharya's position that norm circulation includes states who are ordinarily excluded from the process of formulating a norm. Norm receiving states would be more likely to resist the norm that they would not have been part of creating. This process also exposes the skewed nature of power relations between developed and developing states (Acharya,

2015, pp 73). Acharya argues that constructivism regards ideas as having both causal and constitutive effects. He further argues that constructivism, through the body of literature that has been generated, is able to explain the relevance of norms and how those norms matter (Acharya, 2015, pp73-75).

Norm circulation draws out theories in international relations that have not formulated a framework to an understand norm diffusion in a way that recognises the complexity of international community, with varying degrees of agency among states. This agency depends on the capacity of states to formulate and diffuse norms globally. The idea that liberal ideals, reflected in the preference for 'moral cosmopolitanism' driving the initial discourse around norms, especially how they spread and become established. The liberal, largely western approach measured norms against so called 'good' of acceptable global norms promoted by mainly by western norm entrepreneurs, this process would then displace what they called 'bad' local ideas and practices that are mainly found in the non-Western world (Acharya, 2013).

Moral cosmopolitism and the promotion of norms through the Western perspective of what good or bad norms are, forced conformity in order to secure legitimacy. Such a lens, especially the norm lifecycle model examines norms without explaining how a norm is truly global if several the norm taking or receiving states are without the agency to receive and promote norms that includes their views and understanding of the international environment (Acharya, 2013).

Tor Dahl-Eriksen's (2016) analysis of moral cosmopolitism and R2P examined the ideas of *thick and thin* cosmopolitans. These two types of cosmopolitanisms differ as follows, "Thick" is inclusive of all of humanity, without any focus on a particular person or group, while "Thin" cosmopolitanism, 'accepts different spheres of moral responsibility, allowing for greater degrees of attachment to close others' (Dahl-Eriksen, 2016, pp126).

Dahl-Eriksen, further argues R2P, cosmopolitanism and *human rights*, *inclusive debates and state sovereignty* adds additional dimensions to the contrast between the English School and Critical Theory when assessing norms. First is the manifestation of *human rights* with R2P is consistent with the *prevention* pillar as well as the necessary tools to *halt* atrocities (Dahl-Eriksen, 2016, pp127). Second, is the *Inclusive debates* among a wide spectrum of international actors, which is what cosmopolitism argues creates 'mutual understanding' and 'evolves' through open, inclusive dialogues however, cosmopolitans believe that dialogues should 'produce a just outcome' in which 'the strong cannot impose principles and norms over the weak (Dahl-Eriksen, 2016, pp127-128). This approach is consistent with Acharya's norm circulation model which places emphasis on the contestation and localisation of a norm thereby fulfilling the inclusive, participatory approach to the evolution of the norm. Third is *state sovereignty*, which is traditionally understood as realist, associated with state power and control. However, ICISS report, the work of Francis Deng et al, and former UNSG Anan who contributed to the *'reinterpretation'* of sovereignty from state power and control to sovereignty as responsibility to and for its people in the context of atrocity crimes. According to Dahl-Eriksen '*the responsibility of the state to its population accompanies an external responsibility to the international community.'* The WSOD and the fact that world leaders accepted the execution of justice beyond their borders individual borders (Dahl-Eriksen, 2016, pp129-131).

The work of Dahl-Eriksen, arguably, provides a complimentary analysis to support the norm circulation model, specific to R2P and the critique of moral cosmopolitism in its traditional sense. Cosmopolitans, argue that 'legitimate sovereignty in a cosmopolitan framework promotes individual human rights.' In simple terms, the adoption of an external obligation, such as R2P, is the acceptance that a state will negotiate its rights on an ongoing basis under the rubric of the accepted norm (Dahl-Eriksen, 2016, pp134),

When studying a norm with the norm circulation framework, one is required to see norm diffusion as a two-way process. The norm is initiated and then diffused within the international community the norm takers will this is contrary to the lifecycle model where the norm is adopted upon receipt after the process of norm cascade. For Acharya, global norms offered by transnational moral actors are contested and localised. This process allows for the relevance and meaning of the norm to be shaped by cognitive priors of local actors or norm takers, which results in the localisation of that norm. This process then leads to the norm being repatriated through processes of diffusion as feedback to the wider global environment. This process is not in isolation of other locally constructed norms which contribute to the possible modifications of the norm and allows states to then defend and strengthen the global norm. Acharya's critique of the existing lens used to analyse R2P's norm internalisation processes is that they are essentially premised on the liberal approach to international relations. (Acharya, 2013: 2015)

To comprehensively examine the course that norms take through norm circulation, Acharya proposes a framework comprising of four dimensions. First, what is the *source of the norm*? The connection between the norm and the source is important to understand the foundation upon which the norm is built. This can prove challenging especially where the vehicles through which the norm is promoted and the norm entrepreneurs who promote the norm may distort the connection between the norm and its source based on their interests in respect of the norm, and how it should evolve. Second, is *the context*, from which the norm entrepreneur draws the norm becomes the basis through which a norm is understood and interpreted understanding the norm. Acharya notes that some global norms can have a regional context and in some cases, regions merely adopt and/or adapt global norms, this context is essential to measuring the emergence and evolution of a norm (Acharya, 2013, pp 472-473).

Third, the agents who promote the norm are important in so far as the agency to promote the norm determines how the norm will be diffused. Norm creation and

initiation is as much part of the contribution of weak states as they can also create regional and global norms. Fourth, resistance to the norm is key. The process of localisation involves both contestation and feedback. This for Acharya helps shape the norm based on their ideological leanings or interests. The willingness to accept a norm or not, which then leads to the redefinition, contextualisation and localization of a norm (Acharya, 2013, pp 472-473).

Acharya argues that when compared with the norm circulation model, moral cosmopolitism eventually becomes preoccupied with legitimising the impact of a norm, rather than interrogating the norm itself. Therefore, the lifecycle model does not accommodate contestation/resistance and feedback. Norm circulation on the other hand accommodates the norm taker resisting and contesting the norm, especially if there is potential for disagreement or mistrust around the intentions of the norm. Acharya argues that this process strengthens the way in which the norm is structured and legitimised which in turn allows for a much wider acceptance, application and compliance with its prescripts. He further argues that contestation and localisation suggests that norms are cannot be widely accepted without individual states reconstructing through localizing the norm the outcome of which is repatriated as *feedback* to the norm initiator/sender (Acharya, 2015).

Feedback helps shape the norm as it is interpreted by different states, regions as part of the international community. This process assumes a measure of inclusiveness and this in turn makes it harder for the international community to reject a norm that the state has been part of shaping, when seen through norm circulation framework. Acharya therefore contends that norm localisation and norm subsidiarity are central to norm circulation. Norm localisation implies that beliefs, or cognitive priors have a fundamental role to play in the formulation of norms. The norm circulation process encourages feedback from the norm receiving state back to the sending state (Acharya, 2015, pp. 59-78).

## 2.7    Conclusion

The aim of this chapter was to provide a synopsis of the literature concerning R2P as a norm and more specifically the dynamics associated with R2P as a norm. Among the key components was the determination that the emergence of R2P played a leading role in bringing the idea of responsible sovereignty to the fore.

This chapter provided a conceptual analysis on responsible sovereignty, norms and identities, norms and R2P and the evolution of norms. With that as a basis, the chapter then ventured to examine the constructivist paradigm as a theoretical framework that supports the idea of the emergence and evolution of norms.

Importantly, there is a vast and rich body of literature that covers the idea of norms and models through which they could be analysed. To this end, and for the purposes of this study, the norm circulation model was explained as the ideal means to evaluate R2P as it has emerged and continues to evolve as a complex and highly contested norm, mainly around pillar three and military intervention and mostly since the Libyan intervention.

The evolution of a norm is directly linked to the credibility of a norm. That credibility is informed by the efforts of the norm entrepreneurs who promote the norm among norm receiving states. Under the norm circulation model the credibility of the norm is tested severely on the grounds that it is localised and contested widely within the international community, thereby allowing a norm to be shaped by the various actors who are required to ultimately adopt the norm. This is based on the formed identity' of the receiving state which will then strive to ensure that the norm does contradict that identity.

A norm like R2P touches on sovereignty and state power, for former colonies, largely weaker states are often suspicions of regime change agendas and a general mistrust on the intentions of more powerful states to undermine their sovereignty. This chapter explained that when R2P as a norm is perceived through the norm circulation lens then the process appears more inclusive and

states have an opportunity to contest areas that may present threats to their sovereignty. The third pillar, especially intervention has been subjected to wider debates on humanitarian intervention being reintroduced around pillar three.

This view is supported by Thakur who argued that the UN only endorsed R2P based on the ICISS's compelling arguments that there is a substantial difference between R2P and humanitarian intervention. He further notes that the idea of humanitarian intervention has been discarded by UN officials, national diplomats and civil society since 2005, and the World Summit adoption of R2P, while there are a few who remain committed to the thinking that humanitarian intervention has simply been disguised as R2P (Thakur, 2016).

Specifically, the 2011 NATO led Libyan intervention resulted in increased suspicion and mistrust among developing nations. This created a trust deficit among developing to developed nations who had been excluded as non-permanent UNSC members from the deliberation process for the implementation of Resolution 1973. These states emerged from the experience highly skeptical of Western motives, and they took as a lesson from the Libya intervention that the use of force could also have an opposite effect from that intended aim of preventing a atrocities in Libya.

The R2P debate has become a not only a key element of some emerging powers' challenge to the established distribution of power, but a key locus for increased targeted consultation and cooperation in mounting that challenge. In addition, the intervention debates have become an important stage for emerging powers constructively to give normative content to their challenge to the established order, allowing them to move beyond what some have termed an obstructionist stance.

The perception that R2P is dead requires a sound understanding of how norms emerge, evolve, spread, and the dynamic of that the norm is associated with as it evolves. To this end, this study contends that R2P continues to evolve as a norm. This is central to demonstrate that the norm remains alive and part of the international discourse. This is particularly important when explaining the

evolution of the norm, as examined from Acharya's Norm Circulation model (Acharya, 2015) which requires agency to provide feedback from the norm taker. This process of diffusion continuously shapes and defines the norm until it is established.

Therefore, the commitment and response to R2P largely rests on the common beliefs and ideas that states may have in respect of norms such as sovereignty and human rights and the risks and benefits associated with R2P (Acharya, 2004).

Importantly, to analyse R2P in the current context it is necessary to study norms as having a "constraint" function: they define "acceptable" justifications for behavior (Winston, 2018), the constraint function of R2P is manifest in the limitation brought about through the responsibility (to the population) of a sovereign of the state to protect its population. Winston further argues that if a "state wishes to pursue a specific behavior to address a defined problem," the appropriateness of that behavior depends on how it is publicly justified (Winston, 2018, pp 640).

The constructivist assumption reflected in R2P is that states might not always justify their actions based on pure self-interest, and this is being tested in the aftermath of the NATO intervention in Libya especially in respect of the interests of NATO (Risse T, 2000).  The legitimacy of the Libyan intervention is also tested by the public acceptance, or lack thereof. This is important especially in respect of the justification of the action that was taken in Libya, when measured against the agreed to, and appropriate standard for R2P. The argument is that NATO exceeded its mandate during the intervention, exposing the potential of developed nations misusing R2P with the possibility of humanitarian intervention being revived.

For Acharya, the argument that R2P is dead,' largely emerges out of perspectives informed by moral cosmopolitism, which he argues is preoccupied with legitimising the (moral) impact of a norm. Norm circulation on the other hand compels the norm taker to contest the norm by resisting the norm, and that

contestation does not necessarily imply the end of a norm. What is important is that Acharya argues that this process strengthens the norm and will allow for a greater scope in respect of application and compliance with the norm (Acharya, 2015).

This study therefore takes heed of the suggestion  that R2P as a norm goes through processes of contestation and localisation, which then leads to feedback and the shaping of the norm as it is translated by different states, regions, and the international community. This process assumes a measure of inclusiveness making it harder for the international community to reject a norm that has been subjected to the lens offered by the norm circulation framework. Acharya therefore contends that his preceding model, localisation, which is central to norm circulation, has a fundamental role to play in the formulation of norms (Acharya, 2015, pp. 59-78).

**CHAPTER THREE**

**A retrospective analysis of the impact of UNSC Resolution's 1970 and 1973 and the Libyan intervention**

**3.1     Introduction**

This chapter will provide a retrospective analysis of the evolution of the R2P as a norm, including an outline of the NATO intervention in Libya. while examining the norm through four key dimensions that have come to characterise the evolution of the norm.

First, this chapter will provide a background and outline of the NATO led Libyan intervention in 2011 based on UNSC resolution 1973; second, the view that R2P is indeed a norm and that it has emerged and continues to evolve. A closer examination of the processes that R2P has been subjected to since the call by former UNSG Kofi Anan millennium report. This draws on the arguments by Gareth Evans and Ramesh Thakur that the NATO led Libyan intervention played an important role in the ongoing normative evolution of R2P. Third, Jenifer Welsh's study on robust norms, demonstrates empirically that in the decade, between 2010 and 2020, R2P has been referred to, and actively engaged in a number of UN debates and resolutions and it therefore continues to be relevant, importantly. Welsh suggests that the decay of the norm is not the same at the death of that norm which then supports the norm circulation model that R2P is not dead but continues to evolve. Fourthly, I will draw on Acharya's argument to contextualise and analyse the Libyan intervention through the Norm Circulation lens given that Finnemore and Sikkink's Lifecycle model, is inadequate in explaining why, a norm like R2P continues to be actively engaged and contested.

**3.1.1   The "Arab Spring" and the Libyan Intervention**

The so-called Arab Spring can best be described as a series of protests and revolutions against authoritarian and repressive regimes in the Middle East and North Africa. It is understood as having started in Tunisia in December 2010 when the street vendor, Mohamed Bouazizi, set himself on fire in protest at

police harassment. This event triggered mass protests and what seemed like popular uprisings that led to the subsequent overthrow of Zine El Abidine Ben Ali's government. The major impact was that the protest movements started to spill over into other states, including Yemen, Bahrain, Algeria, Jordon and, notably, Egypt. In Egypt the fall of the Hosni Mubarak regime was unable to contain or withstand the pressure from the widespread protests in Cairo but also elsewhere in Egypt (Ardiç, 2012, pp 14-15).

In Libya, anti-Gaddafi protestors soon controlled Benghazi, resulting in the regime retaliating. In Syria, similar protests gained momentum with protesters demanding the resignation of President Basher al-Assad in countrywide campaigns, leading to violent reappraisals the Assad regime later in 2011, the Free Syrian Army an armed resistance front emerged. The initial reaction to the so-called Arab Spring was optimistic however there were also clear concerns about the direction of uprisings especially with violent extremism posing a threat to both regional and international security (Ardiç, 2012, pp 25).

