Hacettepe University Graduate School of Social Sciences

Department of International Relations

LEGAL ASPECTS OF PROTECTION PROVIDED WITHIN THE RESPONSIBILITY TO PROTECT FRAMEWORK

Selin KUL

Master's Thesis

Ankara, 2020

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Selin KUL

ABSTRACT

KUL, Selin. *Legal Aspects of Protection Provided within the Responsibility to Protect Framework*, Master's Thesis, Ankara, 2020.

Although it has been almost 15 years after the adoption of the Responsibility to Protect (R2P) with the World Summit Outcome Document under Paragraphs 138 and 139, the implementation of the principle still raises controversy. Legality of coercive methods involving the use of force or the implementation phase underlies these discussions about the principle and disrupts the normative evolution of the concept. In this sense, it is necessary to highlight and enrich other methods under R2P framework whose legality is rather uncontested. This thesis, which critically approaches to the scope of R2P, examines and evaluates the legality of the tools under the principle in depth by addressing both peaceful and coercive measures in order to ensure a consistent implementation strategy. In this regard, in order to see the acceptability and success of the methods in R2P practice, Kenya and Guinea cases—which are commonly referred to as successful R2P implementations—as well as Libya and the Ivory Coast cases—which are examples of the implementation of the controversial measure of military intervention—are examined. In order to understand the negative criticisms to R2P, the assumptions of TWAIL and Feminist International Relations (IR) theory are utilized. In the light of the findings obtained by examining the legality of these tested methods, this thesis argues that enriching and deepening the peaceful elements in the toolbox of R2P with the participation of a variety of actors would help an undisputed implementation of the principle and contribute to the removal of the obstacles before R2P's normative development.

Keywords

Responsibility to Protect (R2P), international law, peaceful and coercive methods, use of force

ÖZET

KUL, Selin. *Koruma Sorumluluğu Çerçevesi Altında Sağlanan Korumanın Hukuki Yönleri*, Yüksek Lisans Tezi, Ankara, 2020.

Koruma Sorumluluğu'nun (R2P) Dünya Zirvesi Sonuç Belgesi'nin 138 ve 139'uncu paragrafları çerçevesinde kabulünün ardından yaklaşık 15 yıl geçmiş olmasına rağmen, prensibin uygulaması günümüzde hala tartışmalara neden olmaktadır. Güç kullanımı içeren zorlayıcı yöntemlerin yasallığı veya uygulama aşaması prensibe dair bu tartışmaların temelini oluşturmakta ve kavramın normatif gelişimini sekteye uğratmaktadır. Bu anlamda, R2P altındaki yasallığı daha tartışmasız diğer yöntemlerin vurgulanması ve prensip çerçevesinde tanımlanan korumanın yasal yönlerine bakılması gerekmektedir. R2P'nin kapsamına eleştirel yaklaşan bu tez, tutarlı bir uygulama stratejisi sağlamak için hem barışçıl hem de zorlayıcı yöntemleri ele alarak ilke kapsamındaki araçların yasallığını derinlemesine incelemekte ve değerlendirmektedir. Bu bağlamda, bu tezde yöntemlerin koruma sorumluluğunun yerine getirilmesinde kabul edilebilirliğini ve başarısını görmek için ekseriyetle başarılı R2P uygulamaları olarak anılan Kenya ve Gine vakaları ile tartışmalı askeri müdahale uygulanmasına örnek olan Libya ve Fildişi Sahili vakaları incelenmektedir. Zorlayıcı yöntemlere dair olumsuz eleştirileri anlamak adına, TWAIL ve Feminist Uluslararası İlişkiler teorisinin varsayımlarından yararlanılmaktadır. Test edilen bu yöntemlerin yasallığı incelenerek elde edilen bulgular ışığında bu tez, R2P'nin çerçevesi altındaki barışçıl unsurları çeşitli aktörlerin katılımıyla zenginleştirmenin ve derinleştirmenin prensibin tartışmasız uygulanmasına yardımcı olacağını ve R2P'nin normatif gelişiminin önündeki engelleri kaldıracağını savunmaktadır.

Anahtar Sözcükler

Koruma Sorumluluğu, uluslararası hukuk, barışçıl ve zorlayıcı tedbirler, güç kullanımı

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ABBREVIATIONS

AIDS	Acquired Immune Deficiency Syndrome
ASEAN	Association of South East Asian Nations
AU	African Union
BRICS	Brazil, Russia, India, China, South Korea
CCDS	Committee of Chiefs of Defense Staff
CEI	*Commission Electorale Indépendante*
CIPEV	Commission of Inquiry on Post-Election Violence
CNDD	*Conseil National pour la Démocratie et le Développement*
DPRK	Democratic People's Republic of Korea
DRC	Democratic Republic of Congo
ECOWAS	Economic Community of West African States
EU	European Union
FANCI	*Forces Armée Nationales de Côte d'Ivoire*
FN	Forces Nouvelles
GNP	Gross National Product
HRC	Human Rights Council
ICC	International Criminal Court
ICISS	International Commission on Intervention and State Sovereignty
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
IDPs	Internally Displaced Persons
IOM	International Organization for Migration

IR	International Relations
KPTJ	Kenyans for Peace with Truth and Justice
LoN	League of Nations
MPCI	*Mouvement Patriotique de Côte d'Ivoire*
NATO	North Atlantic Treaty Organization
NGO	Non-governmental Organizations
NTC	National Transition Council
ODM	Orange Democratic Movement
OIC	Organization of Islamic Cooperation
OHCHR	Office of the High Commissioner for Human Rights
PCIJ	Permanent Court of International Justice
PNU	Party of National Unity
PoC	Protection of Civilians
P5	Permanent Five Members of the United Nations Security Council
RP	Responsible Protection
RN2V	Responsibility not to Veto
RwP	Responsibility while Protecting
R2P	Responsibility to Protect
TWAIL	Third World Approaches to International Law
UHAS	UN Humanitarian Air Services
UK	United Kingdom
UN	United Nations
UNHCR	United Nations High Commissioner of Refugees

UNOCI	United Nations Operation in Côte d'Ivoire
UNPROFOR	United Nations Protection Force
UNSC	United Nations Security Council
UNSMIL	United Nations Support Mission in Libya
US	United States of America
WANEP	West Africa Network for Peacebuilding
WSOD	World Summit Outcome Document

INTRODUCTION

In the immediate aftermath of the Cold War, with the transforming security conception and expanding scope of international law, intrastate human rights violations have gradually ceased to be considered as an issue related to the internal affairs of states. The humanitarian crises of the 1990s, and the failure of the United Nations (UN) to take timely and decisive action in some of these brought the humanitarian intervention doctrine into question. Following the debates on mass atrocities committed in Iraq, Rwanda and Kosovo, then UN Secretary-General Kofi Annan, in September 1999 asked states to reconsider their traditional understanding of sovereignty.[1] Thereupon, the International Commission on Intervention and State Sovereignty (ICISS), which was formed in 2000, prepared a report called the Responsibility to Protect (R2P). The report was based on the idea of the existence of a two-fold responsibility to protect populations from mass violations of human rights. In the first place, states' individual responsibility towards their population lies in the "sovereignty as responsibility" understanding, which interprets sovereignty as a reflection of states' responsibilities to protect their populations rather than sovereignty being a shield protecting states from external interference. Thus, the responsibilities of states towards their own population complemented the classical notion of state sovereignty. Secondly, in the case of the state's failure, the international community has a responsibility to protect the concerned population. In this regard, what the ICISS suggested has come to the fore as a concept that revisits the controversial doctrine of humanitarian intervention and shifting the focus towards the existence of a responsibility.

In 2005, R2P was unanimously accepted by the Member States of the UN General Assembly under Paragraphs 138 and 139 of the World Summit Outcome Document (WSOD). Thereby, it has become part of the UN common security system. Four years later, in 2009, Secretary-General Ban Ki-moon issued a report to address the gaps concerning the implementation of R2P, which highlighted the peaceful measures within the concept and divided R2P's implementation strategy into three pillars. Pillar 1

[1] The Guardian, "Kofi Annan: 'No government has the right to hide behind national sovereignty in order to violate human right'", accessed December 11, 2019, https://www.theguardian.com/world/1999/apr/07/balkans.unitednations

attributes the fundamental responsibility to protect populations from four atrocity crimes to state itself. Pillar 2 stresses that the international community should assist states, in necessary cases, to increase their capacity in order for them to fulfill their responsibilities under the first pillar. Finally, Pillar 3 emphasizes the responsibility of the international community to respond "in a timely and decisive manner" in case of a state's failure to fulfill its responsibility. In accordance with Chapters VI, VIII, and later VII of the Charter of the UN, such response may include political, economic or humanitarian measures; but if it is proved that peaceful measures are not sufficient, then under Chapter VII, coercive measures, up to and including the use of force, can be carried out by the international community with the authorization of the UN Security Council.

Due to the possibility to carry out military interventions under R2P, specifically within the confines of Pillar 3, has led to criticisms regarding the principle. Notably, in the annual R2P discussions in the UN General Assembly, R2P is considered by certain states as an equivalent of the old humanitarian intervention doctrine.[2] In an environment where the notion of the use of force for humanitarian purposes is also controversial in the eyes of international law, the necessity of discussing the existing legal measures and introducing new ones have arisen in order to contribute to the normative development of R2P. In this vein, this thesis focuses on the peaceful and coercive measures under the three pillars of R2P and aims to clarify the confines of the protection regime provided within the framework of the principle by emphasizing methods other than the use of force that remain legal even without Security Council authorization.

In the literature, there are many studies focusing on the use of force and its relation with R2P.[3] In addition, the legal status of the concept has been studied by R2P scholars along with contributions discussing whether the concept is an emerging norm, ethical norm or

[2] See Pınar Gözen Ercan, "UN General Assembly Dialogues on the Responsibility to Protect and the Use of Force for Humanitarian Purposes", *Global Responsibility to Protect,* 11(3), (2019), pp. 313-332.
[3] For examples, see Alex J. Bellamy, "The Responsibility to Protect and the Problem of Military Intervention", *International Affairs*, 84(4), (2008), pp. 615-639; Eve Massingham, "Military Intervention for Humanitarian Purposes: Does the Responsibility to Protect Doctrine Advance the Legality of the Use of Force for Humanitarian Ends?", International Review of the Red Cross, 91(876), (2009), pp. 803-831.

a political doctrine.[4] There are also works voicing critical views regarding the principle.[5] In addition, especially the civil wars that started following the Arab uprisings intensified the criticisms about the implementations of R2P and many studies discussing the future of the concept started to dominate the literature.[6] With the increasing number of the controversies, articles discussing the pillars of R2P and peaceful and/or coercive measures under these pillars have been published.[7] However, still there is a lack of comprehensive studies which will help to enrich the peaceful and coercive methods within the pillars of the concept and to remove the reductionist approach that equates coercive methods to the use of force.

At this point in order to draw R2P away from these misconceptions, discussing the repertoire of legal protection measures is required to reach the aim of keeping the protection objective "at the heart of response" as Gareth Evans suggested.[8] In doing so, a

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[4] Carsten Stahn, "Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?", *The American Journal of International Law*, 101 (1), (2007), pp. 990–1020; Pınar Gözen Ercan, "R2P: From Slogan to an International Ethical Norm", *Uluslararası İlişkiler*, 11(43), (2014), pp. 35-52; Jonah Eaton, "An Emerging Norm - Determining the Meaning and Legal Status of the Responsibility to Protect", *Michigan Journal of International Law*, 32(4), (2011), pp.765-804; Camila Pupparo, "The Responsibility to Protect: Emerging Norm or Failed Doctrine?," *Global Tides*, 9, (2015), pp. 1-20.

[5] Hilary Charlesworth, "Feminist Reflections on the Responsibility to Protect", *Global Responsibility to Protect*, 2, (2010), pp. 232-249; Mojtaba Mahdavi, "A Postcolonial Critique of Responsibility to Protect in the Middle East", *Perceptions*, 20(1), (2015), pp. 7-36; Sara E.Davies, Sarah Teitt ve Zim Nwokora, "Bridging the Gap: Early Warning, Gender and the Responsibility to Protect", *Cooperation and Conflict*, 50 (2), (2015), pp. 228-249; Pınar Gözen Ercan, "Onuncu Yılının Ardından "Koruma Sorumluluğu"nun Kavramsal Gelişimine Feminist Bir Eleştiri", *Alternatif Politika*, 9 (3), (2017), pp. 385-408; Mohammed Ayoob "Third World Perspectives on Humanitarian Intervention and International Administration", *Global Governance*, 10(1), (2004), pp. 99-118; Kelleci, Tuğçe and Bodur Ün, Marella, "TWAIL ve Yeni Bir Hâkimiyet Aracı Olarak Koruma Sorumluluğu (R2P): Libya Örneği", *Uluslararası İlişkiler*, 14(56), (2017), pp. 89-104.

[6] Ramesh Thakur, "R2P after Libya and Syria: Engaging Emerging Powers", The Washington Quarterly, (2013), p. 69; Oliver Stuenkel, "The BRICS and Future of R2P: Was Syria or Libya the Exception?", *Global Responsibility to Protect*, 6, (2014), pp. 3-28; Andrew Garwood-Gowers, "The Responsibility to Protect and the Arab Spring: Libya as the Exception, Syria as the Norm?", *UNSW Law Journal*, 36(2), (2013), pp. 514-618; Morris, Justin, "Libya and Syria: R2P and the Spectre of the Swinging Pendulum", *International Affairs*, 89(5), (2013), pp. 1265-1283; Pınar Gözen Ercan, *Debating the Future of the 'Responsibility to Protect': The Evolution of a Moral Norm*, Basingstoke: Palgrave Macmillan, (2016).

[7] Alex Bellamy, "The First Response: Peaceful Means in the Third Pillar of the Responsibility to Protect", The Stanley Foundation, 2015; Adrian Gallagher, "The Promise of Pillar II: Analysing International Assistance under the Responsibility to Protect", *International Affairs*, 91 (6), (2015), pp.1259-1275; Julian Junk, "Bringing the Non-coercive Dimensions of R2P to the Fore: The Case of Kenya", *Global Society*, 30(1), (2016), pp. 54-66; Brian Barbour and Brian Gorlick, "Embracing the 'Responsibility to Protect': A Repertoire of Measures Including Asylum for Potential Victims," *International Journal of Refugee Law,* 20, no. 4, (2008), pp. 533–566; Roland Paris, "The 'Responsibility to Protect' and the Structural Problems of Preventive Humanitarian Intervention", International Peacekeeping, 21(5), (2014), pp. 569-603.

[8] Gareth Evans, "Protecting Civilians Responsibly", accessed December 8, 2019, https://www.project-syndicate.org/commentary/gareth-evanson-moves-by-china-and-other-brics-countries-to-embrace-humanitarian-intervention Protecting Civilians Responsibly.

critical overview of the methods which have been implemented up to now will be made by analyzing the cases of Kenya and Guinea—which are generally referred in the literature as successful R2P implementations—as well as the cases of Libya and the Ivory Coast—which are widely debated within the framework of R2P so far. In addition, the assumptions of Feminist theory and Third World Approaches to International Law (TWAIL) will be utilized in order to detail the criticisms against R2P. Thus, while providing a critique of the tested methods, this thesis aims to examine the peaceful and coercive methods under the R2P framework in depth and to enrich the legal measures of protection under the principle. In this way, the misperception that sees R2P as a synonym of humanitarian intervention will be prevented. Furthermore, this thesis aims to contribute to the literature by focusing on understudied measures under R2P. Hence, it asks why the tested methods under the R2P framework have opened the way for the discussions about the failure of the principle, and whether it is possible to highlight other legal protection measures in light of the lessons learned?

In order to answer its main research question, this thesis will structure its analysis under four main chapters. The first chapter will draw the conceptual framework of R2P starting with the ICISS report focusing on the responsibilities of individual states as well as the international community. Then, it will discuss the points where the principle differs from humanitarian intervention, and focus on the process of incorporating the concept into the UN framework. In the last part of this chapter, the three-pillar implementation strategy that was introduced in 2009 will be reviewed.