According to Hehir and Pattison, Resolution 1970 of February 2011, the situation in Libya, specifically Benghazi was referred to the International Criminal Court (ICC). Arms embargoes, travel bans, and asset freezes were rapidly implemented and administered against members of the Gadhafi family and regime. In Resolution 1973, passed in March 2011, the UN Security Council authorised the imposition of a no-fly zone, with the use of all necessary means to protect the Libyan population under Chapter VII of the UN Charter. (Hehir & Pattison, 2016)

According to Gifkins (2016) UNSC Resolution 1970 and especially 1973 authorising the no-fly zone, have provoked intense debate. Resolution 1973 marked the first time the "*Security Council authorised the non-consensual use of force for the protection of civilians against a functioning state*" (Gifkins, 2016, pp. 149) Gareth Evans argument that '*consensus fell away*' after the Libyan intervention while Thakur has also asserted that the international consensus on R2P has been damaged by the Libyan intervention (Gifkins, 2016, pp. 149).

Importantly Gifkins notes that while the Libyan intervention has been contentious, she questions these arguments as they assume that there was more consensus on R2P in the Security Council before the Arab Spring than there was after. Some have challenged this argument by showing that the Security Council used R2P in resolutions more often in the two years after Libya than it had used it prior to 2011 Frequent use of R2P language is part of the change, but the ease and speed with which R2P language has been included in Council resolutions since Libya also represents a significant shift. Gifkins makes a crucial point, "a close examination of the Security Council's use of language on R2P shows the opposite: R2P was highly contentious within the Security Council prior to the Libyan intervention, and less so afterwards" (Gifkins, 2016, pp 148). This suggests that the UNSC may have found what Gifkins calles 'agreed' language on R2P. I would go further to argue that resolutions were also less likely to use lsanguage that would have caused cointroversy such as refernces to pillar three.

## 3.2 Background to the NATO led Libyan Intervention and UNSC Resolution 1973

On 1 September1969, Colonel Muammar Gaddafi came to power in Libya following a coup d'état (Bassiouni, 2013, pp 49) Libya was country was officially run by People's Congresses and Revolutionary Committees and has been referred to as a 'State of the Masses'. In effect though, internal dissent was not tolerated, and the country was in truth run by Gaddafi and his close associates, often family members (Bassiouni, 2013, pp. 49-50)

In Resolution 1973, the UNSC "demanded an immediate ceasefire and warned that attacks against civilians in Libya could constitute crimes against humanity" (UNSC, 17 March 2011). In the preamble of the resolution, the council reiterated "the Libyan authorities' responsibility to protect the Libyan population" and recalled the communiqués by the Organization of the Islamic Conference, the Arab League and the African Union who requested an end to the violence. In paragraph 4 of UNSC Resolution 1973 the UNSC authorised those member states that would notify the UNSG to take "all necessary measures to protect

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civilians and civilian populated areas under threat of attack in Libya, including Benghazi, while excluding an occupation force of any form on any part of Libyan territory" (UNSC, 17 March 2011).

Pedde outlines the narrative around the Libya intervention as bringing to the fore the 'complex and controversial series of developments' (Pedde, 2017, pp 93). She delves into the conflicting interests which are apparent in the European, and Arab dimensions, key Mediterranean states including Italy, Turkey, France, as well as Great Britain and Arab states including Qatar, met with opposition from United Arab Emirates and Saudi Arabia on the other (Pedde, 2017). Although the eruption in Libya in 2011 resembled, at the time, consistencies with what was dubbed the "*Arab Spring"* Pedde asserts that the situation in Libya was different from those in Tunisia and Egypt.

Gaddafi was an authoritarian leader, but Libya's unique circumstances and interests drew the distinction with neighboring states that were being impacted by the so-called Arab Spring in Tunisia and Egypt. Libya was economically strong and it boasted a population that was reasonably comfortable, with a good quality of life in urban centers (Pedde, 2017 pp 94-95).

The basis of Gaddafi's power and influence rested in how he maintained 'strict control' over the body politic and the security apparatus in Libya. Gaddafi used his power to win loyalty through alliances, nepotism and patronage, through which Gaddafi maintained power for over four decades (Pedde, 2017 pp 94). Since the 1990's Gaddafi gradually started to stabilise relations with the US 'after several altercations during'(Pedde, 2019, pp 94). The security situation in Libya, under Gaddafi was stable, and no meaningful threat existed inside Libya, however in 2011 the uprising that started in Benghazi was not expected, especially given Libya's stability relative to the region (Ardiç, 2012).

One of the main triggers of the uprising was the detention of a prominent human rights lawyer Fethi Tarbel in Benghazi. Even though the Libyan uprising was not predictable there were a number of issues that supported the idea of a popular uprising within Libya for the following key reasons. First, the people took to the

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streets in unarmed and as peaceful demonstrators and the regime responded with live ammunition. However, when the air force was ordered to bomb civilians, the regime started to unravel. Second, signs of a fracture within the presidential support base. The higher ranking officers set up the National Transitional Council, which would lead the rebellion while acting as a conduit between the various powers that supported the overthrow of the regime. Third, the Libyan military was not a popular force in the country, but many of its officers refused to obey Ghaddafi orders to shoot demonstrators.

During the uprising, Ghaddafi relied on the special brigades led by his sons and called in mercenaries to help suppress the rebellion. The involvement of mercenaries to kill Libyans isolated Ghaddafi from large sectors of the military. In light of this, a group of military commanders called on troops to join the protesters.

Pedde highlights the role of the global mass media and the way in which the coverage was building a narrative of the Libyan crisis. The consistent narrative was that of a violent government reaction, which would be easily accepted given the history and the states authoritarian grip was synonymous with the way in which the popular media presented Gaddafi for decades. According to Pedde, this narrative was embedded within the reporting of the Qatari news network Al Jazeera. The strategic release of footage covering dramatic violence, destruction, rage and death on a systematic basis played a role in convincing the European public that the regime has turned on its people and a massacre was underway as a means of Gaddafi retaining his power (Pedde, 2017).

As the situation in Libya became increasingly dangerous, the UN condemned the violence, calling for restraint and (based on media reports) requested the Libyan government to desist from attacking its civilians. In a press release on 22 February 2011, the UN High Commissioner on Human Rights, Pillay called for the immediate cessation of the grave human rights violations committed by Libyan authorities and urged for an independent international investigation into the violent suppression of protests in the country. The statement went on to

affirm the protection of civilians should be the paramount consideration of the State in maintaining national order and the rule of law. Pillay (2011) went on to condemn the "widespread and systematic attacks against the civilian population may amount to crimes against humanity"(UNOCHR, 2011).

It was apparent that the statements from the UN were a consequence of the global mass media's reporting on developments within Libya. These report in turn resulted in citizens putting pressure on their leaders to intervene to prevent what appeared to be an imminent genocide. On 25 February 2011, the Human Rights Council convened a special session on the unfolding crisis in Libya. The session was opened by the High Commissioner for Human Rights who described developments as 'shocking and brutal' (Pillay, 25 February 2011).

As the debate unfolded, José-Luis Gómez del Prado, Chair of the Working Group on the use of mercenaries as a means of violating human rights delivered a Statement on behalf of All Special Procedures Mandate Holders of the United Nations Human Rights Council. The statement highlighted the fact that the information received was to be verified, but argued the international community's responsibility to protect the people of Libya. The statement also cited reports that telephone lines and various forms of communication were cut off resulting in no factual reporting of the atrocities that may be underway. The chair did however cite reports of deaths, arbitrary arrests, thousands injured as part of the unrest fueling levels of concern in the international community (Gómez del Prado, 25 February 2011).

The international concern with events in Libya was obvious given the rapid build-up of statements and resolutions that started to provide the necessary legitimisation of any decisive action by the UNSC. On 26 February 2011, the UNSC convened an urgent meeting to discuss the Libyan crisis. The meeting concluded with the adoption of Resolution 1970. The UNSC welcomed the condemnation by the key regional actors including the Arab League, the African Union and the Organisation of Islamic Cooperation (OIC). The resolution condemned the deliberate killing of civilians and explicitly recalled the

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"responsibility of the Libyan government to protect its population" (UNSC, 26 Febrary 2011).

In addition, the resolution demanded an immediate cessation of hostilities, the observance of human rights, and access for human rights monitors, and safe passage for humanitarian and medical workers and supplies into the country. To restrain the Libyan authorities, it imposed an immediate arms embargo, a ban on key individual's ability to travel mainly from the Libyan administration, a freeze on overseas assets, it also called for a review of progress with respect to these measures within 120 days. (UNSC, 26 February 2011). The UNSC unanimously adopted UNSC Resolution 1970 (2011) under Article 41 of the United Nations Charter's Chapter VII which allows for "action with respect to threats to peace, reaches of the peace, and acts of aggression. Article 41 empowers the UNSC to further authorise all member states to seize and dispose of military-related materiel banned by the text"(UNGA, 1945) (UNSG, 26 February 2011). On 2 March 2011, the Libyan Government responded critically to the UNSC resolution, arguing that the Security Council decision was premature and requested that its operations be suspended until the claims made within it could be verified and confirmed.

With unprecedented speed, and just of weeks into the uprising against Muammar Gaddafi, the United Nations Security Council (UNSC) legitimised a no-fly zone over Libya under R2P.  The UNSC 1973 was a consequence of the agitation at the UN, fueled by the escalating violence in the region, while regional organisations began to raise their concerns more frequently and vocally, the concerns expressed by regional actors had now marked a clear departure from references to media reports.

The Gulf Cooperation Council (GCC) released a statement on 7 March 2011, calling upon the Security Council to "take all necessary measures to protect civilians, including enforcing a no-fly zone over Libya" while condemning what it called the 'state-sponsored violence.' The OIC and the Arab League also endorsed the establishment of a no-fly zone but was careful to not endorse

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foreign military intervention with ground forces. On 12 March 2011, the Arab League called upon the Security Council to establish a no-fly zone and to create safe areas in places exposed to shelling (Zifack, 2012).

On 17 March 2011, the UNSC convened to review the situation and determine future actions. The outcome of its deliberations was that the Resolution 1973 (UNSC, 17 March 2011) was, as Ziflack (2012) pointed out, sought to explicitly deplore the Libyan authorities for failure to comply with Resolution 1970 which expressed the international community's concern at what was becoming a deteriorating human rights situation and escalating violence in the country. Resolution 1973 emphasised the responsibility of the Libyan Government to protect its population, and recalled the Arab League, the AU and the OIC's condemnation of the Libyan regimes conduct. To this end the resolution reflected their demand to establish a no-fly zone, and create safe havens for civilians under threat of attack (Zifack, 2012, pp 1-5).

Resolution 1973 took the historically significant resolve to authorise coercive military intervention, in a sovereign state, without seeking the consent of that state's governing authorities. Resolution 1973 made further headway in strengthening and extending the arms embargo, asset freeze and travel restrictions imposed in Resolution 1970. It deplored the flow of armed mercenaries into the country to assist government forces in suppressing the rebellion. Most importantly, it authorised the use of force by a coalition of nations under NATO (Zifack, 2012).

According to Neethling, Operation Dawn Odyssey, which formed part of the UNSC Resolution 1973 to establish a no-fly zone over Libya. This operation required an array of coordinated military operations needed to secure Libya's airspace. The NATO led military operation began to take shape immediately after the implementation of UNSC Res 1973 was underway. South Africa expressed its concern that the resolution does not authorise a military intervention and that NATO was extending its mandate. On 30 March 2011. South Africa's cabinet meeting discussed the NATO intervention and in its statement to the position that

all parties must agree to an immediate ceasefire and insisted that the territorial integrity of Libya be respected (Neethling, 2013, pp 26-27)

Evans in an interview with e-ir on 2 September 2011, described the events that unfolded after the adoption of Resolution 1973 which resulted in the NATO led arial bombings on Libyan government positions. Importantly, Evans notes that the military operations were 'multidimensional' with targeted strikes aimed at disabling Libya's air defense systems including targeting aircraft. Evans also notes that the NATO forces 'remained committed 'to the protection of civilians as their primary objective, ultimately Benghazi was swiftly within weeks of the adoption of the resolution 1973. On 2 September 2011, Evans stated in his interview with e-ir that the early stages of the operation seemed to be successful in implementing R2P. However, when it became clear that Libyan forces were spread across the country, raids on Tripoli, and various targets that had been identified as 'command and control' centers were struck (Evans, e-ir, 2 September 2011).

Gareth Evans further outlined the dynamics that played out around UNSC Resolution 1973. His insights into the developments are significant as he reminded the audience that in the build up to the UNSC meeting on 17 March 2011, Gaddafi labelled protestors as 'cockroaches.' This language immediately evoked images of Rwanda (Evans, 2 September 2011). For Evans, 'coercive military action,' under UNSC resolution 1973 was allowed to take two forms" all necessary measures" to enforce a no-fly zone, and "all necessary measures" to "protect civilians and civilian populated areas under threat of attack." Interestingly, he  was also clear that 'a foreign occupation force' was not considered, as a ground deployment for the Arab league was not acceptable and the US needed to mobilise regional support on the Council, and to ensure that Russia or China would not veto. In real terms this meant that regional support was an 'absolute precondition' for the US to legitimise the intervention and guard against any negative sentiments or allegations that an invasion was being planned (Evans, 2 September 2011).

During the interview, Evans further asserted that after UNSC Resolution 1973, was the main reason why a catastrophe was averted. He remains adamant that the NATO intervention was crucial in displacing the Gaddafi regime by the rebel forces. For Evans inability for NATO to deploy troops prolonged the efforts and this, he suggested has resulted in a widespread perception that NATO in Libya stretched its "responsibility to protect" beyond its mandate. Evans concedes that it would have been ideal if NATO had confined its role by securing and maintaining the no-fly zone and to be ready to attack if civilians or civilian areas were targeted.this according to Evans would have prevented the stress that was placed on R2P due to the intervention. (Evans, 2 September 2011).

As the conflict unfolded, the situation rapidly deteriorated. It was reported that on the weekend of 1 May 2011 the Gaddafi family compound was hit and his youngest son and three grandchildren were killed. At the UNSC, Russia criticised NATO and described this as a 'disproportionate use of force'. However, in contrast to this assertion by Russia, there were concerns expressed by Libyan fighters that NATO's bombing campaign was insufficient and not helping the fighters gain advantage. Rebels in the west and in the port city of Misrata complained that without more "intensive and extensive" NATO support, they would be unable to remove the Gaddafi administration as they lacked the military capacity to do so (Zifack, 2012).

Ziflack further observes that Resolution 1973 authorised all necessary means to protect civilians. Loyal government forces still controlled a large percentage of the strategically significant territory this maintained their tactical supremacy over the rebel forces. There was a growing concern that Libya could be split, with the growing  possibility that the rebel controlled eastern front, and government controlled western front could form breakaway states and claim sovereignty. It appeared that the rebels controlled the east and forces loyal to then regime controlled the west. Increasingly, the pressure on NATO to extend its support was growing, and that increasingly the need for 'boots on the ground' was being raised as an imperative to achieve a complete regime change. Initially, President

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Obama, rejected the idea of an 'expanded Libyan intervention' but was persuaded that the argument that the Libyan people needed to be in a position through which they can make a determination about their future was a necessary outcome of the intervention. It is widely understood, and Ziflack captured the view that the US aimed to stretch the interpretation of Resolution 1973 to justify troop deployments. (Zifack, 2012)

According to Ziflack, by September 2011, the UNSC was 'sufficiently confident' and on 16 September 2011, Resolution 2009 was adopted and the establishment of the mandate to pursue a UN Support Mission in Libya (UNSMIL). The resolution provided for the lifting of the arms embargo, securing the new Libyan authorities, the protection of humanitarian and diplomatic personnel in Libya, lifting the asset freeze on the Libyan National Oil Corporation and Zuetina Oil Company and open the airspace to allow the resumption of commercial flights in order to facilitate normal economic activity (Zifack, 2012).