In order to evaluate R2P's implementation, it is necessary to examine the peaceful and coercive measures under the three-pillar structure of the principle. Therefore, in the second chapter, the peaceful methods that can be applied within the framework of R2P will be addressed. As well as the methods that the Chapter VI of the UN Charter outlines (such as negotiation, inquiry, mediation, conciliation, arbitration and judicial settlement), other possible peaceful methods will be emphasized and their applicability and importance within the scope of R2P will be evaluated. Furthermore, the role of regional organizations in resolving conflicts, as referred to in Chapter VIII of the UN Charter, will be discussed in this Chapter.

The third chapter will discuss the coercive methods under Chapter VII of the UN Charter with regard to the implementation of R2P and address the question under which conditions the legality of the use of force can be achieved. Afterwards, alternative legal coercive methods short of use of force will be studied. In light of this, the misperception that coercive methods under R2P only consists of the use of force will be scrutinized.

The fourth chapter will focus on demonstrative cases. First, the cases of Kenya and Guinea, which are considered as successful preventive R2P implementations will be addressed in order to examine the questions that under what conditions peaceful methods are applied and how they can be successful. Then, the military interventions in Libya and the Ivory Coast, which are the most debated and controversial examples within the context of R2P's implementation will be studied. Although these cases will be discussed in particular to the implementation of these methods under R2P, this thesis will not adopt case study as a method per se, but it will benefit from cases as examples of implementation in order to perform an overall analysis concerning the legality of the measures. While discussing the cases of Libya and the Ivory Coast, the criticisms of TWAIL and Feminist International Relations Theory will be utilized to demonstrate why the peaceful methods of R2P should be prioritized. In order to provide a background for the criticisms of the two approaches, it would be helpful to mention their general stances. The TWAIL perspective is fundamentally based on the following assumptions: The discrepancies between the West and the Third World countries (also known as the Global South) has been continuing through various economic and cultural dependences even after the Second World War, which ended the colonial period, and since the late 1990s the Western states have been legitimizing their interventions of all sorts through international law.[9] TWAIL can also be explained mainly as a view that aims to illuminate the historical continuity between international law and colonialism. To this end, it adopts an anti-hierarchic and a counter-hegemonic stance and the principles of Third Worldism.[10] Moreover, this view—which perceives international law as a tool to maintain

[9] Larissa Ramina, "TWAIL – 'ThirdWorld Approaches to International Law' and Human Rights: Some Considerations", *Revista de Investigações Constitucionais, Curitiba*, 5(1), p. 262.
[10] Kelleci and Bodur Ün, "TWAIL ve Yeni Bir Hâkimiyet Aracı", p. 93.

the hierarchy of international norms and institutions that puts the Global South under the domination of Europeans—aims to achieve the global justice.[11]

According to TWAIL, since colonial domination cannot be maintained in the new world order, a new domination method has been introduced through international law.[12] The West has marginalized the non-European people by characterizing them as underdeveloped within the framework of its "mission of civilization".[13] Thus, international law has been serving to the realities of the West in this created hierarchy by paving the way for humanitarian interventions to be made in the Third World countries, especially with the discourses of "human rights" and "crimes against humanity" in the post-Cold War period. In this context, the concept of humanitarian intervention, which cleared the way for interventions in the Global South, represents the re-awakening of the "mission of civilization" which had been used to control these states.[14] Thus, European states and institutions are depicted as heroes who brought civilization to them by saving the victims of these barbaric states. Consequently, according to TWAIL scholars, racial and cultural marginalization constitutes the basis of the civilized and non-civilized distinction of the West, and imperialism has been carried out through this marginalization.[15]

As of the 1990s, the term "non-civilized nations" that was frequently used in this historical context was replaced with "authoritarian regimes" to indicate regimes that violates human rights. Therefore, "the civilized" definition of the West was presented as if it was a universal one.[16] Furthermore, in order to maintain such a domination, the understanding of sovereignty had to be transformed, and the concepts of intervention and responsibility had to be redefined. According to TWAIL, R2P was designed to serve this purpose.[17] Thus, the right to intervene in authoritarian regimes transformed and this time

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[11] Makau Mutua, "What is TWAIL?", *Proceedings of the 94th Annual Meeting of the American Society of International Law,* 2000, p. 31.
[12] James Thuo Gathii, "TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography", *Trade Law and Development*, 3(1), (2011), pp. 26-64.
[13] Kelleci and Bodur Ün, "TWAIL ve Yeni Bir Hakimiyet", p. 94.
[14] Sue Robertson, "'Beseeching Dominance': Critical Thoughts on the 'Responsibility to Protect' Doctrine", *Australian International Law Journal*, 12, (2005), p. 45.
[15] Robert Knox, "Civilizing Interventions? Race, War and International Law", *Cambridge Review of International Affairs*, 26(1), (2013), p. 113.
[16] Robertson, "'Beseeching Dominance", p. 46.
[17] Kelleci and Bodur Ün, "TWAIL ve Yeni Bir Hakimiyet", p. 90.

the Western states violated the concept of sovereignty by defining it as a responsibility. Moreover, TWAIL scholars see R2P as a reflection of the hierarchical functioning of international law and Eurocentrism in the international legal order.[18] In this vein, regarding the cases of Libya and the Ivory Coast, TWAIL provides a criticism of the two interventions arguing that these were vehicles for the West to change the balance in the region to its favor and to maintain its global superiority rather than solving the problem. Therefore, while addressing these two cases in Chapter 4, the specific concerns of TWAIL will be taken into account.

On the other hand, since a considerable portion of the works of Feminist IR scholars has focused on the impact of the use of force on women, in the R2P literature there are Feminist critiques of the norm, especially with regard to the inclusion of humanitarian intervention in general. Feminist scholars state that in cases of a conflict within a country, the situations of women, who become the primary target of sexual and gender-based violence, are generally not adequately addressed by the international community and also, women are mostly excluded from the peace building processes.[19] As a response to these discussions, in 2000, with Resolution 1325, which is the cornerstone of the Women Peace and Security (WPS) agenda, the UN Security Council drew attention to the effects of armed conflicts on women, the role of women in ensuring peace as well as gender dimensions of peace and conflict resolution processes. Thus, this Resolution aimed to ensure that "women are represented more at all levels of decision-making in national, regional and international institutions and mechanisms related to conflict prevention and solution processes".[20]

Regarding the relationship between R2P and WPS, if women are considered to be one of the first to be affected by the increased in violence in a country, their status in the four atrocity crimes of R2P should also be taken into consideration.[21] R2P, which is ostensibly not based on the use of force unlike the humanitarian intervention, tries to prevent large-

[18] Ibid., p. 98.
[19] UN Women, "In Focus: Women, peace and security", accessed July, 7, 2020, https://www.unwomen.org/en/news/in-focus/women-peace-security

[20] UN Security Council, Security Council Resolution 1325 on Women, Peace and Security, (31 October 2000), S/RES/1325.
[21] Valerie M. Hudson, Bonnie Ballif-Spanvill, Mary Caprioli et al., *Sex and World Peace*. New York: Columbia University Press, (2012).

scale human rights crises before they intensify, and in this respect essentially, it follows a parallel path with WPS agenda and suggests new approaches to how to respond to conflicts.[22] According to Charlesworth, R2P responded to the feminist criticism of the international security system, with its emphasis on the prevention of atrocity crimes and its emphasis on non-military measures.[23] However, in essence, R2P did not emphasize how women are affected by conflicts or how can they get involved in decision-making processes.[24] In addition, prevention which has found itself a place in WPS agenda, constitutes one of the most lacking points of R2P, and this causes Feminist scholars to act cautiously towards R2P.[25] Another source of tension between the two agendas has been the idea that R2P is substantially deal with the humanitarian intervention;[26] in this context, Feminist scholars argue that R2P underestimates women by putting them to the victim roles who have to wait for being "rescued" by armed male saviors.[27]