UN Secretary General (UNSG) Ban Ki-Moon stated that "Resolution 1973 affirms, clearly and unequivocally, the international community's determination to fulfil its responsibility to protect civilians from violence perpetrated upon them by their own government (UNSG, 2011)." Gareth Evans, co-chair of the ICISS, stated that "the Libyan case was, at least at the outset, a textbook case of the R2P norm working exactly as it was supposed to." (Evans, 2 September 2011. pp7) He further stressed that it, was a fact that all four "BRICS" (Brazil, Russia, India, China) were represented in the Council, and there was no veto against the resolution, South Africa voted in favor of Resolution 1973 (Evans, 2 September 2011, pp 7-8).

## 3.3    Retrospective analysis of R2P since the Libyan intervention

Africa and Pretorius make the following key points around military intervention. First, military intervention can only be justified with just cause. Second, it must be "based on actual or anticipated mass human suffering and evidenced by large-scale loss of life." Third, military intervention must be governed by the right intention, which would be informed by the need to put an end to human

suffering human suffering. Fourth that 'proportional means' must play a part in arriving at the decision based on the scale of military intervention which can only be activated as a 'last resort' with'reasonable prospects for success.' (Africa and Pretorius, 2012, pp 398-399). Fifth, the *right authority,* where the UNSC is seen as the overarching authority with the responsibility to address situations where international peace and security is threatened (Africa and Pretorius, 2012, pp 398-399).

There is little dispute in the scholarly literature that the norm of R2P endured a major setback following the 2011 UN authorised NATO intervention in Libya. However, there is an increasing agreement that the setback does not imply the death of R2P, instead it supports the notion that R2P is a norm and is subjected to processes of diffusion in the international community. Using Acharya's norm circulation model, it becomes apparent that contestation, localisation and repatriation of a norm from the norm taker to the norm sender is in fact indicative of the evolution of a norm.

### 3.3.1 Empirical Analysis on the status of R2P

Maggie Powers (2015) tracks the use of R2P at the UN to test its strength as a norm. The response of the international community, especially among nations of the South was that of concern that R2P was simply an 'updated' version of humanitarian intervention. The empirical study examines the the voting patterns associated with R2P between 2011 and 2015. Powers concludes that R2P is not dead and that the debates following the intervention in Libya are part of the normative processes that R2P is subjected to. She further concludes that it is the UNSC uses R2P language to authorise peace keeping and for 'detractors to co-opt the language of R2P' this she argues might in fact reference the moral and political credibility of R2P (Powers 2015, pp 1274).

Through the use of the UNSC and UNHRC documents, Powers formulated a data driven exercise that zoomed in on the status of R2P. Her data analysis reveals that the Libyan intervention did not, in real terms, result in a decrease in the acceptance of the norm nor a decrease in authorisation of R2P framed

resolutions. The reality, according to Powers, is that R2P has become further internalised and is increasingly utilised in the Security Council and Human Rights Council (Powers, 2015). Powers makes it clear that the post Libya era, there was a discontent in respect of R2P, and had impacted on the wider acceptance and application of R2P. She demonstrates that 2011 marked a highpoint for R2P usage with one hundered and thirty three references in UNSC documents and open meetings, eleven of those references came between 1 January and 17 March 2011 (Powers 2015, pp 1274).

Interestingly, her study makes a key observation that the day after Gaddafi's assassination the UNSC recalled the government's primary R2P. This observation she argues demonstrates that Russia's concern over R2P was more about the situation in Syria as opposed to an opposition to R2P. Interestingly Russia's vote on R2P was closely associated with its interests in the country concerned and Russia's immediate interests in Syria was what informed its opposition to R2P (Powers 2015, pp 1269).

Importantly, Powers points out that Argentina and the United Kingdom highlighted the importance of R2P in statements at the UNSC, only weeks after the adoption of the WSOD. This, arguably, was the beginning R2P's normative development at the UNSC. However, powers points out that despite the strong WSOD, 'there was no overall agreement over R2P' and it was considered 'toxic' at this time. Powers identifies the use of R2P for the first time at the UNSC on 9 December 2005 during the Protection of Civilians (PoC) debate. Powers notes the following, firstly, R2P was referenced 50 times, and this was not seen again until February 2013. She further points out that the 50 references came from 26 different member states, where twenty-one countries made a combined forty affirmative R2P references, and five countries made seven neutral references (Powers, 2015, pp1260-1261).

The study revealed that only three references, during the 2005-2011 period was 'explicitly negative.' These governments were Egypt, Russia and Algeria. Both Egypt and Russia argued that the UNSC should only act after the General

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Assembly had been consulted on R2P, as mandated by the WSOD. Algeria stated that, they supported discussions at the UNGA as there was 'still no unanimity within the international community' on what R2P meant. Brazil noted that R2P 'does merit an adequate place in our system' after all peaceful means to resolve conflict have been exhausted. Brazil went on to highlight the mandate of the united nations by stating that 'the United Nations was not created to disseminate the notion that order should be imposed by force', this exposed an acceptance of the principle in theory, but a more wary position towards implementation of the use of force under R2P (Powers, 2015, pp 1262-1263).

Between 14 September 2005 and 17 March 2011, the UNSC adopted six resolutions that referenced R2P. Of those six documents, four are on country specific situations and two are on the protection of civilians. There is only one explicit reference to primary R2P and three reaffirmations of paragraphs 138 and 139 of the WSOD (Powers, 2015, pp 1265-1266).

During this period, a total of 549 references to R2P were made in UNSC open meetings and documents. The 541 references made in open meetings were overwhelmingly positive of R2P principles. Only 25 of 541 references coded (5%) qualify as explicitly negative. These negative statements came from seven countries: Sudan, Venezuela, China, Egypt, Russia, Algeria, and Qatar. While this is not a significant number of countries compared to the number using affirmative language, Russia and China's use of negative language reveals a lack of consensus within the P5 on R2P. As permanent members of the UNSC, China and Russia have the veto and are empowered to use it at any opportunity to manage such relations. R2P language or policies from adoption, as has become painfully apparent with the crisis in Syria. age (Powers, 2015, pp, 1265). What is apparent from Powers study that only a few countries explicitly opposed the use of R2P language at the UNSC and the trends are relatively consistent with the current trend.

Powers then brings in the relative success of R2P starting in 2013. She reveals that one hundred and forty-two references to R2P were made in the UNSC, the highest of any year in this study since 2005.  125 of these references were made in open meetings; 104 were affirmations, 12 negative, 8 neutral, and 1 mixed/other. The 12 negative statements were made by the following governments Nicaragua (4), Sudan (4), Syria (2), Russia (1) and Venezuela (1). None of the states were on the UNSC at the time, except Russia, but instead they were speaking at open PoC debates or debates concerning their countries (Powers, 2015).

In 2013, R2P language was also included in seven resolutions more than any other year. As of 28 February 2014, R2P had already been referenced 48 times – nearly equal to the entire year of 2012. Of those 48 references, 36 were affirmations, 5 were neutral, 1 was negative, and 3 were mixed/other. The one negative reference came from Venezuela, while the three mixed references came from the governments of Syria and Sudan (Powers, 2015, pp 1271).

This study is significant, and it helps demonstrate, empirically, that the period after the Libyan intervention marked a difficult time for R2P often. We learn from the Powers study that the Libyan intervention and the Syrian non-intervention did not mark the end of R2P but reflects the normative processes that R2P has been subjected to. This understanding is significant in that it reflects the argument that Thakur, Evans and others have been advancing in concrete terms. In addition, this data signifies the need for R2P to be evaluated from the period after 2015. This period will be covered by Welsh's study on the complex and robust character that R2P can be used to describe R2P as a norm.

### 3.3.2 Welsh and R2P as a complex and robust norm

Welsh points out that since the Libyan intervention, engagement on R2P has brought about greater consensus on R2P, this does not imply that R2P, especially pillar three was not impacted by the Libyan intervention. The contestation around  R2P's third pillar, and military intervention, reveals concerns

about the norm in certain sectors but these concerns are far from unanimous, but instead nuanced often favoring the diplomatic and persuasive approach rather than military intervention (Welsh, 2016).

Welsh suggests that R2P remains relevant, although explicit R2P language is sometimes avoided, the principles were and are applied when required. Importantly, she concludes that norm decay must not be confused with the death of a norm, and that R2P's prescriptions will survive given that they are embedded in a broader normative structure of human rights, humanitarian law, and civilian protection (Welsh, 2019). This point is crucial as it leads to the understanding that the protection of populations is an historic and embedded principle in international community.

UN statements on R2P have noticeably increased in recent years. The fact that more states are actively engaging with the Secretary-General's reports and requesting to take the floor on R2P debates demonstrate the relevance and validity of the R2P as an evolving norm. Welsh notes that many states that originally expressed concern about the concept, such as China, Iran and Malaysia have increasingly come to agree on many of its core aspects and principles toward achieving this consensus is the agreement that the primary responsibility to protect populations lies with the state itself, while humanitarian assistance, diplomatic efforts, and assistance with early warnings and ensure 'timely and decisive response.' However, it is arguing that concerns are exposed when it comes to invoking the third pillar which requires external military intervention. The bias is towards states using a full range of diplomatic, political, and humanitarian measures should be primary while the use of force should be a last resort in keeping with the major shift from humanitarian intervention (Welsh, 2019).

Welsh cites the political violence in Burundi in 2015, and argues that the case of Burundi indicates that R2P's validity remains intact (Welsh, 2019), when, the now late President Pierre Nkurunziza sought to secure a third presidential term in 2015 the response was threatening to the stability of Burundi with a failed coup,

widespread protests and violence between 2015-2017. According to the Global center for R2P, more than 1,200 people were killed and 10,000 arbitrarily detained (Global Center for R2P, January 2021). Despite the establishment of a Commission of Inquiry (CoI) and a range of targeted sanctions including EU travel bans little progress has been made. The government elected in May 2020 has continued with the violence against its population (Welsh, 2019, pp.)

Welsh notes that R2P language was not explicitly used in the Burundi case in 2015 and used in a 'circumscribed manner' in the Syrian case. This could imply that actors are less convinced about the significance of terminology with respect to crafting statements and resolutions concerning R2P. This could possibly be linked to the contestation that ensued after the Libyan intervention. For Welsh, the key question is, 'are the norm's audiences less persuaded by R2P's prescriptions?' (Welsh, 2019, PP 54-58)

The use of language in a normative framework, determines the status of a norm as a political principle, according to Welsh specific questions of whether a norm's robustness depends on it being raised and engaged specifically by actors in real-world cases. The application of the norm depends on how the norm is framed, although, there is a view among advocates of R2P who argue that specific language and commitment to the norm should be seen as mutually exclusive (Welsh, 2019, pp 66). In the case of Burundi for example, R2P was implemented without the use of specific language, this may be in part a reasoning as to why the population at risk has not been adequately protected in the case of Burundi.

Like Bellamy, Welsh challenges the view that states need not necessarily speak specifically in the terms of R2P, as it is more important for responses to support the prevention of atrocity crimes. Welsh however argues that the 'political nature and purpose of the norm' such as R2P creates an expectation that ambiguity is limited as it should be explicitly cited when invoked (Welsh, 2019).The Security Council, according to Welsh has tabled a number of resolutions containing language related to R2P with implicit and not explicit use of R2P language.

Hehir (2015) argues that the majority of these resolutions are biased toward the first pillar, which states that every state has the responsibility to protect its populations from the four mass atrocity crimes i.e., genocide, war crimes, crimes against humanity and ethnic cleansing. In practice it would simply be reduced rhetoric and little action. Similarly, critics of R2P often suggest that pillar three, which states that if a state is manifestly failing to protect its populations, then the international community must take timely and decisive action is fundamental to the implementation of R2P yet it is neither prevalent nor is it invoked (Hehir, 2015). The view among critics is that this may betray the underlying fact that the commitment to act, especially to intervene, when governments are unable or unwilling to protect their populations remains a highly contentious issue. This then requires us to interrogate if R2P language is used, to what extent do such resolution evoke pillar three and authorise intervention.

It could be argued that the reluctance of states to authorise intervention may well be caused why what Thakur deduces is when humanitarian intervention and R2P are conflated (Thakur, 2015). Welsh outlines the central weakness associated with this line of argument presented by Hehir, who argues that most of R2P resolutions are biased to the first pillar, and this exposes a reluctance on the part of te international community to implement pillar three. Welsh argues that R2P, is a complex norm, as it is comprises of three pillars that are mutually reinforcing, hence any response will and should ultimately reflect all three pillars and that by 'cherry picking' aspects of R2P to support claims that only a robust, interventionist response from the international community represents the 'real' R2P. This is flawed and ignores the fact that the requirements for all pillars must be fulfilled before implementation in totality can commence (Welsh, 2019).

It is arguable that such criticism misses the point of the ICISS Report, the WSOD resolution 138 and 139 and the 2009 UNSG Report on the Implementation of R2P as these provide for a wide spectrum of options before considering intervention. These options include but are not restricted to engaging the government to try and secure a peaceful diplomatic, solution, humanitarian aid,

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Second, she further notes that there were very few cases at the UNGA or the UNSC in which coercive action by international actors was considered appropriate. Welsh concludes that it is therefore premature to conclude that R2P's very validity is at stake as this aspect continues to evolve (Welsh, 2019, pp 65-67).

When it could be argued that the characterization of, and the response to the violence in Burundi and Syria could be perceived as a weakening of R2P's robustness. Welsh argues that this could only be the case if it could be shown that 'the duty of conduct prescribed by the norm failed to materialize in these situations.' Welsh then measures this by questioning the fact that the majority of actors (both states and other key international actors) saw the violence as grave enough to point to the risk or commission of atrocity crimes, constituting a matter of international concern? States at both the regional and international level deliberated on various forms of the response and utilised national and international policy measures to address the situation. (Welsh, 2019)

Importantly, Welsh draws on the Burundian case, and highlights the finding that the normative content of R2P, including the prescriptions for the international community was firmly in place. Resolution 2248 was to enable the UN to implement R2P. However, the issue of language resurfaced in the final text was crafted to accommodate Russian concerns about regime security, which in the end received a unanimous vote. The Russian position on Burundi could have been interpreted as a form of 'validity contestation' as it was a matter for the sovereign government of Burundi. Russia's more general engagement with R2P suggests it has no serious opposition to the norm but that it is playing a role to shape and strengthen the norm, and bring more focus on prevention and national ownership to prevent the abuse of the norm (Welsh, 2019) (Kurowska, 2014).

### 3.3.3 Did R2P survive the NATO led Libyan intervention?

UNSC Resolution 1973 is the first UNSC resolution that mandated the use of force against a functioning state. The implementation of this resolution was a direct consequence of the threat to Libya's civilian population. The activation of

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the no-fly zone, and strategic targeting of Libya military assets was conducted in order to prevent the imminent risk of the Libyan authorities committing atrocity crimes. Importantly, the NATO led intervention in Libya, the debate on R2P vis a vis humanitarian intervention has grown exponentially mainly among scholars and policymakers.  According to Brockmeier et al 'It was generally accepted by advocates of R2P that Libya was a key turning point for R2P as it represented the turning point from the 'battle of ideas to the battle of implementation.' (Brockmeier, Stuenkel, Tourinho, 2016a, pp113-114).

Brockmeier et al noted that the immediate reaction to the Libyan intervention was loaded with language that described R2P as following a linear evolutionary trajectory of R2P as being either 'alive' or 'dead', it has 'arrived' or will need to 'Rest in Peace' (Brockmeier, Stuenkel, Tourinho, 2016a, pp 114). In recent years a more nuanced and less binary approach to R2P is emerging, Welsh (2019) for example has extensively elaborated on the 'complex' nature of R2P as a norm and that after the initial reactions, member states began to look at R2P as containing a variety of interventions and that military intervention is only but among the different options available.

Brockmeier et al (2016a) further observe that the UNSC Resolution 1973 did not only authorise the implementation of a no-fly zone over Libya. Additional measures, consistent with the R2P in its totality that included a tightening of the arms embargo, asset freezes and ban on flights were part of the mandate provided by the UNSC Resolution 1973 (S/RES/1973, 2011).  Paragraph 2 of the resolution was advanced by Brazil, India and South Africa emphasised the "need to intensify efforts to find a solution to the crisis". This paragraph in particular explicitly makes reference to dialogue and refers to the efforts of the secretary-general's special envoy Jordanian diplomat, Abdelelah al Khatib to Libya, and the African Union to facilitate dialogue. Paragraph two also stressed the need to secure the political reforms necessary to find a peaceful and sustainable solution (Brockmeier, Stuenkel, Tourinho, 2016a, pp116).

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Brockmeier et al (2016 a) observe that after resolution 1973 was passed, the international community seemed at odds with the implementation of 1973 and on 19 March 2011, French, British and US forces began implementing their military operations in Libya. First was the imposition of the no-fly zone, while targeted bombing Gaddafi tanks from the air. An attempt by representatives of the African Union to travel to Libya to negotiate a ceasefire with the Gaddafi government on 19 March 2011 was cancelled because the coalition forces were unwilling to lift the no-fly zone (Brockmeier 2016a, pp116-117).

On 19 March 2011, French, British and US forces began military operations in Libya. The objective was to impose a no-fly zone.  Two weeks after the start of the military efforts, NATO took over the operation. Between March and October 2011, NATO carried out airstrikes with other initiatives to aimed at securing a political solution to the conflict. Among these initiatives was the deployment of Abdelelah al Khatib, the secretary-general's special envoy to Libya, who was tasked to persuade both the rebel forces and the Gaddafi government to negotiate a ceasefire. The African Union attempted to mediate between the parties and the Libya Contact Group, made up of the coalition that initiated the military operation in Libya, that sought to pursue diplomacy and arrive at a a negotiated political solution (Brockmeier et al, 2016 a, pp116-117).

The challenge to R2P gained momentum with several states, scholars, interest's groups and international commentators argued that regime change significantly overstepped the mandate of Resolution 1973, it was ultimately the overthrow and death of Gaddafi in October 2011 that ended the NATO intervention. According to Brockmeier et al (2016a) interviews with New York based diplomats revealed that the controversy surrounding the implementation of the protection of civilian's mandate in Libya, appeared to have created mistrust among Council members (Brockmeier, 2016a).

Bellamy (2014) notes that the Russian and Chinese decisions to veto three draft Security Council resolutions on Syria, prevented UN action in Syria, until the chemical attack on Ghouta in August 2012. Their reservations were based on the

implementation of UNSC Resolution 1973 on Libya, by NATO and its allies. Bellamy specifies that the vetoes on Syria were informed by the fact that NATO had interpreted the mandate in Libya to justify arming the National Transition Council (NTC) irrespective of the arms embargo by the UN. In this sense NATO's operations contributing directly to the downfall of Gadhafi, which was authorised by the Council. The intervention unleashed a serious security crisis caused by Gadhafi's fall, which included the Islamist insurgency in Mali, and instability that gave rise to terrorism in Libya (Bellamy, 2014),

Bellamy further examines the first draft resolution on Syria which came to a vote on 4 October 2011 (S/2011/612). The draft resolution attempted to advance an R2P intervention in Syria and recalled the Syrian government's 'primary responsibility to protect' its population from war crimes and crimes against humanity and condemned the systematic violation of human rights and targeting of civilians by the regime. Russia expressed its concerns that the statement refers to the UNSC was firstly examining the Syrian conflict in isolation of the Libyan experience and that 'compliance with Security Council resolutions on Libya in the NATO interpretation is a model for the future actions of NATO in implementing the responsibility to protect' (Bellamy, 2014, pp 25)

Bellamy makes an important point that the most controversial elements of the draft resolution (S/2011/612) were paragraphs 9 and 11. Paragraph 9 called for Member States to exercise '*vigilance and restraint'* in providing '*direct or indirect'* arms to the Syrian government, the paragraph also included *technical training, financial resources or services, advice, other services or assistance related to such arms and related materie*l this would have been tantamount ro sanctions. The resolution was vetoed by Russia and China on those grounds (Bellamy, 2014, pp 27-28).

Paragraph 11 was more explicit in that the Council was expected to review compliance with measures within 30 days, under Article 41 of the UN Charter dealing with sanctions (UNGA, 1945,). A total of nine Council members voted in favor, Gabon, and Nigeria, four abstained Brazil, India, Lebanon and South

Africa, and two Permanent Members but the permanent China and Russia voted against. Although the requisite number of votes were in fact achieved, the veto by Russia and China stopped the resolution (Bellamy, 2014) (S/2011/612).

The second draft resolution on Syria was presented for a vote on 4 February 2012 (S/2012/ 77, 4 February 2012) . The resolution was tabled in support of the Arab League Plan of Action that had been agreed to by the Syrian authorities on 2 November 2011. The plan required that armed and military personnel were to be withdrawn, Arab League monitors would be deployed, and both foreign reporters and Arab monitors would be granted access. However, the monitoring mission was soon suspended when it became clear that none of these agreements were being honored. The resolution was vetoed by Russia and China. The failure of this process resulted in former UNSG Kofi Annan  was appointed as the first joint UN-League of Arab States envoy, he was responsible for assisting with getting the  Syrian parties to reach a negotiated settlement (Bellamy, 2014, pp28-29).

Bellamy then examines the various failed resolutions and outlined Russia's objections to the draft text on 4 February 2022. Russia took the view that the bias against the Syrian regime was apparent and that they were not being treated as equals. Russia argues that the resolution did not take into account the requirement that the opposition groups distance themselves from terror organisations and that the Syrian armed forces from the cities, there should be an end to attacks by armed groups on State institutions and neighborhoods. (Bellamy, 2014, pp34). (S/PV.6711, pp 9, 4 February 2012)

Welsh makes an important point that R2P should be evaluated with a view to factor in the extent to which expectations have changed, and how atrocity crimes are prevented or minimised. Welsh also asserts that R2P still has a long and uneven journey, and the international human rights order has taken decades to effect concrete changes in the behavior of states (Welsh, 2016).

Welsh further explains that  R2P is a 'complex norm', the existence of the three pillars , that contain multiple dimensions ranging from preventative to

interventionist prescripts. In respect of the R2P, and the embedded notions of responsible sovereignty, states are required to both prevent atrocities against their populations and protect their populations from atrocity crimes. R2P has also included provisions for the international community to support states in fulfilling this responsibility.  However, Welsh argues that the complex structure of R2P suggests that 'has to be judged at a variety of levels and in terms of different kinds of conduct' (Welsh, 2016, pp 56).

Importantly Welsh points out that R2P by virtue of its structure, creates a situation where the failure on the part of a national government to protect its population is meant to act as a trigger for fulfillment of another component, the international community's remedial role in protecting'(Welsh, 2016, pp56-57). This, according to Welsh is among the structural vulnerabilities of R2P and Welsh argues that this 'formulation makes the norm particularly vulnerable to applicatory contestation.'  This allows states to debate the importance of one pillar over another which in the end presents difficulties in that all there pillars are not seen as equal. However, Welsh argues that the complexity of R2P can even help protect the robustness of R2P  as all three pillars are unlikely to be contested at the same time, through this process the stronger and weaker dimensions of R2P are exposed and reinforced through processes of contestation (Welsh, 2016, pp56-58).  .

In the period between 2014-15, developments that may constitute genocide, war crimes, ethnic cleansing and crimes against humanity were occurring in the Central African Republic, the Democratic Republic of the Congo, the Democratic Republic of North Korea, Iraq, Libya, Nigeria, South Sudan, Sudan, Syria and Yemen.

The nature of contemporary conflicts, weapons and tactics  has resulted in devastating impacts on civilians. The advanced technologies used, the frequency of attacks on civilian targets, that range from  facilities to obstructing access to for humanitarian aid with life saving supplies. Civilian harm is inevitable as a

consequence of what happens in the 'fog of war.' (Welsh, 2016) (see also Deitelhoff & Zimmerman, 2013)

Welsh's analysis and her examination draws on Zimmerman and Deitelhoff's framework on 'robustness' and 'contestation' and it is here that we start to draw close the notion of norm circulation. Welsh examines two important elelemnts that define the robustness and the contestation around the norm. First, that diplomatic engagement and policy development has brought credibility to core elements. As part of my argument the validity as well as the credibility of the norm whilst, according to Welsh R2P original cosmopolitan aspirations have dampened much of the debate around R2P. Second, Welsh argues that the 'persistent applicatory contestation' especially in respect of the third pillar reveals the deeper concerns about the norm. This was clearly visible in the aftermath of the Libyan intervention, resulting in a reluctance to use R2P language and risk another UNSC Resolution 1973 that provided the mandate for the NATO intervention in Libya. Welsh cites the reluctance to adopt R2P language in the case of Syria, and Burundi in 2015 thereby raising fundamental questions on the implementation of R2P (Welsh, 2019, pp 53-54)

Welsh argues that the three pillars of R2P combine to form a 'complex norm', since it is comprised of more than one prescription. Welsh argues that the state's responsibilities in the context of R2P are three fold, first a responsibility to protect their own populations from atrocity crimes, and second to assist other states to fulfil this responsibility, and third if the assistance fails then the state is also required to join the international community in response to protection failures within the international community (Welsh, 2019, pp 56-57).

Welsh further argues that any examination of R2P should factor in the complect structure of the norm, relative to different kinds of behavior by the state. However, this also makes the norm particularly vulnerable to 'applicatory contestation,' given that states can debate whether certain pillars should have greater or attention than others. However, when states selectively engage parts of R2P, there is a risk of contradicting the 2009 UNSG Report on the

Implementation of R2P which claims that all the pillars have equal standing. However, the complex structure of R2P also has the potential to safeguard its 'robustness,' as contestation, according to Welsh, is rarely directed at all three dimensions, and frequently seeks to strengthen one aspect even while raising questions about another (Welsh, 2019, pp56-57).

Assessing the robust nature of R2P, Welsh draws on the idea of Convergence on Validity. The validity of R2P as a norm has not been challenged on its fundamentals. The principles that are embedded with the normative framework of R2P has not been challenged or contested in any significant manner since the World Summit in 2005 (Welsh, 2019) (Deitelhoff and Zimmerman, 2013). However, the validity in respect of pillar three remains an area that states are reluctant to evoke in order to protect populations due to its proximity to humanitarian intervention and the concerns that emerged mainly after the Libyan intervention have

In both capacities as both a UN high level official and commentator on R2P asserts that the annual reports of the UNSG demonstrate that there has been discussion on the responsibility to protect in the Informal Interactive Dialogues of the General Assembly. In addition, Member States have reaffirmed the commitments at the World Summit in 2005. It is important to note that these dialogues that these dialogues have helped to both advance a common understanding of the original concept of R2P, while lobbying support for an implementation framework based on the three supporting pillars adopted in 2009. (Welsh, 2019)

Statements by representatives of governments at the annual dialogues have UN debates on R2P are frequent and substantive the discussion at the United Nations mainly within the context of the UNSG's Implementation Report. Iran, China and Malaysia, who have been known critics of of R2P have since come to agree on R2P's core principles, including the notion that the primary responsibility to protect lies with the state, and that this responsibility entails prevention (Welsh, 2019). However, they remain rigorous in their views that

pillars one and two are more acceptable than pillar three. This suggests that officials at the UN are increasingly being mandated to incorporate R2P into their positions, this implies that the norm was subjected to processes of contestation and localisation, the norm is then repatriated to the international community in a form that is acceptable to previously skeptical states.

Welsh states that international assistance efforts, especially on development cooperation and/or peacebuilding exercises, as a matter of principle should be directed states which may demonstrate early signs of risk, to ensure meaning to what might be a "timely and decisive response" to an imminent threat of atrocity crimes. R2P is clear on the need to utilize a full range of diplomatic, political, and humanitarian measures, and that the use of force should be a measure of last resort. For Welsh, R2P's relatively high degree of validity is also due to the growing convergence of views that cover all regions (Welsh, 2019). As reflected in the ICISS report, the WSOD and repeated by advocates of R2P including Gareth Evans and Ramesh Thakur it must be noted that R2P, in order to fulfil its protection mandate, is required to intervene as provided for in pillar three. However, such an intervention will only occur when all criteria justifying the need for the intervention has been met, and all measures to prevent an imminent atrocity crime have failed, and a population is at risk.

The empirical record of deliberations and actions at the UN demonstrate that only a small number of states have contested R2P's validity. Welsh points out that states such as Cuba, Nicaragua, Venezuela, and Sudan have tested the legitimacy of R2P, the wider acceptance of R2P at the UNGA is indicative of its relevance. Welsh further points out that the principles of R2P enjoys much wider support in the international community. Welsh again points out that the record of the failed vote held at the UNGA in September 2017 to place R2P on the formal agenda of the General Assembly, confirms its validity and the growing consensus (Welsh, 2019, pp 58-59). The vote recorded 113 in favor of R2P remaining on the UNGA agenda, to 21 against, with 17 abstentions. (UNGA, 15 September 2017)

China's foreign policy is centered on the principles of noninterference in the affairs of other states and the supremacy of state sovereignty, as Zhang and Liu describe this as an 'unshakable foundation' of China's foreign policy (Zhang & Liu, 2014, pp 413). Predictably, China's intervention in the General Assembly discussion of 2009, on the implementation of R2P, revealed concerns about 'R2P's scope and potential to erode state sovereignty.' This perception has however changed, and by 2014 China was describing R2P as a norm that was appropriate for the international community to adopt measures that would support its implementation. According to Zhang and Liu, the Chinese Government refers to R2P as follows; first it restricts the application of R2P to the four mass atrocity crimes listed 2005 World Summit; second China believes that R2P operations can only be undertaken with the agreement of the state concerned; Third, a healthy and powerful sovereign state is beneficial to the stability, good governance and balanced development of a country and international society; and fourth that the international community should pay attention to development and poverty alleviation in weak states and de-prioritise intervention. (Zhang & Liu, 2014, pp 411). However, China made its posture on intervention clear in outlining its view ion the rationale for intervention, "even under these special circumstances, the protection offered by the international community should be temporary and supplementary with the final aim being the restoration of the state's sovereignty" (Zhang & Liu, 2014, pp 413).