In the WSOD version of R2P and in several annual reports of the Secretary-General there were only a few references to the situation of women in any conflict wherein women were mentioned as victims.[28] Only in 2020 such approach began to change with the Secretary-General's annual report on R2P titled "Women and the Responsibility to Protect", which made quite important highlights. The Secretary-General, voiced the circumstances during conflicts in which women were particularly affected such as sexual violence, trafficking or displacement and he expressed that women fell into an even more vulnerable position in such cases.[29] He also underlined the importance of the participation of women in all levels of the processes for effective implementation of R2P, such as peace operations, peacebuilding and conflict resolution.[30] In spite of this belated emphasis, R2P could not

[22] Jennifer Bond and Laurel Sherret, "Mapping Gender and the Responsibility to Protect: Seeking Intersections", *Global Responsibility to Protect*, (2012), 4(2), p. 133.
[23] Charlesworth, "Feminist Reflections", pp. 232-249.
[24] Charlesworth, "Feminist Reflections", p. 242.
[25] Davies, Teitt and Nwokora, "Bridging the Gap: Early Warning, Gender and the Responsibility to Protect", p. 229.
[26] Charlesworth, "Feminist Reflections", p. 233.
[27] Stamnes, "The Responsibility to Protect", (2010), p. 22.
[28] Gözen Ercan, "Onuncu Yılının Ardından", pp. 394-397.
[29] Global Centre for the Responsibility to Protect, "Summary of the UN Secretary-General's Report on R2P, Prioritizing Prevention and Strengthening Response: Women And The Responsibility to Protect", accessed August 21, 2020, https://www.globalr2p.org/publications/summary-of-the-un-secretary-generals-report-on-r2p-prioritizing-prevention-and-strengthening-response-women-and-the-responsibility-to-protect/.
[30] Bond and Sherret, "Mapping Gender and the Responsibility to Protect", p. 133.

go beyond the genderblind framework in Libya and Ivory Coast cases.[31] As a matter of fact, the military interventions in Libya and Ivory Coast cases, R2P decision makers preferred an implementation that was far from the WPS agenda. As feminist critiques have expressed, women were kept away from all processes and they were treated as victims. In this regard, in Chapter 4, the feminist approach will help to analyze why it is important to prioritize the preventive aspects of R2P by focusing on the consequences of the use of force in the cases of Libya and the Ivory Coast.

Finally, with a general overview which supports the main argument, this thesis will be concluded. As seen in the ongoing discussions on R2P, the inclusion of the use of force as a method has been the mainstay of skeptical approaches to the norm and it has impeded the conceptual development of the principle. Particularly under the shadow of Libya and the Ivory Coast interventions, these discussions have led to frequent emphasis on the preventive aspects of R2P. In this sense, there is a need to re-examine the coercive methods available to R2P and to clarify other methods in its toolbox. Aiming to fill such gap in the literature, this thesis will conclude that the foregrounding of the peaceful methods under R2P in practice, which have been overlooked so far, will not only prevent the misperception which equates R2P to humanitarian intervention (a.k.a. the right to intervene), but also will contribute to the normative development of the norm by overcoming major criticisms against it.

[31] Ibid., p. 140.

CHAPTER 1

THE RESPONSIBILITY TO PROTECT

The R2P norm, which was proposed in order to prevent human catastrophe, was unanimously adopted under the UN framework in 2005. Nevertheless, the adoption of the norm by Outcome Document did not ensure its practice. In order to address matters pertaining to implementation the principle continued to be discussed under the UN framework via annual reports of the Secretary-General and follow-up debates in the UN General Assembly. During R2P's institutionalization in the UN, it has become necessary to emphasize preventive methods within the framework of R2P in order to reveal the differences between R2P and humanitarian intervention and to ensure the R2P's consistent and effective. This Chapter will emphasize the necessity of examining the legal methods under the principle by addressing firstly the evolution of R2P and its acceptance by the UN. Then, it will address the attempts and discussions about the principle during its institutionalization process.

1.1. From Humanitarian Intervention to the Report of the ICISS

In the context of the 1990s, the contemporary understanding of humanitarian intervention was one of the most debated issues for the international community, as a result of the serious human rights violations that took place during[32] and especially after the Cold War. While neither the UN Charter nor any other official document provides a definition of the doctrine, in the literature, there are various definitions of the human intervention. For instance, Stowell describes it as a rightful use of force to prevent arbitrary and persistent ill-treatment by a state which overcomes the limits of its sovereignty against its citizens.[33] Teson defines it in a more limited manner as a proportionate intervention (which may include the use of force) to a state by one or more states, due to fundamental human rights

[32] India's intervention in East Pakistan in 1971, Vietnam's intervention in Cambodia in 1978, and Tanzania's intervention in Uganda in 1979, the US's intervention to Iraq in 1991, see Garry J. Bass, "The Indian Way of Humanitarian Intervention", *Yale Journal of International Law*, 40, pp. 228-287; Oliver Ramsbotham, "Humanitarian Intervention 1990-5: A Need to Reconceptualize?", *Review of International Studies*, 23(4), (1997), pp. 445-468.

[33] Ellery C. Stowell, *Intervention in International Law*, (Washington, D. C.: John Byrne & Co, 1921), p. 8.

violations and in favor of those who oppose to the oppressive governments.[34] Despite their nuances, based on these definitions it is possible to argue that the most important element of humanitarian intervention is the existence of severe and widespread human rights violations by a state against its own population. In the post-Charter period, another contested issue regarding the humanitarian intervention doctrine is its identification as a "right to intervene",[35] given that the principle of non-intervention was established with the UN Charter. Indeed, the humanitarian intervention doctrine or "the right to intervene" is not something that is recognized as a legal method after the establishment under the UN Charter, as Article 2(7) establishes that neither the UN nor its Member States should interfere in matters within the domestic jurisdiction of states. Likewise, the UN General Assembly's "Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty Resolution" stated that no state has a right to intervene to the other state.[36]

Furthermore, what makes humanitarian intervention even more controversial is its dependence on the use of force, which is prohibited under Article 2(4) of the UN Charter, which has a constitutional feature for interstate relations in the post-1945 period.[37] Although the Charter prohibits "the threat and use of force", there are two specific exceptions to this under Chapter VII. The first is the inherent right of self-defense regulated by Article 51 of the UN Charter, which allows states to use force to respond to an aggression until the UN Security Council takes the necessary measures to re-establish the peace and security environment. The second one arises from Article 42 of the UN Charter,[38] which gives the power to the UN Security Council to authorize legal use of force in order to restore or maintain international peace and security.

The controversies with regard to the concept of humanitarian intervention on the axis of Article 2(4) increased in the post-Cold War era. The period of increasing number of civil wars due to the demands for independence after the dissolution of the Soviet Union and the transformation of the understanding of security in a way to include human rights and

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[34] Fernando R. Tesón, "Humanitarian Intervention: Loose Ends", *FSU College of Law*, Public Law Research Paper No. 516, (2011), p. 5.
[35] Gözen Ercan, *Debating the Future of the "Responsibility to Protect",* p. 10.
[36] Gözen Ercan, *Debating the Future of the "Responsibility to Protect"*, p. 19.
[37] United Nations, *Charter of the United Nations*, 24 October 1945, Article 2(4).
[38] Charter of the United Nations, Chapter VII.

values can be counted as the driving forces behind this change. With the expansion of the security understanding, it was emphasized that not only tensions and conflicts between states, but also human rights violations in states threaten international peace and security.

In the post-Cold War era, the international community and scholars have been divided on the issue of the use of force for humanitarian ends. In this vein, the case of Kosovo—wherein a military intervention was carried out by the North Atlantic Treaty Organization (NATO) in March 1999 with the aim of stopping the Serbian atrocities against the Kosovar population since 1995—brought the discussions on the prohibition of the use of force under the UN Charter to its highest level.[39] While there are those who argue for the legitimacy of the intervention on the basis of international customary law,[40] there are also those who argue against the intervention. The latter group of scholars posits that NATO's intervention was illegal and that it violated international law as it was in contravention to Article 2(4) of the UN Charter since the UN Security Council neither authorizes the intervention under Chapter VII nor gave authority to any regional organization under Article 53 of the UN Charter.[41]

In light of the cases of the 1990s, then Secretary-General of the UN Kofi Annan, raised the following question to the international community: "If humanitarian intervention is indeed an unacceptable attack against sovereignty, how should we respond to large-scale and systematic human rights violations affecting every basic rule of our common humanity, such as Rwanda and Srebrenica"?[42] Annan also argued that state sovereignty was redefined by the new conjuncture and the basic aim of the state should be serving its people, and sovereignty became a responsibility for states.[43] Annan's challenging of the classical Westphalian notion of state sovereignty that considered state authorities to have "absolute power" within their national borders, has paved the way for the rethinking of the humanitarian intervention doctrine.