Shifting views by countries like Malaysia and India demonstrate further a less suspicious and more positive engagement with the norm. By 2015, Malaysia's UNGA statements on R2P acknowledged successes in the implementation of responsibility to protect, while India's initial cautious approach, on R2P. India's remarks since 2015, have been more constructive on ways to link the principle's implementation to broader agendas such as peacebuilding and conflict prevention. Similarly, Indonesia's statements noted that UN bodies had "come a long way in their efforts to strengthen adherence to the three pillars of responsibility to protect" (Welsh, 2019) (UNGA, 2009) (Global Centre for R2P, 2019).

The Secretary-General has since released annual reports in advance of the UN General Assembly Informal Interactive Dialogue on the Responsibility to Protect. During June 2018 the UNGA held its first debate on the Responsibility to Protect since 2009. Welsh highlights the following facts, first, by June 2018, the UNSC had adopted more than 50 resolutions that make specific reference to R2P, member states have been reminded that they are required to protect their populations from atrocity crimes, with two peacekeeping missions that were specifically based on R2P. Second, the UNGA has continued its consideration of the principle by convening eight annual Informal Interactive Dialogues, and agreed to put R2P on the formal agenda of both its 2017, 72nd and 2018, 73rd sessions of the UNGA Welsh, 2019, pp 55-56).

Individual states, non-state actors and humanitarian networks, are engaged in numerous initiatives to ensure they can prevent mass atrocity crimes mainly by upholding their pillar I and pillar II commitments. According to the Global Centre for R2P, R2P has been invoked in more than 80 UN Security Council resolutions concerning crises in Central African Republic, Côte d'Ivoire, Democratic Republic of the Congo, Liberia, Libya, Mali, Somalia, South Sudan, Syria, and Yemen, as well as thematic resolutions concerning the prevention of genocide, prevention of armed conflict and restricting the trade of small arms and light weapons. The Responsibility to Protect has also been invoked in more than 50 Human Rights Council resolutions and 13 General Assembly resolutions. These resolutions and their related preventive and – as a last resort – coercive measures, have demonstrated that collective action to protect populations at risk is possible (Global Centre for R2P, 2020).

## 3.4 Conclusion

This chapter has demonstrated that R2P is relevant and alive. The study by Powers sets a strong case based on empirical data that demonstrates that R2P is indeed a living norm and one that continues to evolve. Powers study further sheds light on the strength of the norm and further demonstrates that since 2013 the use of R2P at the UNSC and the UNHRC has been on the increase.

This chapter has also demonstrated that the assumption that R2P was humanitarian intervention in a different form, excludes the fundamental basis of R2P's origins as a better option, based on the wider acceptance of its core principles and the wider participation of the international community in the finasation of the 2005, WSOD as well as the UNSG's 2009 report on the implementation of R2P and that unlike humanitarian intervention, R2P is a norm that is undergoing an evolutionary process that continues to shape and develop the norm.

Importantly, unlike humanitarian intervention R2P is not premised on The Hague, Geneva or ICC conventions and treatise. Third, as a norm R2P has no legal framework, and as with norms in general, it is based on the generally accepted values and principles concerning the protection of populations among states; fourth, R2P is not solely based on military intervention but instead on a wide spectrum of preventative options (Acharya, 2015) (see also Evans, 2011, Thakur and Samford, 2015, UNGA, World Summit Outcomes 24 October 2005).

This chapter does not dispute the fact that that the reputational impact of the Libyan intervention on R2P has been significant, however, it acknowledges that R2P has gained some momentum and has once more again become part of the UN program of debate and will be examined this more closely the 2018 UNGA debates on R2P are clear that it remains an acceptable norm to the majority of UN member states (Guterres, 2018) (Welsh, 2019).

Welsh (2016) argues that since the adoption of R2P, Kenya, Cote d'Ivoire, Guinea, Kyrgyzstan, and Mali have been presented as successful examples of the prevention of atrocity crimes. Specifically, Kenya is often cited as a sterking example of preventative action in 2007. The actions included international diplomatic coordination mostly through the UN, the AU and other regional structures. This approach was focused on the unfolding crisis and resultant violence after the Presidential election in December 2007 (Welsh, 2016, pp 221).

**CHAPTER FOUR:**

**Findings and Discussion:**

**4.1    Introduction**

This chapter will examine three examples of states in which populations are either victims of ongoing atrocities or at risk of atrocities. The cases of Syria, Myanmar and South Sudan are appropriate for the following reasons.  First, this study is aimed at a providing a retrospective analysis of R2P since the Libyan intervention in 2011, these three examples fall within this timeframe. Second, this study challenges the idea that R2P is dead, and argues that Acharya's (2015) norm circulation framework provides a lens that sees R2P as a norm that is being subjected to various forms of localisation and contestation as it is diffused in the international community. Third, in addition to Acharya, Welsh's (2019) presentation of R2P as a complex and robust norm explains how the preventative methods of R2P that include sanctions, arms embargoes, judicial measures and diplomatic isolation render military intervention but one part of R2P's rubric.

This study, in its totality argues that R2P continues to exist as a norm, and this is justified when examining R2P from the norm circulation lens. The broad acceptance of responsible sovereignty, as expressed in the in the ICISS (2001) report, the  WSOD (2005) and the UNSG's Report on the Implementation of R2P (2009), remains uncontested. It is understood that in cases where populations are at risk then external intervention is both necessary and expected. However, on the implementation of pillar three, and the   activation of military intervention there appears to be skepticism within the international community.

Critics of R2P argue that if pillar three remains highly contested, then it follows that R2P has failed and has little or no relevance. However, advocates of R2P argue that the implementation of R2P, was limited by first broadening the definition of intervention to include diplomatic interventions, sanctions, embargoes, and other nonmilitary means in line with the UN Charter. The WSOD

(2005) further constrains the activation of military intervention adding the qualification that the state must be 'manifestly failing to protect its populations' and only when the international community has fully exhausted all other means and options then, and only then can military intervention be justified. These are arguably the main reason why R2P's third pillar remains contested.

The expectations that are placed on the requirements for military intervention are stringent. Should the UNSC authorise a military intervention, then it can only be because the international community has exhausted all other options. In addition, if the state has manifestly failed, or is unwilling to protect its population, it is at that point at which military intervention can be authorised by the UNSC.

*When R2P marked its 15th year, a series of articles were published by the Global R2P webpage, Evans penned an article in which he affirmed that "Normatively,* the concept of 'the responsibility to protect' has achieved a global acceptance unimaginable for the earlier concept of 'the right of humanitarian intervention," which R2P has now rightly and almost completely displaced." (Evans, 2020).

In the same edition, Karen Smith (2020) draws attention to the ethical character of R2P, where R2P reflects "the idea of responsibility towards others" She advances the idea that political authority and a responsibility to protect citizens exists in many schools of thought and paradigms in the international community. Smith also makes the point that, in 2020, fifteen years since the R2P was accepted by the international community, it is crucial that we build a more inclusive narrative to validate the notion that this is a global and shared responsibility.

Smith argues that when viewing R2P from the perspective of the countries of the South, embedded worldviews such as *ubuntu in Southern Africa, sumak kawsay* of Latin America or the *Daoist* philosophy that emerge out of Asia, in different ways, reflect the notion of responsibility towards others through a common humanity. Smith makes the point that "despite their differences, all these worldviews emphasise that, as humans, we are all inextricably connected to one

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another, and according to some, also to nature. As individuals, and as states (which, arguably, are an extension of the individual), we therefore do not merely have a responsibility towards others due to a sense of obligation or duty, but rather because we are all intimately related" (Smith, 2020).

This resonates, in many ways with Acharya's norm circulation framework that requires a norm to reflect the impact of cognitive priors of the norm taking state, which in the case of R2P becomes an important component of analysing the current state of R2P and its existence as a norm (Acharya, 2015). As this study has already elaborated in previous chapters, when analysing R2P from the perspective of what Welsh calls a complex norm, it becomes apparent that R2P is not necessarily being contested in its totality, but instead, it is the third pillar and more specifically concerns around military intervention that is highly contested (Welsh, 2019).

It therefore becomes necessary to examine examples of when, how and in which context R2P has been evoked at the UNSC since the Libyan intervention. This chapter will first look at the case of Syria, which is often seen as the conflict immediately after the Libyan intervention that exposed the international community's concerns with respect to the implementation of R2P. Second, the more recent and ongoing violence and unrest in Myanmar and third South Sudan which faces ongoing internal conflict with reports of atrocities being committed with impunity.

## 4.2    Syria and R2P

The Syrian conflict is often cited as the test that R2P failed after Libya in 2011. On 15 March 2011, reports began to surface of anti-government protests and unrest which formed part of the broader 'Arab Spring.' The Assad regime responded with crackdowns and harsh measures to quell the unrest. This resulted in a spiral of violence that led to the protracted conflict that continues. It is often suggested that R2P was exposed during the NATO led Libyan intervention as yet another vehicle for humanitarian intervention as well as regime change agendas. The inability of the international community to

implement R2P in Syria was mainly due to the way the Libyan intervention was implemented.

According to Foot (2020) the Syrian conflict has experienced various phases. The first phase of the conflict was triggered by the Arab Spring and followed by the Syrian  government's harsh and violent response to the protests. This resulted in reported defections from the Syrian armed forces, to set up a 'Free Syrian Army.' This resulted in the escalation of violence which spread across the country with an increasingly sectarian character associated with the uprising where communities were mobilised to defend themselves. The gravity of the Syrian conflict was clear when peace efforts, that included the Arab League and former UN Secretary-General Kofi Annan, resulted in Annan resigning in August 2012 as joint UN-Arab League Special Envoy (Foot, 2020, pp 165).

By 2014, the conflict had become internationalised with several foreign forces including Hezbollah, Iran, Russia, Turkey, and the United States engaged in various ways. In 2013, the Syrian government was alleged to have used chemical weapons. This created an immediate concern that Western backed military intervention might be unavoidable. However, Foot explains that this was averted, by domestic opposition and expressions of caution in both the United States and United Kingdom. Russia decision to facilitate an agreement that resulted in the destruction of the Syrian chemical weapons capabilities (Foot, 2020, pp 165-166).

According to R2P Monitor, since the start of the Syrian conflict in 2011, at least 580,000 people have been killed, more than 130,000 arbitrary detentions, abductions, disappearances have occurred, 13 million people have been displaced, including 6.7 million Syrian refugees. An estimated 13.4 million Syrians remain in need of humanitarian assistance (R2P Monitor, 2022).

On 13 January 2022, Anwar Raslan, a former member of Syria's Intelligence Directorate was convicted in Germany for crimes against humanity. Raslan was charged and convicted of killing, torture, serious deprivation of liberty, rape and sexual assault in his capacity as head of investigations at the al-Khatib detention

facility in Damascus, that was also known as "Branch 251." (Atrocity Alert No. 284, 2022)

Syria is not a signatory to the Rome Statute of the International Criminal Court, however the conviction of Raslan at the Higher Regional Court in Koblenz, Germany sent a clear message that war criminals can also be prosecuted in domestic jurisdictions. This judgement is hailed as a victory for human rights. Michelle Bachelet, UN High Commissioner on Human Rights (UNHCHR), commented that the Anwar Raslan verdict "should serve to spur forward all efforts to widen the net of accountability for all perpetrators of the unspeakable crimes that have characterised this brutal conflict... This serves as a powerful deterrent and helps prevent future atrocities" (Hill, BBC Online, 2022).

According to the Global Centre for the Responsibility to Protect, between 2013 and June 2022, the UNSC has passed 27 resolutions to provide access for humanitarian assistance, peace talks and chemical weapons in Syria, several resolutions did highlight the Syrian government's responsibility to protect, but they have only been partially implemented. Russia and China have jointly vetoed ten draft resolutions and Russia has independently vetoed an additional six. On 11 January 2022 the UNSC extended authorization for cross-border aid through one crossing until July (Global Centre for R2P, 2022).

On 22 August 2016, the UNHRC voted to establish an International, Impartial and Independent Mechanism to assist in the investigation and prosecution of perpetrators of atrocities in Syria. To this end the Commission of Inquiry (CoI) on the Syrian Arab Republic was established. An increasing number of states have also initiated domestic legal proceedings against suspected Syrian perpetrators under universal jurisdiction (S-17/1)

On 24 February 2021, a German court delivered the first conviction of another member of Syria's intelligence services, Eyad A., for complicity in crimes against humanity. Nearly a year later, on 13 January 2022, the same court convicted Anwar R., a high-ranking former Syrian government official, of crimes against humanity. On 19 January another German court opened a trial involving

allegations of torture and murder by a Syrian state agent (BBC News Online, 2022).

It must also be noted that on September 2020 the government of the Netherlands formally requested negotiations with the Syrian government as a first step toward holding Syria accountable for violations of the UN Convention against Torture. The government of Canada issued a similar request on 4 March 2021. In addition, on 21 April 2021 most States Parties to the Chemical Weapons Convention voted to suspend Syria's rights and privileges under the treaty (Global Centre for R2P Online).

## 4.3. Myanmar and R2P

In March 2022, the UN High Commissioner for Human Rights, Michelle Bachelet, in her report to the 49th Session of the UNHRC, on the situation in Myanmar, stated that, "Thirteen months after the military coup of 1 February 2021, the human rights of the people of Myanmar are in profound crisis. Pre-existing armed conflicts in multiple ethnic states have been inflamed by the systematic use of brutal methods by security forces" (Bachelet, 2022). Bachelet acknowledged the violations starting in 2017 against the Rohingya population and the conduct of the Tatmadaw against civilians after the 1 February 2021 coup.

The coup created serious threats to the Rohingya population including threats to the return of those who were living as refugees in neighbouring countries mainly Bangladesh. It is highly unlikely that the military regime will address issue of citizenship for the Rohingya, nor will they accept accountability for past atrocities.

The Myanmar armed forces, known as the Tatmadaw, have been able to continue committing widespread and systematic human rights violations and abuses against civilians, particularly those from ethnic minority populations. It is therefore highly likely that the Tatmadaw will continue to target civilians, and the armed resistance, in what appears to be a widespread and systematic scorched earth campaign. (Mennecke, and Stensrud, 2021)

According to the R2P Monitor (2022) the Myanmar Government launched what it called 'clearance operations' against the Rohingya population in the Rakhine state. The Rohingya were forced to flee the country while Bangladesh had to cater for over 900,000 refugees. In June 2022, the R2P Monitor reported that up to 600,000 Rohingya remain in Rakhine State and continue to face severe human rights violations. The source of the violence was Myanmar's 1982 Citizenship Law which rendered most Rohingya stateless (R2P Monitor, 2022, pp13).

In September 2018, The UNHCR established the Independent Investigative Mechanism for Myanmar (IIMM) (A/HRC/RES/39/2) to investigate and prepare for the prosecution of perpetrators of atrocities against the Rohingya. The mechanism served as a repository of analysis, consolidated data, and analysis of evidence involving the most serious international crimes and violations of international law since 2011. Importantly, the IIMM is also mandated to prepare and collate allegations of human rights violations as well as to ensure criminal proceedings regionally, nationally or through international courts or tribunals that are empowered with jurisdiction to hear cases (IIMM, 2022).

Significantly, the IIMM report stated that it had collected substantial evidence in respect of the widespread burning of villages and towns, and of targeted or indiscriminate killing of civilians" (A/HRC/51/4, para 9and 10).

On 1 February 2021, the Myanmar military, known as the Tatmadaw, removed the civilian leadership from power though a coup. Mennecke and Stensrud (2021) refer to the international community's response to the coup in Myanmar as a failure of R2P. For Mennecke and Stensrud this was most evident when the protestors held up placards and chanted for the activation of R2P.This never happened and the only semblance of R2P was reflected in the sanctions imposed by the EU. However, ASEAN providing little or no response, with Thailand, Cambodia, and Vietnam referring to the coup as an internal matter and any form of interference should be avoided. It was further noted that the Human Rights Council and the UNSC agreed on two, non-binding presidential

statements on 10 March and 1 April 2021, but there was no mention of R2P (Mennecke and Stensrud, 2021, pp114).

According to the R2P Monitor of June 2022, Myanmar has been plagued by protests, strikes and the activation of Peoples Defence Forces (PDF) against military rule, while numerous civilian militias – known as People's Defence Forces (PDFs) have also formed armed militias. Since the coup and the June 2022 report more than 1,800 people have been killed by the security forces and over 10,400 resisters are held in prisons, with at least 110 people sentenced to death by military tribunals (R2P Monitor, 2022). According the to R2P Monitor, the military has torched over 11,400 civilian homes across the country since the coup, while communal violence is escalating with the formation of the pro-junta "Blood Comrades" militia (R2P Monitor 2022, pp12).

Gareth Evans addressed the Myanmar institute of Australia on 26 April 2021, where he suggested that the military coup had resulted in a massive crackdown on pro-democracy protesters. Gareth Evans describes the developments playing out in Myanmar, and pointed out that protesters were aware of R2P and that the conduct of the generals warranted the need to invoke R2P (Evans, 2021).

Evens then goes on to explain why R2P's third pillar was not activated. He argues that military intervention is not an option in Myanmar for three reasons. First, he argues that Russia and China will not agree to military intervention and will exercise their veto oppose any attempt. Second, that there has been a lack of willingness to take up arms and engage Myanmar even if the UNSC authorises intervention. Third, the prudential criteria which informs decisions on the use of military force. The underlying reasoning is that the intervention must do more good than harm. According to Evans, the prudential criteria is an important factor as the Tatmadaw are a formidable force and the risk of a protracted war which would result in greater bloodshed is not an option (Evans, 2021).

Evans does however outline the various options available under R2P that can be activated these *include naming, shaming and diplomatic isolation*, **arms embargos, targeted sanctions, and judicial action.** Evans does however

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indicate that it is unlikely that the Tatmadaw will collapse and there is risk of an ongoing conflict such as Syria. However, the 'alternative scenario' that Evans contemplates is one where the generals are placed under sufficient pressure that will force change (Evans, 2021).

There has been some activity in adopting various mechanisms and means to put as much pressure on the Tatmadaw as possible. The Association of Southeast Asian Nations (ASEAN) agreed to a Five-Point Consensus. ASEANs chair, the Sultan of Brunei, Hassanal Bolkiah announced the five-point consensus that called for first, the immediate cessation of violence; second, dialogue among all parties concerned; third, allow for mediation facilitated by the ASEAN chair, through an envoy, supported by the ASEAN secretary-general; fourth, to allow humanitarian assistance; fifth, secure a visit led by the special envoy to Myanmar. However, the Tatmadaw was blocked from sending representatives to the US-ASEAN summit, held 12-13 May 2022. This was seen as a sign of diplomatic isolation while the US met with representatives of Myanmar's National Unity Government (NUG) on 18 June 2022 and the UNGA adopted a resolution calling for the immediate release of all political detainees and for all member states to prevent the flow of arms into Myanmar (R2P Monitor, 2022).

Several governments have imposed targeted sanctions on Myanmar since the coup. These include Canada, UK, US, and the EU. Considering this, oil conglomerates including TotalEnergies and Chevron announced in January 2022, their withdrawal due to the worsening human rights crisis in Myanmar. In February 2022 the EU sanctioned the state-owned Myanmar Oil and Gas Enterprise (MOGE), while The Republic of Korea restricted military exports and suspended defence exchanges.

The case of Myanmar therefore presents the following concerns with respect to the implementation of R2P. The international community has observed the attacks on the Rohingya people since 2017 right through to the crackdown on pro-democracy protestors after the coup in 2021.  Although, not mentioned, the use of R2Ps spectrum of measures is reflected in the international community's

response to the ongoing Myanmar crisis. The activation of regional structures such as ASEAN and the five-point consensus, excluding the Tatmadaw from the ASEAN, the US meeting with the Targeted sanctions that include trade embargoes, asset freezes, travel bans, and investment bans by the US, UK, EU, Canada, Australia including South Korea, against Myanmar's government. Additionally, the UNHCR's establishment of the IIMM to collate evidence of human rights violations and prepare for judicial action, represents ongoing measures against the ruling authorities who have failed to uphold the responsibility to protect their population.

There are three points that emerge out of the Myanmar example. First, that the coup triggered prodemocracy protests throughout Myanmar. The coup had also exacerbated the crises endured by the Rohingya people in the Rakhine state, Second, the military response was brutal and the atrocities against its population continue despite international pressure. Third, the protesters held up placards appealing to the international community to activate R2P, however, as indicated by Evans the activation of pillar three is seen as a risk, and it is unlikely that it will be activated in the foreseeable future.

## 4.4    South Sudan and R2P

On 9 July 2011 South Sudan became an independent state. In December 2013 tensions between the Sudan People's Liberation Movement (SPLM) and former Vice-President, Riek Machar had publicly accused President Salva Kiir of acting unilaterally. Such rhetoric resulted in further escalation of tensions, the SPLM warned against any actions that could incite rebellion. On 14 December 2013 the SPLM's governing body, the National Liberation Council (NLC) met to confirm the administration's constitution and manifesto. Machar rejected the proposals and did not participate the deliberations (Zifack, 2015, pp1-2).

In December 2013 South Sudan was plunged into a crisis. As the violence ensued and escalated, atrocities were committed by all sides. The civilians who were caught in the orgy of violence tried to seek refuge at UN bases. The situation seemed to be spiralling out of control with the UN Mission to South

Sudan (UNMISS) overwhelmed. On 17 December 2013, Hervé Ladsous, the UN Under-Secretary-General of Peacekeeping Operations, briefed the Security Council. Ladsous provided startling figures with hundreds already killed in a matter of days. Disturbingly he reported that a staggering 18, 000 civilians had overwhelmed UNMISS bases in search of refuge from the carnage. The fighting then started to spread through the country and within the span of a week, the number of people killed and displaced in the violence had swelled well to the thousands (Zifac, 2015, pp 3-5)

UN Resolution 2514 on the situation in South Sudan extended the mandate of the UN Mission in South Sudan (UNMISS) until 15 March 2021. The resolution emphasizes that, "South Sudan's government bears the primary responsibility to protect its populations from genocide, war crimes, ethnic cleansing, and crimes against humanity, and expressing concern that despite the signing of the Revitalised Agreement, violations including rape and sexual violence continue to occur which may amount to international crimes, including war crimes and crimes against humanity" (Zifac, 2015, pp 1-3).

According to data sourced by R2P Monitor, more than 8.3 million people need humanitarian assistance. Disturbingly this figure accounts for 75% of the population of South Sudan. In addition, 130 humanitarian workers have been killed in South Sudan since 2013 which has earned the country the reputation of being one of the most dangerous environments for humanitarian workers. Threats and attempts against humanitarian workers continue to be recorded monthly. An estimated two million Sudanese remain internally displaced with 2.3 million seeking refuge in neighbouring countries putting a strain on regional resources (R2P Monitor, 2022 pp 24).

R2P Monitor has further reported that as recently as the January-March 2022 reporting period, UNMISS has documented at least three hundred civilian deaths, one hundred and twenty-five abductions and sixty-three cases of sexual violence by government forces and the Sudan People's Liberation Army-In Opposition (SPLA-IO). These include several armed groups and community-based militias

who are part of the ongoing violence. In 2022, the Leer County reported a surge of violence, that include gang rapes, beheadings, the burning of civilians alive and attacks on humanitarian workers. At least seventy-two civilians killed and sixty-four cases of sexual violence between February-April 2022 have been recorded. What is concerning is that the violence is widespread, and according to R2P Monitors data, the violence is currently taking place in nine out of ten states (R2P Monitor, 2022 pp23-24).

The UNSC Resolution 2633, on 25 May 2022, on the situation in South Sudan renewed three key preventative options provided by R2P. Firstly, the overall sanctions regime, including targeted sanctions, the arms embargo and the mandate of the Panel of Experts until 31 May 2023. Second, the mandate of the South Sudan Sanctions Committee was renewed until 1 July 2023. Third, noting that resolution 2633 emphasises that "those responsible for violations of international humanitarian law and violations and abuses of human rights must be held accountable, and that the Revitalised Transitional Government of National Unity (RTGNU) bears the primary responsibility to protect its population from genocide, war crimes, ethnic cleansing, and crimes against humanity (UNSC, 2022, S/RES/2633).

South Sudan remains among the most violent conflicts in Africa. Attempts to ensure prevention to protect populations has fallen short of success. However, there is no way of knowing that without the existing measures in place, how much worse the situation could have been.

Zifac questions whether or not R2P has failed in the Sudanese case, and concludes that it has had some effect. First, the international community's will to protect civilians and prevent mass atrocities is clear given the time and attention allocated to such cases. Second, that the UNSC's focus on protecting civilians in conflict zones is "significantly greater than it was even 20 years ago" which implies that since former UNSG Annan's appeal to the international community, in his Millennium report, the response to atrocities has improved (Zifac, 2015, pp33).

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Zifac further notes that the UNSC has encountered some disagreements on the means to protect civilians in conflict zones. The UNSC is increasingly committed to international peacekeeping operations as seen with the UN's Peacebuilding Commission where progress is being registered through the UN in capacity-building and formulating strategies aimed at preventing the failure of states (Zifac, 2015, p 33).

## 4.5. R2P Implementation in respect of Syria, Myanmar and South Sudan

The Global Centre for the Responsibility to Protect unit that compiles data on Populations at Risk examines each country by providing an analysis on the factors putting populations at risk of mass atrocities and other crimes. Accordingly in 2022 there are twenty-nine conflicts of which fourteen are in Africa (see globalr2p.org/populations-at-risk).

The reasoning behind the choice of Syria, Myanmar and South Sudan as examples of states that have not protected their populations and have also perpetrated violence against their populations. Based on the 2022 data provided by the globalr2p.org on populations at risk, and their rankings on the severity and status of those risks these three countries feature as severe failures of the states responsibility to protect its populations. Second, their respective geographical locations are representative of Africa, Asia and the Middle East, and these cases enjoyed a significant amount of international attention. Latin America includes Nicaragua and Venezuela with populations at risk, notwithstanding that all risks are significant, the sheer scale and gravity of these cases are not as intensive as they are in Africa, the Middle East and Asia.

In this study several cases that involved R2P have been already been cited, however for this chapter the first choice of Syria is arguably the basis upon which much of the criticism against R2P has based. The proximity of weeks between the Syrian conflict to the NATO intervention in Libya, both under the rubric of the Arab Spring created a sense of concern among UN member states that Syria,

like Libya, would become a victim of a regime change agenda. The evolution of the Syrian conflict and the later interventions which included sanctions, the diplomatic isolation of the Syrian regime as well as the use of judicial mechanisms to bring perpetrators of atrocity crimes to justice have been instituted by the UN and other bodies including prosecution for in Germany of senior Syrian military leaders.

The successful conviction of two high ranking Syrian officials in Germany has been hailed as a huge victory in ensuring that a strong message is sent to the perpetrators of atrocities. As discussed in preceding chapters, R2P provides a wide range of options that can be used to deal with atrocity crimes. However, without the ability of the international community to use force and the state's primary responsibility to protect cannot be ensured. The preventative mechanisms in the three cases cited have neither quelled the violence nor stopped the atrocities that have been committed.

The Myanmar case has also followed a similar process as with Syria and the CoI, the establishment of the Independent Investigative Mechanism for Myanmar (IIMM) in 2018 where evidence against perpetrators has been collated and prepared for judicial proceedings. The mechanism was formed in 2018 with the atrocities being committed against the (stateless) Rohingya people but continues to gather evidence of further atrocities committed against civilians who participated in the pro-democracy protests after the 1 February 2021 coup. Significantly in Myanmar the protestors held up placards appealing to the international community to implement R2P. As indicated by Evans in his address to the *Myanmar Institute of Australia Webinar, on 26 April 2021, the prudential criteria must be factored in to understand why military intervention in Myanmar is not one to be taken light given the military capabilities of the Tatmadaw.*

*In respect of South Sudan, Zifac notes the ongoing activity and increasing concern of the international community and the UNSC to ensure the protection of civilians. The sheer scale of the atrocities recorded which are ongoing cannot be ignored. However, several mechanisms are in place to collate data and*

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*formulate analysis. In this case as well, it is obvious that the use of force has remained elusive, that being said the broader spectrum of R2P options continue to be utilised. Zifac* makes the important point that the prevention of 'genocide, crimes against humanity, war crimes and ethnic cleansing' is in fact the main objective of protecting populations at risk. He argues that this 'presents immensely complex and variegated problems' and that R2P is an 'overarching framework or mechanism,' by implication, the complexity of the norm creates ensures that while some components will be contested others may not, in the case of R2P, the contestation seems concentrated on pillar three(Zifac, 2015, pp34).

Zifac's argument is consistent with what Welsh (2019) later uses to describe the complex and robust characteristics of R2P as a norm. In essence both these arguments support the idea that R2P as norm is alive and continues to evolve and is shaped by the contexts to which it may be subjected be it Syria, Libya, South Sudan etc. The idea that R2P is a complex norm that continues to evolve is supported by the sheer number of resolutions, and Presidents statements both UNSC and UNGA imply that the norm continues remains active. It is important to accept that the option of military intervention, as a means of enforcing responsible sovereignty, forms part of the third pillar and is central to the prevention of atrocities, R2P was never intended to be pacifist and this, de facto, might explain why the military option, might not be readily activated but remains a crucial part of the norm.