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[39] Milorad Petreski, "The International Public Law and the Use of Force by the States", *Journal of Liberty and International Affairs*, 1(2), (2015), p. 7.
[40] Klinton W. Alexander, "Nato's "Intervention in Kosovo: The Legal Case for Violating Yugoslavia's 'National Sovereignty' in the Absence of Security Council Approval", Houston Journal of International Law, 22, (2000), p. 39.
[41] Petreski, "The International Public Law", pp. 7-8.
[42] ICISS, "The Responsibility to Protect: The Report of the International Commission on Intervention and State Sovereignty", International Development Research Center, Ottawa, (2001), p. vii.
[43] Ibid.

Consequently, the International Commission on Intervention and State Sovereignty (ICISS) was founded in 2000, under the initiative of the Canadian Government and with the support of the Chicago's Mac Arthur Foundation. The Commission, which had 12 members from different parts of the world representing a variety of views, completed its work in 2001 and published the report called "the Responsibility to Protect" in December. In the introduction, the ICISS stated that the aim of this report is to answer the question "when it is possible to resort to coercive methods—especially the use of military force" to protect people whose lives are endangered by their states,[44] but more precisely, as the co-chair of the Commission Gareth Evans states, the report aimed to establish a "satisfactory and reliable guideline" that indicates under what circumstances the international community can respond to domestic human rights violations.[45]

One of the most important changes put forth by the report concerned the notion of state sovereignty. According to R2P, the sovereignty of states brings the responsibility to protect the populations living in that country from mass atrocities along with itself, thus, it deviates from the traditional understanding of sovereignty.[46] As a matter of fact, "sovereignty as a responsibility" understanding was first introduced by Francis Deng, who was appointed as the Special Representative of Internally Displaced Persons (IDPs) by the UN Secretary-General Boutros Boutros-Ghali in 1993,[47] and his colleague Roberta Cohen by looking at the increasing number of displaced people due to the severity of armed conflicts between different groups within a state. Deng and Cohen's goals in introducing this concept were to remind the responsibilities of the leaders who reject the international aid by arguing that protecting and helping IDPs was primarily the responsibility of the state in which these people reside.[48] Again according to Deng and Cohen, if the states in question cannot provide this protection, they should accept assistance from outside or this responsibility should be transferred to the international community.[49] Although Deng and Cohen did not suggest concrete criteria in order to

[44] ICISS, "The Responsibility to Protect", p. vi.
[45] Gareth Evans, "From an Idea to an International Norm", in Juliette Voinov Kohler, Richar H. Cooper, *Responsibility to Protect: The Global Moral Compact for the 21st Century,* Palgrave Macmillan, (2009), p. 19.
[46] ICISS, "The Responsibility to Protect", p. 12.
[47] Bellamy, "The Responsibility to Protect", p. 618.
[48] Bellamy, "The Responsibility to Protect", p. 619.
[49] Roberta Cohen, Francis M. Deng, *Masses in Flight: The Global Crisis of Internal Displacement*, Washington: The Brookings Institution, (1998), p. 27.

determine whether a country fulfills its responsibility or not, the UN Security Council was considered as the first authority in this regard.[50] As a reflection of this study, the report of the ICISS underlined that the main responsibility to protect the people living in a country lies with the state itself, moreover, if this state is unable or unwilling to fulfill this responsibility, it will be transferred to the international community.[51] Thus, it is possible to argue that R2P draws a wider framework than humanitarian intervention regarding the responsibilities of states to respond mass atrocities.

Another important development brought by the report is that, it looks from the perspective of those who need help, instead of reflecting the attitude of those who consider intervening.[52] Therefore, the main priority was indicated as the protection of the civilians. For this reason, R2P does not only comprise the responsibilities of states to react[53] after the beginning of the conflict, but also brings the responsibility to prevent the incidents in the first place[54] and the responsibility to rebuild the region after the establishment of the peace.[55] Regarding the responsibility to react, since the ICISS was aware that it was necessary to detach the discussions from humanitarian intervention, the Commission members wanted to change the negative effect of associating the humanitarian intervention with a natural right to intervene and they underlined that this initiative is a "responsibility" to protect fundamental rights of populations rather than a right which is granted to the states. At this point, they put the principle in the context of the sovereignty principle and detached it from the right to intervene context.[56]

The responsibility to prevent, which is seen as the first responsibility, covers the precautions to be taken before the problem turns into a real humanitarian crisis. If success is not achieved at the first stage, the responsibility of the international community to react to the situation with peaceful or coercive measures is seen as the second stage. The third stage, after stopping the conflicts in the region, includes the measures to be taken to ensure the peace and stability of the people living there and to rebuild the region.[57] In other

[50] Bellamy, "The Responsibility to Protect", pp. 619-620
[51] ICISS, "The Responsibility to Protect", p. xi.
[52] Ibid., p. 6.
[53] Ibid., p. 29.
[54] Ibid., p. 19.
[55] Ibid., p. 39.
[56] Gözen Ercan, *Debating the Future of the "Responsibility to Protect"*, p. 57.
[57] ICISS, "The Responsibility to Protect", p. xi.

words, the ICISS's emphasis on preventing grave violations of human rights without resorting to military intervention shows that stopping incidents before happening or escalating constitutes a fundamental dimension of R2P. However, despite this emphasis on prevention in order to prevent potential abuses of the norm, according to Bellamy, the main focus of the Commission has been on the aspect of intervention and as a matter of fact, while only 9 pages out of 85 were dedicated to prevention aspect of R2P, 32 pages have been allocated to intervention.[58] The questions under which circumstances an intervention would be legitimate and which institutions would authorize the intervention has occupied a large portion of the report and these questions were tried to be overcome with just cause thresholds and precautionary principles.[59]

The just cause threshold and precautionary principles defined under the responsibility to react, aimed to address past criticisms about military intervention. Thus, the ICISS suggested that the decision to intervene would be legitimate only if the six criteria were met,[60] which are just cause, right intention, last resort, proportional means, reasonable prospects and right authority.[61] Thus, while the UN Security Council was indicated as "the right authority" to decide on an intervention, permanent members (P5) were asked to refrain from exercising their veto right unless their states' vital interests were at stake. In the cases when the UN Security Council could not take the necessary decision, it was suggested that the case should be taken before the UN General Assembly or to regional organizations in line with Chapter VIII of the UN Charter.[62] After the decision was taken and the responsibility to react phase was fulfilled, the Commission argued that the responsibility to rebuild should be carried out. This final responsibility stipulates that the forces which intervened in a certain state would come under certain obligations after the intervention. These responsibilities include establishing permanent peace, ensuring

[58] Bellamy, "The Responsibility to Protect", p. 621.
[59] Ibid.
[60] ICISS, "The Responsibility to Protect", pp. 32-38.
[61] The just cause, the first of these criteria, emphasizes the need to have a justified reason for a military intervention in cases such as massive human rights losses and ethnic cleansing. While the last resort criterion indicates the need to exhaust all preventive and peaceful methods before resorting to military intervention; through proportional means it was emphasized that the intensity and duration of the military intervention should be proportional. In addition, the reasonable prospects stipulate that the military intervention should have a chance of success and it should improve the conditions of the people in the region. Finally, the operations should be conducted first and foremost under the authority of the UN Security-Council which is indicated as the right authority.
[62] ICISS, "The Responsibility to Protect", pp. 12-13.

reconstruction, building a security mechanism and judicial system by collaborating with local governments.[63] Thus, the Commission did not limit its approach to reacting against human rights violations, but it has drawn a very broad framework through the responsibility to rebuild phase.

Different reactions have been given to the report of the ICISS. The publication of the report coincided with the international war against terror following September 11 attacks and since R2P was seen as equivalent to humanitarian intervention, it was not possible for the concept to immediately gain absolute recognition.[64] Permanent members of the UN Security Council generally approached the content of the report with suspicion. The United States (US) declared that it would not sign a binding document on the use of force. China stated that the only address for the resolution of these problems should remain as the UN Security Council. France and the United Kingdom (UK) expressed their concerns that a compromise on the criteria would not be sufficient to provide political will and consensus to react against humanitarian crises.[65] The Non-Aligned Movement did not necessarily favor the concept, while non-governmental organizations, even though they generally took a positive approach towards the principle, emphasized that some points should be clarified.[66] What they pointed out was that the concept could be used by the great states for their own interests and the military intervention could destroy the values, institutions and rules of the relatively peaceful and organized states.[67] In addition, defining the concept with a wide range of content, including situations such as natural disasters and epidemics, raised concerns about the possibility of exploiting the use of force and many states have united in the opinion of narrowing the scope of R2P in order to gain an international support for the concept.[68] However, despite all these criticisms, the report has managed to draw attention especially before the UN and started to be discussed as an agenda topic.

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[63] Ibid., p. 39.
[64] Pınar Gözen Ercan, "İkinci On Yılına Girerken Koruma Sorumluluğunu Yeniden Düşünmek: Lex Ferenda Olarak R2P", *Hacettepe Hukuk Fakültesi Dergisi*, 5(2), (2015), p. 168.
[65] Alex J. Bellamy, "Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit", *Ethics and International Affairs*, (2006), pp. 151-152.
[66] Ibid.
[67] Roberto Belloni, "The Tragedy of Darfur and the Limits of the 'Responsibility to Protect'". *Ethnopolitics*, 5 (4), (2006), p. 330.
[68] Gözen Ercan, "R2P: From Slogan to an International Ethical Norm", p. 40.

1.2. R2P under the Framework of the UN

In November 2003, High-Level Panel on "Threats, Challenges, and Change" was organized to discuss issues such as security, military intervention and increasing effectiveness of the UN bodies by the initiative of the UN Secretary-General Kofi Annan. This panel brought the issue of R2P to the UN agenda by preparing a report named "A More Secure World: Our Shared Responsibility" in 2004. In the report, it was stated that the concept of sovereignty should not be used to keep large-scale human rights violations such as genocide away from the UN agenda. The criteria of the ICISS were also proposed with slight changes in the names, as legitimate grounds for intervention.[69] Unlike the ICISS's report, Secretary-General Annan, who removed natural disasters and epidemics from the scope of R2P, defined the right authority only as the UN Security Council and he also stated that the Council could take decisions for a joint action within the framework of Chapter VII of the UN Charter.[70]

In 2005, Annan presented his report on "UN Reform: In Larger Freedom" to the UN, which has similarities with the content provided by the panel, and he tried to obtain more concrete results from these developments. However, R2P—which was under the heading "Collective Security and Use of Force" in the report of the Panel, was placed in the "Freedom to Live in Dignity" section of Annan's report.[71] With this amendment, it is aimed to prevent the perception of R2P and the concept of humanitarian intervention in the same way.[72] In addition, Annan did not include the intervention criteria that draw attention to the use of force, and further clarified the scope of the concept by arguing that sovereignty would not be a shield against "genocide, crimes against humanity, and large-scale persecutions".[73]

Annan's report was addressed at the 2005 UN World Summit which was held in New York between 14 and 16 September 2005. While producing an outcome document at the

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[69] UN General Assembly, "A More Secure World: Our Shared Responsibility", Report of the Secretary General's Report High-level Panel on Threats, Challenges and Change, (2004), p. 65.
[70] UN General Assembly, "A More Secure World", p. 66.
[71] UN General Assembly, Report of the Secretary-General, In Larger Freedom: Towards Development, Security and Human Rights for All, A/59/2005, p. 34.
[72] Pınar Gözen Ercan, "The Responsibility to Protect: An International Norm?". *USAK Yearbook of International Politics and Law*, 5, (2012), pp. 245-248.
[73] UN General Assembly, Report of the Secretary-General, "In Larger Freedom", pp. 34-35.

end of this Summit, it was very difficult to manifest a context which all countries agreed on regarding R2P. Several African countries were in favor of setting criteria to make the UN Security Council decisions more transparent. On the other hand, permanent members of the Security Council like the US, China and Russia supported that the criteria could reduce the effectiveness of the UN Security Council.[74] Despite these concerns, eventually, the Paragraphs 138 and 139 of the WSOD were dedicated to the R2P by narrowing its scope, and gradually removing elements such as the "intervention criteria"[75] that draw attention to the use of force in order to remove the concerns of the states and to receive their support. Also, R2P was limited to four atrocity crimes which are genocide, war crimes, ethnic cleansing and crimes against humanity.[76]

Accordingly, Paragraph 138 defined the responsibilities of the individual states towards their population through the understanding of sovereignty as responsibility and this paragraph indicated that each state has an obligation to protect its people from genocide, war crimes, ethnic cleansing and crimes against humanity (hereinafter referred to as atrocity crimes), and the international community should support states in carrying out these responsibilities.[77] On the other hand, Paragraph 139 underlined that the international community is also responsible for undertaking the responsibilities of states that are unable or unwilling to protect their populations from atrocity crimes, and within this framework, it is the responsibility to use appropriate diplomatic, humanitarian and other peaceful means in accordance with Chapter VI and VIII of UN Charter. In cases where these peaceful measures fell short, the UN Security Council has been determined as the sole authority for the decision of the use of force, which is included within the coercive methods in accordance with UN Charter Chapter VII.[78]

Contrary to the ICISS's report, the WSOD did not propose any other body than the Security Council for the use of force decision, and no open door was left to allow any authority other than the Council to make a military intervention decision.[79] Moreover, in

[74] Bellamy, "The Responsibility to Protect", p. 626.
[75] See Gözen Ercan, *Debating the Future of the "Responsibility to Protect"*, Chapter 4.
[76] UN General Assembly, 2005 World Summit Outcome, A/60/L.1, 15 September 2005.
[77] UN General Assembly, 2005 World Summit Outcome, para. 138.
[78] UN General Assembly, 2005 World Summit Outcome, para. 139.
[79] Bellamy, "The Responsibility to Protect", p. 623.

order to prevent deadlocks, no restriction on the veto rights of P5 were imposed.[80] In addition, the "responsibility to rebuild" element was removed and the intervention criteria were completely eliminated to address the concerns of Member States. Furthermore, within the framework of Paragraph 140, it was decided that the General Assembly would continue to discuss R2P under the leadership of the UN Secretary-General.[81] However, the developments after the adoption of R2P by the UN led to the view that expectations were not met in practice.

After R2P's international recognition in the World Summit in 2005, the cases such as Darfur could not be prevented and R2P was not applied in accordance with what the situation required. This ineffectiveness caused comments that the promises made at the World Summit did not become functional. However, the UN Security Council has made references in the following years confirming its adherence to Paragraphs 138 and 139 of the WSOD in Resolutions 1674 and 1706.[82] Ban Ki-moon, who took office as the UN Secretary-General after Kofi Annan, was focused on R2P and asked his special adviser, Edward Luck, to prepare a report on how R2P could be implemented better. Ban underlined in this first detailed report on R2P published in 2009, titled "Implementing the Responsibility to Protect", the aim of the principle was not to reinterpret or discuss the outputs of the World Summit, but to find ways to ensure that the decisions were implemented faithfully and consistently.[83]

The report envisaged a three-pillar structure while implementing R2P. The first pillar states that, in relation to Paragraph 138, it is primarily the duty of states to protect their populations from the atrocity crimes. Again, in relation to the same paragraph, the second pillar pertains to the role of the international community in the fulfillment of the responsibilities of the individual states. The international community should assist states in performing their duties and encourage them to carry out this responsibility. This

[80] Gözen Ercan, *Debating the Future of the "Responsibility to Protect"*, p. 64.
[81] Gözen Ercan, *Debating the Future of the "Responsibility to Protect",* p. 65.
[82] UN Security Council, Resolution 1674, S/RES/1674, 28 April 2006; UNSC, Resolution 1706, S/RES/1706, 31 August 2006.
[83] UN General Assembly, Report of the Secretary-General, "Implementing the Responsibility to Protect", A/63/677, 12 January 2009, para. 11.

incentive can start with reminding states of their responsibilities and be extended to helping them in capacity building.