Docherty et al (2020) argue that US policymakers, 'through discourse, framing, and grafting, brought R2P into congruence with local beliefs and practices of American exceptionalism, specifically exemplarism.' They argue that Amitav Acharya's norm circulation framework suggests that localisation was not restrictive and is not exclusive to any group or formation. However, they argue that despite this, the existing literature on R2P localisation does not factor the non-Western world (Docherty et.al, 2020, pp 248-249). The implications of this reasoning is significant as it supports the basis of this study that R2P is not dead,

but instead being subjected to processes of localisation and contestations that are best explained through the norm circulation model.

Docherty et al further argue that norm localisation can have a significant impact on the practical decisions taken by states. The US discourse was able to become part of how R2P was being shaped after the Libyan intervention and during the Syrian crisis. This in turn impacted the way in which the Syrian debate was being framed. The argument asserts that the US approach through localisation made two decisions particularly unlikely: a direct intervention and a negotiated solution with the Syrian regime.' (Docherty et.al, 2020, pp 249-251).They further argue that the 'US in fact restricted its own policy choices (and that of other international actors) while prolonging the Syrian conflict' (Docherty et.al, 2020, pp 249-251).

In all three cases cites, R2P's preventative options are reflected. Resolutions and mechanisms particularly legal mechanisms that are aimed at bringing war criminals to face justice is seemingly gaining momentum. Importantly, the German convictions of two Syrian officials implicated in committing crimes associated with atrocities is, as the UN High Commissioner for Human Right Ms Bachelet expressed, an unprecedented, historic and significant move in the direction of protecting civilians in conflict zones. R2P includes prosecution of perpetrators as a means of presentation, the German cases will surely have an impact on how governments conduct themselves.

## 4.6   Conclusion: Discussion and Analysis- How does the Norm Circulation Lens Explain the Status of R2P?

Amitav Acharya's 2013 work on norm circulation is deeply rooted in the divide that exists between the east- west or even north- south relations that is often used to polarise the world in respect of R2P as an international norm. Acharya's argument is supported by Hoffman (2015), and Deitelhoff, Zimmerman (2019) that "norm research is flawed because it creates narratives about norm emergence, diffusion, and change from Western or Eurocentric vantage points,

ignoring non-Western perspectives and the colonial and postcolonial power asymmetries.( Deitelhoff, Zimmerman, 2019, p 36).

Hoffman (2015) observed some useful patterns concerning the contestation that R2P is subjected to in his ten year review article on R2P. He notes that South Africa was a supporter of R2P in 2005, however, in 2015 South Africa appeared to share similar concerns about R2P with countries such as China, Cuba, Egypt, Iran, Malaysia, Pakistan, and Russia. The central concern within the global South is a continuation of humanitarian intervention, the undermining of state sovereignty by more powerful actors and agendas that are based on regime change. He further notes that a qualitative examination of the data demonstrates that South Africa's critique seems largely informed by the NATO led, Libyan intervention in 2011.

Hoffman further explains that Indonesia has revised its position since 2005 and is now more inclined to support R2P. Brazil's R2P rhetoric shows similarities to Ghana's, even though most would see Brazil as a sceptic and Ghana as a major supporter of R2P (Hoffman, 2015, pp291). According to Hoffman, this study exposes that first, there is a conflict between the fundamental principles of sovereignty and human rights, and second that procedural justice, which, simply put, requires fairness in the implementation of processes used to settle disputes, are seen as central in the debate around R2P. Moreover, the simplifying dichotomy of 'the West against the rest' is not warranted, even though states from the global South share a commitment to statist rights. These results point to the same major lines of conflict already present in 2005, when the ICISS emphasis on intervention was constrained and restricted by stating that intervention can only when 'national authorities manifestly fail to protect their populations'(Hofmann, 2015, pp 291-292).

In addition, Hoffman points out the following. First, that at least 35 Security Council Resolutions with direct references to R2P, and second that between September 2005 and June 2015, R2P's growing relevance in international peace and security has been growing (Hofmann, 2015, pp 291-292).

What is significant is that Hoffman notes that most of these resolutions refer mainly to pillar one, which is the protection responsibility of the state. During that period only eight resolutions, including resolutions 1674 (2006) and 1894 (2009) on the Protection of Civilians in Armed Conflict, refer to directly to R2P, and only two out of those seven are resolutions on a country-specific situations these are Sudan in 2006, and South-Sudan 2014. Three resolutions refer to pillar two of R2P. (Hoffman, 2015, pp 292-293).These findings support the idea that R2P, and responsible sovereignty remains  important components in the discourse on the protection of populations.

The implementation of UNSC Resolution 1973 (2011) allowing the NATO led intervention into Libya triggered the debate on 'procedural justice,' 'equality before the law' in particular. Hoffman points out that despite Pillar's one and two, many states demand a narrower understanding of R2P's Pillar three. The main line of contestation concerning Pillar Three, is that many sceptics still claim for a neutral and impartial application of R2P to all conflict parties  (Hoffman, 2015, p 294). This finding assists in explaining the perceptions that the third pillar on intervention is yet to be formulated around the principles of procedural justice and equality before the law, which provides a convenient gap for states to 'cherry pick' what does or does not require intervention. Developing nations often cite the hypocrisy of the developed nations in respect of military intervention.

Hofmann makes the point that the diffusion of international norms ultimately serves 'to move social practices related to a norm beyond the social context in which they originate' (Hofmann, 2015, pp289-291). Standards of appropriateness, social practices, local norms, and values, allows norm receiving states to guide the interpretation and meaning of international norms. (Hoffman, 2015. pp 280-281). The analysis that Hofmann's study provides, compliments the norm circulation model and Acharya's (2013) assertion that norm diffusion involves localisation and contestation of the norm, and this would then infuse the cognitive priors of the receiving states as part of the diffusion process.

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The data provided by Hoffman, albeit for the first decade of R2P reveals three factors that support the arguments presented in this study. First, that there is an ongoing contestation of R2P in its totality. Preference for pillars one and two demonstrate that the norm, in its totality has not necessary died, instead it is the third pillar that remains contested in that 'non-western 'states appear reluctant to authorise military intervention. The contestation around Pillar three, where the idea of military intervention is seen as having more to do with the association with the right to intervene, and the just war doctrine. These have, traditionally been used as regime change enablers and received with suspicion among many postcolonial states. This in turn supports the idea presented by Acharya (2013) and Hoffman (2015) that the western and non-western paradigms concerning intervention is what drives the processes of contestation, this helps us explain why pillar three remains contested.

Second, the structural form of R2P which Welsh (2019) describes complex and robust, in summary R2P emerged out of a discussion and then formulation process initiated by former UNSG Kofi Annan. The idea of R2P is rooted in the ideas of responsible sovereignty and incubated within the African context. This is reflected in article 4(h) of the AU's Constitutive Act (2000), the ICISS (2001), the WSOD (2005) and the UNSG Report on the Implementation of R2P (2009), however, the NATO led intervention in Libya (2011) and the Syrian conflict (2011) were significant in prompting a more critical global debate on R2P. It is generally accepted that R2P as a norm remains critical to the international community's efforts to ensure that states protect their populations and are supported in their efforts to do so. Since the Libyan intervention the non-military, but coercive methods that include embargoes, sanctions and diplomatic interventions have emerged as acceptable means to prevent atrocity crimes.

Third, R2P continues to form part of country specific cases where populations are at risk, the three specific cases in this chapter, Syria, Myanmar, and South Sudan all reflect, in one way or another, R2P's first and second pillars. The measures include, targeted sanctions, facilitating diplomatic efforts including

efforts to mediate and provide humanitarian assistance and ensure criminal prosecutions for the perpetrators of atrocity crimes. In each case study cited in this chapter a legal mechanism has been established to monitor violence and build evidence against alleged perpetrators of atrocity crimes toward prosecution.

The Syrian case demonstrates a concerted will by the international community to prosecute perpetrators of crimes against their populations. The successful arrest and conviction of Anwar Raslan and Eyad in German courts during 2022 are significant milestones in ensuring that justice is served for crimes against humanity. The South Sudanese case demonstrates the clear determination of humanitarian workers to continue providing humanitarian assistance to populations despite the great risk associated with working in the region. The imposition of sanctions and diplomatic intervention as well as compiling evidence of genocide and atrocities is ongoing. The case of Myanmar adds a further complication in that the most recent crimes against the Rohingya had already started in 2017, and the risk to the Rohingya was heightened after the Tatmadaw launched a successful coup on 1 February 2020, interestingly Myanmar protesters held up placards referring specifically for the implementation of R2P.

This study's aim was to determine whether first, R2P is alive and continues to evolve, and second that it remains relevant, and part of the international communities means to protect populations at risk. This chapter demonstrated that R2P, as a norm, does indeed circulate as per Acharya's framework of norm circulation. The three case studies, with Acharya's norm circulation model Hoffman's 2015 study and Welsh's notions of the complex and robust norms combine to explain that pillar three of R2P, in its existing form, may well be challenged as an aspect of R2P that remains contested. However, pillar three is not R2P in its totality, nor is military intervention the only option provided by R2P. Acharya and Hoffman's analysis that the global east-west divide has much to do with concerns raised among countries of the South, of a deep and historic mistrust, a cognitive prior, that may have its roots in the age of colonisation, the right to intervene and humanitarian intervention.

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Hofmann (2015) observed some useful patterns concerning the contestation that R2P is subjected to in his ten year review article on R2P. He notes that South Africa was a supporter of R2P in 2005, however, in 2015 South Africa appeared to share similar concerns about R2P with countries such as China, Cuba, Egypt, Iran, Malaysia, Pakistan, and Russia. He further notes that a qualitative examination of the data demonstrates that South Africa's critique seems largely informed by the NATO led, Libyan intervention in 2011. Hofmann further explains that Indonesia has revised its position since 2005 and is now more inclined to support R2P. Brazil's R2P rhetoric shows similarities to Ghana's, even though most would see Brazil as a sceptic and Ghana as a major supporter of R2P (Hofmann, 2015, pp291).

According to Hofmann (2015), this study exposes that first, there is a conflict between the fundamental principles of sovereignty and human rights, and second that procedural justice claims seem to be central in the debate around R2P. Moreover, the simplifying dichotomy of 'the West against the rest' is not warranted, even though states from the global South share a commitment to statist rights. These results point to the same major lines of conflict already present in 2005. A qualitative assessment of the data reveals their influence on the development of the R2P and its components (Hofmann, 2015, pp 291-292).

In addition, Hofmann points out the following. First, that least 35 Security Council Resolutions with direct references to "R2P, and second that between September 2005 and June 2015 its growing relevance for the politics of international peace and security" is noteworthy (Hofmann, 2015, pp 291-292).

What is significant is that Hofmann notes that most of these resolutions refer mainly to pillar one, which is the protection responsibility of the state. During that period only eight resolutions, including resolutions 1674 (2006) and 1894 (2009) on the Protection of Civilians in Armed Conflict, refer to directly to R2P and only two out of those seven are resolutions on a country-specific situation these are Sudan in 2006, and South-Sudan 2014. Three resolutions refer to pillar two of R2P. (Hofmann, 2015, pp 292-293).

The implementation of UNSC Resolution 1973 (2011) allowing the NATO led intervention into Libya by triggered the debate on 'procedural justice,' 'equality before the law,' in particular. Hofmann points out that in spite of Pillar's one and two, many states demand a narrow understanding of R2P's Pillar three. The main line of contestation concerning Pillar Three, is that many sceptics still claim for a neutral and impartial application of R2P to all conflict parties (Hofmann, 2015, p 294).

Hofmann makes the point that the diffusion of international norms ultimately serves 'to move social practices related to a norm beyond the social context in which they originate' (Hofmann, 2015, pp289-291). Standards of appropriateness, social practices, local norms and values, allows norm receiving states to be culturally contingent to guide the interpretation of the meaning of international norms. (Hofmann, 2015. pp 280-281).

The data provided by Hofmann, albeit for the first decade of R2P reveals three factors that support the arguments presented in this study. First, that there is an ongoing contestation of R2P in its totality. Preference for pillars one an two demonstrate that the norm has necessary died, instead the third pillar remains contested in that 'non-western 'states appear reluctant to engage pillar three. The contestation around pillar three, where the idea of military intervention has more

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to do with the historic connotations association with the right to intervene and just war as regime change enablers. This in turn supports the idea presented by Acharya (2013) and Hofmann (2015) that the western and non-western perspectives on intervention is what drives the contestation. For Acharya the norm is contested through diffusion process that are inclusive of the receiving states that results in localisation and then contestation of the norm at the local level before repatriating the norm to the sending state.

Second, the structural form of R2P which Welsh (2019) describes complex and robust, in summary  R2P emerged out of a discussion and then formulation process initiated by former UNSG Kofi Annan. The idea of R2P is rooted in the ideas of responsible sovereignty and incubated within the African context. The ICISS (2001), the WSOD, 2009 and the UNSG Report on the implementation of R2P. However, the NATO led intervention in Libya (2011) and the Syrian conflict (2011) were significant in prompting a global debate in R2P and shaping the implementation of the norm. It is generally accepted that R2P as a norm remains critical to the international community's efforts to ensure states protect their populations and are supported in their efforts to do so.

Third, R2P continues to form part of country specific cases in general but the three specific cases in this chapter, Syria, Myanmar, and South Sudan all reflect, in one way or another, R2P's pillars of R2P. Targeted sanctions, facilitating diplomatic efforts including efforts to mediate and provide humanitarian assistance and ensure criminal prosecutions for the perpetrators of atrocity crimes all fall within the prescriptions under R2P even if the term R2P is not specifically cited. However, the reality is that the use of military intervention remains contested as there is little evidence of R2P's implementation, but in each case study in this chapter a legal mechanism has been established to monitor violence and build evidence against alleged perpetrators of atrocity crimes.

This study was to determine if R2P is alive or not, to achieve this there was a need to demonstrate that R2P, as a norm, does indeed circulate as per Acharya's framework of norm circulation. The three case studies, Acharya's norm

circulation model Hofmann's 2015 study, Welsh's notions of the complex and robust norms combine to explain that pillar three of R2P, in its existing form, may well be challenged. However, pillar three is not R2P in its totality, nor is military intervention the only option provided by R2P. Acharya and Hofmann's analysis that the global east-west divide has much to do with concerns raised, mainly by developing nations, a deep and historic mistrust that may have its roots in the age of colonisation.

## CHAPTER FIVE:

## CONCLUSION THE CONTESTED STATUS OF R2P

The stated aims of this study has been to first, to outline the evolution of R2P as a norm, and second, to determine relevance of R2P since the 2011 NATO led Intervention in Libya, and third to demonstrate that R2P as a norm continues to evolve, albeit with caution or limitations on possible military intervention as per pillar three. The stated objective of this study was to demonstrate that R2P is alive when examined through Acharya's (2013) norm circulation model despite contestation on the implementation of R2P's third pillar and the option of military intervention that it provides.

The UNSC Council Resolutions 1970 and 1973, which were widely accepted as R2P resolutions that triggered significant debate among both scholars and practitioners alike. Some states, mainly in the developing world as well P5 members Russia and China saw this as a violation of the UN Charter and the ultimate demise of R2P. Whilst, mainly developed nations saw the intervention as a positive move in the endeavor to protect populations at risk. These debates have unleashed a large volume of literature on R2P.