Unlike the first two, the third pillar, under Paragraph 139—and in line with the responsibility to react that was defined by the ICISS—involves the international community's responsibility in the case of manifest failure of the individual state in an ongoing R2P crisis, and requires either using the peaceful methods within the framework of Chapter VI and VIII of the UN Charter or using the coercive methods under Chapter VII. The responses to be carried out under Chapter VI includes some of the peaceful measures such as negotiation, mediation, conciliation, commission of inquiry, arbitration, judicial settlement as well as any other peaceful means. Moreover, Chapter VIII of the UN Charter should involve political, economic and/or humanitarian measures.[84] Although a reference has been made to Chapter VI and VIII, there are no restrictions on the peaceful methods to be used under R2P and this indicates that the peaceful methods under R2P can be diversified.

As mentioned above, when peaceful methods are insufficient, again according to Paragraph 139, the international community may take coercive action under Chapter VII of the UN Charter, but this use of force can only be applied as a last resort and can only be authorized by the UN Security Council. In this regard, the third pillar can be examined in two phases; the use of peaceful methods by the international community, which is prioritized during the formation of the concept, are the first of these phases[85] and the other part includes coercive action and the use of force. Although there are no limitations or time restriction on the measures to be applied to protect populations from atrocity crimes and there is no guideline on which method will be used in which case, the methods to be used vary according to the preferences of the actors who will take this initiative and according to the case.[86] This aspect will be discussed further in the forthcoming chapter.

The report, which suggested the three-pillar implementation strategy led to intense discussions at the UN General Assembly. The UN term president, Nicaraguan diplomat Miguel d'Escoto Brockmann described R2P as "a redecorated version of colonialism".[87]

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[84] UN General Assembly, 2005 World Summit Outcome, para. 139.
[85] Bellamy, "The First Response", p. 11.
[86] Bellamy, "The First Response", pp. 12-13.
[87] UN General Assembly, "Implementing the Responsibility to Protect", para. 11.

While most speakers expressed their strong support for the steps developed to implement R2P by the Secretary-General's report, representatives of countries such as Cuba, Nicaragua, Ecuador, Venezuela, Zimbabwe, Sudan, Syria and Iran refrained to support the report by defining R2P as a tool of Western imperialism.[88] Despite these discussions, the Report was adopted on 14 September 2009, with the signature of 67 states, by the 63/308 Resolution of the General Assembly.[89]

After the 2009 report, UN Secretary-General Ban Ki-moon prepared reports every year until the end of his term of office in 2016 in order to ensure the proper implementation of R2P. These reports focused on the following issues: early warning capability (2010),[90] cooperation with regional organizations (2011),[91] how to respond in a timely and decisive manner (2012),[92] prevention (2013),[93] how to use international aid most effectively (2014),[94] an implementation effort of R2P pillars (2015)[95] and the future position of R2P (2016)[96].

Secretary-General Antonio Guterres, who took office after Ban, also paid significant attention to R2P and he published his first report on R2P in 2017, which was titled "Implementing the Responsibility to Protect: Accountability for Prevention".[97] In this report he drew attention to the gap between practice and promises of the notion and emphasized that the international community should highlight the prevention aspect while

[88] United Nations Press Release, "More Tan 40 Delegates Express Strong Skepticism, Full Support as General Assembly Continues Debate on Responsibility to Protect", 24 July 2009.
[89] United Nations General Assembly, The Responsibility to Protect, A/RES/63/308, 7 October 2009.
[90] United Nations General Assembly, Report of the Secretary-General, "Early Warning, Assessment and the Responsibility to Protect", A/64/864, 14 July 2010.
[91] UN General Assembly, Report of the Secretary-General, "The Role of Regional and Subregional Arrangements in Implementing the Responsibility to Protect", A/65/877, 28 June 2011.
[92] United Nations General Assembly, Report of the Secretary-General, "Responsibility to Protect: Timely and Decisive Response", A/66/874, 25 July 2012.
[93] United Nations General Assembly, Report of the Secretary-General, "Responsibility to Protect: State Responsibility and Prevention", A/67/929-S/2013/399, 9 July 2013.
[94] United Nations General Assembly, Report of the Secretary-General, "Fulfilling Our Collective Responsibility: International Assistance and the Responsibility to Protect", A/68/947, 11 July 2014.
[95] United Nations General Assembly, Report of the Secretary-General, "A Vital and Enduring Commitment: Implementing the Responsibility to Protect", A/69/981, 13 July 2015.
[96] United Nations General Assembly, Report of the Secretary-General, "Mobilizing Collective Action: The Next Decade of the Responsibility to Protect", A/70/999, 22 July 2016.
[97] United Nations General Assembly, Report of the Secretary-General, "Integrated and Coordinated Implementation of and Follow-Up to the Outcomes of the Major United Nations Conferences and Summits in the Economic, Social and Related Fields", A/71/1016, 10 August 2017.

fulfilling its responsibility under the second and third pillars.[98] Again, referring to the effective implementation of R2P in his 2018 report, Guterres emphasized prioritization of early warning mechanisms and stated that correct prevention has an importance over all pillars.[99] In his 2019 report, the Secretary-General emphasized the need to better understand the range and combinations of measures to be implemented under R2P in order to strengthen preventive action. He also drew attention to the role of the international community at the prevention phase. Accordingly, the methods to be considered when taking the responsibility over from states, which manifestly failed, should always comply with international law. In this sense, Guterres argued that persuading perpetrators is an important way, and this can only be achieved by the methods in which the actors such as the UN and/or regional arrangements act collectively. He also stressed that peaceful methods such as negotiation and mediation, which will be discussed in Chapter 2, can be effective in terms of persuasion and prevention of the escalation of the conflict.[100] When these methods are insufficient, he proposed to prevent perpetrators from committing atrocity crimes by taking measures targeting their capacity. Finally, he pointed out that so far limited range of tools have been used by the international community and stated the need for a more comprehensive framework for the methods to be used under the framework of R2P.[101]

The clarifications the 2009 report provided guidelines as to R2P's implementation in three different pillars, and by placing the emphasis on preventive aspects of the norm presented a complementary responsibility approach.[102] Nevertheless, neither its unanimous adoption under the UN nor the comprehensive reports of the Secretaries-General has made R2P an international norm that is truly able to influence state behavior. In order to understand the current normative status of R2P as well as the questions under focus within the framework of the UN, the next section focuses on R2P's evolution after the 2009 report the norm's current legal status.

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[98] United Nations General Assembly, Report of the Secretary General, "Implementing the Responsibility to Protect: Accountability for Prevention" A/71/1016 –S/2017/556, 10 August 2017.
[99] United Nations General Assembly, Report of the Secretary General, "Responsibility to Protect: From Early Warning to Early Action" A/72/884–S/2018/525, 1 June 2018.
[100] United Nations General Assembly, Report of the Secretary General, "Responsibility to Protect: Lessons Learned for Prevention" A/73/898–S/2019/463, 10 June 2019, p. 8.
[101] Report of the Secretary General, "Responsibility to Protect: Lessons Learned for Prevention".
[102] Menent Savaş Cazala, "Koruma Sorumluluğu'nun Normatif Statüsü", *Marmara Üniversitesi Öneri Dergisi*, 13(50), (2018), p. 72.