Welsh (2019) argues that the decay of a norm is not the same at the death of that norm, and that R2P has experienced some element of decay as part of its evolution. Welsh demonstrates empirically that since the aftermath of the Libyan intervention, R2P did experience a setback with many states reluctant to pass resolutions related to R2P (Welsh, 2019). This trend was apparent during the unfolding Syrian crises of 2011 and 2012. However, Welsh demonstrates that since 2014, R2P has been actively engaged as a norm at the UN, especially in recent years.

This study examined the scholarly work presented mainly by constructivist scholars who have helped explain the normative characteristics of R2P and used this paradigm to argue and justify its emergence and evolution in the international community. This study closely examined the norm circulation model which helps

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explain that R2P continues to be part of the international debate with localisation and contestation remaining prominent features when viewing R2P from the norm circulation lens.

Acharya's norm circulation model explains how norms emerge and how these norms evolve. For Acharya, norm creation and norm diffusion are a two-way process. For Acharya the existing literature on norm diffusion, are promoted by western or developed nation actors and agents, this in turn can impact on, or displace the beliefs and practices of the local/ regional actors.  On the other hand, local actors may also borrow transnational norms, this helps them strengthen their legitimacy and authority (Acharya, 2015).

Welsh delves into R2P and the UN processes that it has been subjected to as it continues to evolve. This study further examines Welsh and her detailed argument on the status of R2P in the international community. Importantly Welsh draws the distinction between the death of a norm and its decay, the complex and robust nature of R2P as a norm, Welsh's argument that a  complex norm such as R2P with its three pillars, allows for parts of the norm to be contested while supported by other components or pillars, and in the case of R2P the concerns presented by pillar three does not result in the death of the norm as pillars one and two, especially on prevention, appear to be engaged through the various UN debates (Welsh 2016, 2019).

Maggie Powers (2015) empirical study of the voting patterns associated with R2P between 2011 and 2015 assists in determining the status of R2P. Her research makes an empirical case that supports this study in that it tracks the use of R2P at the UN to test its strength as a norm and provide quantitative evidence to prove the status of R2P. The immediate response of the international community, especially among nations of the South was the concern that R2P is simply an 'updated' version of humanitarian intervention.

Powers, using UNSC and UNHRC documents formulated a data driven exercise that zoomed on the status of R2P.  Her data analysis revealed that the Libyan intervention did not, in real terms, result in a decrease in the acceptance of the

norm nor a decrease in the authorisation of R2P framed resolutions. The reality according to Powers findings is that R2P has become further internalised and is increasingly utilised in the Security Council and Human Rights Council (Powers, 2015). This finding assists in reinforcing the argument that this study is based on the norm circulation lens, R2P is very much alive but undergoing processes such as contestation and localisation which are in fact necessary to develop a norm. The data also supports Welsh's views on the complexity of R2P as well as the convergence of views on R2P as the debates continue however the focus is increasingly on the first two pillars of R2P 9Welsh 2019, pp 59).

On 25 June 2018, UNSG António Guterres, delivered his statement during the UNGA on the debate concerning R2P. In his statement the UNSG made the following key points. First that this was the first formal debate since 2009, second that he had taken note of concerns among states that R2P could be used to take collective action to satisfy other interests apart from what was agreed to in the WSOD, third that member states should speed up the ratification process of instruments in the domain of international law that relate to the prohibition and prevention of atrocity crimes and violations that are part of R2P. The UNSG made the point that, at the time of his speech, forty-five member states are yet to ratify the convention on the Prevention and Punishment of the Crime of Genocide (Guterres, 2018). This statement is important in that the ratification of the convention on the PPCG still has a significant number of outstanding states, however the principles of R2P have been widely accepted by the wider international community.

To this end, it is important in that instruments of international law are not as readily accepted as a norm would be, and the norm that shares the basic principles that the legal instrument enjoys a greater degree of acceptance, thus advancing the principles intended in the legal instrument.

The statement by the UNSG reveals the ongoing contestation but also the evolution of R2P as a norm. Welsh's characterisation of R2P as a robust and complex norm allows for a coherent analysis of the norm (Welsh, 2019).

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Formulating a structural analysis of a norm, by analysing the debates and discourse around R2P helps understand the reasons why the norm continues to circulate within the international terrain. Explaining R2P from the norm lifecycle model would have years ago considered the norm 'dead' as its

According to Glanville (2016), we can recognise the impact of a norm in instances of both *compliance and violation*. Glanville further points out that demonstrating the impact of a norm in the case of compliance is difficult, because the correlation between the 'standard of appropriate behavior' and the 'actor,' does not imply that the expected behavior is what caused the actor to act in respect of compliance with the norm. Conversely, the actor might comply with the norm, however this compliance may not be to fulfill the standard of appropriate behavior that might be expected of through the norm. Glanville argues that even if an actor justifies their actions with respect to a norm it does not necessarily imply compliance with the norm or that the norm motivated the action (Glanville, 2016).

Glanville further argues that it is much easier to observe the *regulative impact* of a norm as the violation is measurable in respect of the policy that has been violated. He points out that Russia and China's decision to not veto the Security Council to adopt Resolution 1973, which authorised the intervention in Libya, when they rarely authorised interventions without the consent of the state in question, might well reflect such an example. (Glanville, 2016).

China endorsed R2P at the World Summit in 2005, while remaining cautious about R2P's third pillar and military intervention. China then formulated a strategy of ''norm containment'' in which it continued to downplay the link between R2P and non-consensual military intervention.  As early as 2006, China resisted the need to elaborate and refine the concept of R2P, insisting that resolution 1674 (2006) Protection of civilians in armed conflict be limited to a reaffirmation of the key paragraphs of the World Summit Outcome Document.

China has consistently expressed its preference for the the preventive dimension of R2P, and pillar one which expects the state to assume primary responsibility to

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protect lies with the state. However, while China agrees to the principle of intervention, it holds firm to the argument that international action should be carried out with state consent in accordance with R2P's second pillar. This approach would render it virtually impossible to launch any intervention as the errant state is unlikely to invite the international community to intervene. China's position on the implementation of R2P is based on its historic position on non-interference in the domestic affairs of any state (Garwood-Gowers,2012, pp 381)

Francis Deng was a pioneer in linking state sovereignty with responsibility, along with theorists like Roberta Cohen (1996) championed the idea of "*sovereignty as responsibility*" as early as the 1990s. Deng canvassed elaborately for the protection of internally displaced persons (Deng FM, et al 1996). It was the Canadian sponsored International Commission on Intervention and State Sovereignty (ICISS) which formalised the idea that "sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself" (ICISS, 2001, p. ix). The ICISS asserted that in the event the state is unwilling or incapable to protect its population from serious harm, then the international community is required to assist and intervene if and when intervention is required. The United Nations World Summit endorsed the responsibility to protect in 2005, the General Assembly and the Security Council supported with relevant resolutions (UNGA, 24 October 2005).

According to Lwabukuna (2021) engaging R2P within an internal displacement framework is lacking as most scholarly work has studies them in separate contexts. The wider acceptance of sovereignty as responsibility as the primary basis for R2P, and the fact that IDPs are victims of the very atrocity crimes that R2P, strives to mitigate against has been inadequate and slow. However, Lwabukuna argues that despite these gaps, 'the spirit of R2P' is reflected in respect of the protection of civilians, including those who have been internally displaced. Francis Deng has been able to link both the protection to IDP and R2P, with responsible sovereignty eventually becoming the underlying principle of protecting IDP's (Lwabukuna, 2021, pp74.)

The ICISS report further asserts that "humanitarian intervention" has been controversial, "both when it happens, and when it has failed to happen" (ICISS, 2001). The grave failure of inaction was glaring during the genocide in Rwanda in 1994. The fact that the UN and some permanent members of the Security Council had already received intelligence that the then government was planning to commit genocide. Although a contingent of UN forces were present, and strategies to prevent the killings were available, rendered the UN forces unable to assist in any way as the Security Council refused to authorise any necessary action. The report further states that the consequence of the genocide was felt across the region, In the aftermath, many African peoples concluded that, for all the rhetoric about the universality of human rights, some human lives end up mattering a great deal less to the international community than others. (ICISS, 2001, pp. 1-2)

Kosovo, on the other hand is where the intervention did take place in 1999. The operation raised major questions about the legitimacy of 'humanitarian' military intervention in a sovereign state. Several key questions emerged that seriously questioned the legitimacy of the intervention. The ICISS report (ICISS, 2001, pp. 1-2) raises these questions. Was the cause just i.e., was there sufficient evidence of human rights abuses? Was the possibility of peaceful, non-military means explored? How and by whom was the operation authorised?  How could the operation be legitimate or justified if the UNSC was marginalized by "a coalition of the willing?" (ICISS, 2001)

The case of Bosnia demonstrated the failure of the United Nations and the international community to prevent the massacre of thousands of civilians seeking refuge in UN "safe areas" in Srebrenica in 1995. Additionally, the failure mission and withdrawal of the UN peace operations in Somalia in 1992–93, followed a failed intervention to save lives and restore order which was destroyed by poor planning and execution, which was based on excessive dependence on military force (ICISS, 2001).

The ICISS conception of R2P differed in several significant ways to the final conception of R2P that was adopted at the 2005 World Summit. The major criticism was that the original criteria resembled Just War Theory. These are *just ad bellum,* or the conditions required for justly going to war, and *jus in bello* or the conditions required for the just conduct of war. These concerns were based on the six criteria for military action outlined in the ICISS report. These included just cause, right intention, last resort, right authority, proportional means and reasonable prospect of success. The UNSC was designated the authority to authorise intervention, however, crucially, regional organisations might provide an alternate mechanism if the UNSC was deadlocked (ICISS, 2001).

The report succinctly outlined the challenge as follows, "*For some, the only real issue is in ensuring that coercive interventions are effective; for others, questions about legality, process and the possible misuse of precedent loom much larger*" (ICISS, 2001, pp. 1-3). The basis of the ICISS report aimed to bridge the gap between sovereignty and the need to protect civilians from genocide and atrocities.

The concerns from China, Russia and other non-permanent Security Council member states resulted in several significant modifications to the original ICISS conception of R2P. In the 2005 WSOD, the criteria to determine appropriateness of action was removed and military force was placed exclusively in UNSC control. Importantly, the threshold for action was raised to 'manifestly failing to protect', and the type of violence covered by R2P were now limited to four mass atrocity crimes these are genocide, war crimes, crimes against humanity and ethnic cleansing (UNGA, 24 October 2005).

Bellamy noted at the UNSC's annual retreat in May 2002 the United States rejected the criteria arguing the right to veto should not be arbitrarily constrained. Russia and China were concerned that the criteria could be used to bypass the Security Council, France expressed concern that the agreement on criteria was not a replacement for the consensus required for effective responses to humanitarian crises (Bellamy, 2008).

Bellamy convincingly argues that the understanding of R2P by governments, regional organizations and the UN is not the same understanding that is reflected in the ICISS report, instead it is the World Summit outcomes of 2005 that are more readily accepted as a more accurate reflection of R2P (Bellamy, 2008) (UNGA, 24 October 2005). He further suggests that paragraphs 138 and 139 of the WSOD outcomes are summarised into the following, four basic commitments. First, is the concession by all states that they have a responsibility to protect their citizens from genocide, war crimes, crimes against humanity and ethnic cleansing; Second, assistance to states will be provided to fulfil this responsibility; Third, if the state 'manifestly' fails in its responsibility, all peaceful means will be preferred to protect vulnerable populations. Fourth, if those measures fail or be deemed inappropriate, the Security Council will use all necessary means, including non-consensual force (Bellamy, 2008, pp. 622-624).

The WSOD Summit of 2005 mostly clarified the relevant roles and responsibilities of states. Which according to Bellamy is in line with the fundamental doctrine put forth by Francis Deng that all states have a primary responsibility towards their own citizens, while all other states have a responsibility to assist their peers in fulfilling this primary responsibility' (Bellamy, 2008) (Deng FM et al, 1996) (Deng & Cohen, 2016).  Bellamy notes that the 2005 World Summit did not 'endorse criteria,' but it instead identified the crimes that a state needs to protect its population from and then to examine the circumstances that would require the responsibility to be taken up by the international community. The specific crimes that impose the responsibility on the state are listed as genocide, war crimes, crimes against humanity and ethnic cleansing. The 2005 document further ensure that this responsibility is to be realised by the Security Council when a government was 'manifestly failing' to provide such protection.

Understanding this process is important in attempting to conceptualise R2P from the norm circulation perspective. The contestation that ensued between 2001 and 2005 would have shaped the norm as expressed in paragraphs 138 and 139

of the World Summit outcome documents. This then takes us to another key milestone in the evolution of R2P as a norm. The scope for military intervention based on a state's ability or willingness to protect its population remained contentious.

Serena Sharma (Sharma, 2010), makes useful observations of the 2009 UNSG Ban Ki Moon implementation report released in 2009. The implementation report that was circulated early in 2009, was prefaced with the key paragraphs of the WSOD 138 and 139.  Sharma draws on the UNSG 2009 report's observation that the provisions of 138 and 139 of the 2005 World Summit Outcome Document. The report firmly stated that for the implementation process to move forward, states must desist from trying to reinterpret or renegotiate the outcome document that applies to R2P. Until member states decide otherwise, any attempt to alter the agenda would undermine the 2005 consensus. (Sharma, 2010, pp. 129-130) The basis of the UNSG's 2009 report was to ensure that R2P was to be kept "narrow," the response would be "deep," this approach would direct debate on the implementation of R2P and ensure that populations at risk would be protected (Sharma, 2010) (UNGA, 24 October 2005).

When taken together, it is increasingly plausible that R2P is a 'living' norm for the following reasons. First, remains on the UN agenda and second the contestation around the third pillar is, according to the norm circulation lens, a necessary process in developing and shaping the norm. As Powers (2015) empirical analysis points to an even greater engagement with R2P post-2013, injured the idea that the NATO led Libyan intervention 'killed' R2P. Acharya's (2013, 2015) norm circulation model when applied to R2P, is strengthened by Welsh's (2018, 2019) proposal that R2P can be seen as a complex and robust norm. This implies that R2P's status is more apparent in cases where multifaceted complex nature of R2P is seen from the first and second pillars as opposed to the third pillar. The third pillar remains contested given the element of military intervention that it prescribes, as this is associated with concerns of regime change is indeed alive and continues to be subjected to a norm diffusion process that incorporates

localisation and contestation between and among norm takers and norm senders. These are key processes required in the strengthening of the norm as seen from the norm circulation model.

## 5.1    Recommendation for future research

Future studies on R2P should consider data driven methodologies. There is a need to build on the empirical analysis that can support quantitative studies. R2P is a complex norm that remains an important means to minimise the impact of atrocity crimes committed against populations. The preventative approach prescribed in pillars one and two seem to be the preferred options, however the complete matrix includes military intervention that is seen as fundamental to implementing R2P more effectively.

Empirical evidence will help researchers zoom in on the specific concerns/challenges that states have with respect to pillar three and assist in finding more effective ways to respond to concerns around the use or misuse of military intervention. This would also contribute to the policy debates around the implementation of R2P, especially in cases where states manifestly fail in their responsibility to protect their populations.

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