1.3. Legal Status of R2P, the UN General Assembly Formal Debates and Related Initiatives

Although R2P is incorporated into the UN framework with all the reports and documents mentioned in the previous section, it has not been associated with any of the international law sources listed in Article 38 of the Statute of the International Court of Justice,[103] that is, international agreements, rules of conduct and general principles of law. Therefore, R2P itself does not create any legal obligations for states, yet, it has potential to become a part of customary international law in the future.[104] Gareth Evans, one of the leading entrepreneurs of the norm, says that R2P was an emerging international norm, which might eventually be a new rule of international customary law.[105]

Although R2P has not evolved into a legal norm, the individual responsibility of the states under Paragraph 138 is fundamentally based on existing international rules and laws, as the 2009 report stated.[106] Three of the crimes covered by R2P are also included within the Rome Statute of the International Criminal Court (ICC). Similarly, these crimes are covered by many regional and international conventions, and the commission of these crimes create universal jurisdiction. Therefore, it is possible to say that the obligation of states to not to commit genocide, war crimes, crimes against humanity and ethnic cleansing, which constitute the first pillar of R2P, is based on existing international law. As stated by Ban in the 2013 Report, the crimes that are associated also with R2P are practically banned by customary international law,[107] and these bans are regarded as binding for each state, whether or not they are a party to a relevant international agreement. In addition, one of the four atrocity crimes within the framework of R2P, ethnic cleansing, which is not defined under international criminal law, generally occurs

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[103] Michael W. Doyle, *The Question of Intervention: John Stuart Mill and Responsibility to Protect*, London: Yale University Press, (2015), p. 115.
[104] Ibid.
[105] Gareth Evans, From Humanitarian Intervention to the Responsibility to Protect, Keynote Address to Symposium on Humanitarian Intervention, University of Wisconsin, Madison, 31 March 2006, accessed February 7, 2020, http://www.crisisgroup.org/ home/index.cfm?id=406 0&l=1.
[106] United Nations General Assembly, "Implementing the Responsibility to Protect", p. 20.
[107] United Nations General Assembly, "Responsibility to Protect: State Responsibility and Prevention", p. 3.

as a result of the other three crimes.[108] In other words, states' responsibilities to protect their populations from atrocity crimes are based on International Humanitarian Law, as well as the treaties such as 1948 "Convention on the Prevention and Punishment of the Crime of Genocide", "International Covenant on Civil and Political Rights", "International Covenant on Social, Economic and Cultural Rights", "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment", "Convention on the Elimination of All Forms of Racial Discrimination" and "Rome Statute of the International Criminal Court". In this context, the responsibility of states to protect their populations from atrocity crimes is based on their existing obligations arising from international conventions that they are party to as well as customary international law.[109]

R2P's potential contribution to the development of international law lies in the responsibilities it defines for the international community. Nevertheless, while defining such responsibility, R2P did not change the existing authorities and/or mechanisms. In this regard, as for coercive measures and the use of force, a decision is to be adopted on the basis of Chapter VII of the UN Charter and the Security Council is the sole authority to decide on the measures to be applied.[110]

In response to the criticisms of some Member States regarding R2P in 2009, Edward Luck, the first Special Advisor to the UN Secretary-General on the Responsibility to Protect made statements rejecting the idea that the purpose of R2P is to propose a new legal norm or to change the Security Council's decision-making mechanisms based on the UN Charter and underlined that R2P was not a legal but a political concept based on international law and articles of the UN Charter.[111] Therefore, although debates in this direction generally admit that the core of the concept refers to legal duties and R2P has become part of the UN's terminology, these discussions eventually compromised on the idea that R2P is not a legal norm.[112]

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[108] Ruben Reike and Alex Bellamy, "The Responsibility to Protect and International Law", *Global Responsibility to Protect*, 2(3), p. 90.
[109] Gözen Ercan, "İkinci On Yılına Girerken", p. 172.
[110] Gözen Ercan, "İkinci On Yılına Girerken", p. 173.
[111] Edward C. Luck. Remarks to the General Assembly on the Responsibility to Protect (R2P), New York, 23 July 2009, accessed February 7, 2020, http://www.un.org/en/preventgenocide/adviser/pdf/EL%20GA%20remarks%202009.pdf.
[112] Gözen Ercan, *Debating the Future of the "Responsibility to Protect"*.

While a majority of the UN Member States embrace the idea that all states have common duties arising from international law on the protection of human rights, the primary obstacles before an effective implementation of R2P is the lack of a legal obligation for the international community (or the UN Security Council as the decision-making body). Hence, there is no supreme authority to supervise or impose sanctions on the international community in cases where it fails to fulfill its responsibility. This fact is the core reason as to the specification of the UN Security Council as the only authority for R2P-based decisions is problematic in practical terms. In order to be able to carry out an R2P response in a specific case, the norm can serve its purpose only if the P5 agree so and/or do not exercise their veto right. Given that the UN Security Council is not a legal but a political body and that its members pursue the national interests of their states, as it was widely seen in the examples during and after the Cold War, the decision-making emerges as a political process.[113] Within the context of R2P, this situation has been exemplified numerous times, for instance in the recent case of Syria. After the military operations in Libya and the Ivory Coast in 2011—which are often referred to as examples of timely and effective implementation of R2P in the literature but have raised controversies due to the way of conduct during the operations—Russia and China have vetoed various resolutions on Syria. Both states justified their vetoes on the basis of the example that the Libyan intervention has set. According to some, this situation brought the discussions about the impact of the R2P to the top and while some found the concept ineffective, others interpreted the Syrian case as the death of the principle.[114] In parallel with these discussions, many new suggestions have been brought to the agenda, especially due to addressing the problems regarding the use of force and the intensity of these discussions about the concept is essentially important for contributing to the conceptual development of R2P.

Brazil's "Responsibility while Protecting" (RwP) initiative, which has been one of the most concrete efforts to improve the concept, was presented at the 66th Session of UN General Assembly on 21 September 2011. Brazilian President Dilma Rousseff stated

[113] Gözen Ercan, "İkinci On Yılına Girerken", p. 173.
[114] See Spencer Zifcak, "The Responsibility to Protect After Libya and Syria", *Melbourne Journal of International Law*, (2012), pp. 1-35; Mohammad Nuruzzaman, "The 'Responsibility to Protect' Doctrine: Revived in Libya, Buried in Syria" *Insight Turkey,* 15(2), (2013), p. 57; Thomas G. Weiss, "RtoP Alive and Well after Libya", *Ethics & International Affairs,* 25(03), (2011), pp. 287-292.

the international community should develop "the responsibility" together.[115] RwP understanding basically advocated that peaceful elements should be used in the first place and military operation should be used only as a last resort, and also underlined the importance of setting criteria for a legitimate military operation, as ICISS suggested. RwP, which was an initiative to complement R2P, also proposed an independent mechanism to control military operations.[116] This proposal, which has gained the support of Ban Ki-moon and Brazil, Russia, India, China and South Africa (BRICS),[117] has been evaluated by Gareth Evans, as a promising step in terms of giving importance to preventive measures instead of coercive measures.[118] Although it has not become a new concept due to the weak support given to the proposal and the end of the temporary UN Security Council membership of Brazil, RwP has remained only as an unfinished but important initiative since it emphasizes the limitation of the use of force.

Another initiative during this period was "Responsible Protection" (RP), which was put forward by China in 2012. Vice president of the China Institute of International Studies, Ruan Zongze, who drew the boundaries of the concept, emphasized mainly the third pillar of R2P with this initiative and stated that the aim of protection in this framework is not for the political parties and armed forces, but for the innocent individuals. This article, which criticizes the West's attitude in the Syrian and Libyan crises in its first part, also introduced the Beijing Government's perspective towards these two crises.[119] Regarding the methods which are used to provide protection, he claimed that use of force could have undesirable side effects and also emphasized the prioritization of diplomatic and political methods. Moreover, he mentioned that the actors who carried out the intervention should be active in the reconstruction process in the post-intervention period. With this initiative, China emphasized the basic principles and aims of the UN Charter and reflected the voice

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[115] United Nations General Assembly, "Statement by H. E. Dilma Rousseff, President of the Federative Republic of Brazil", the 66th Session, 21 September 2011.
[116] United Nations General Assembly, "Statement by H. E. Dilma Rousseff, President of the Federative Republic of Brazil", the 66th Session, 21 September 2011.
[117] UN General Assembly, "Report of the Secretary-General, Responsibility to Protect", A/66/874, 25 July 2012, pp. 13-15.
[118] Gareth Evans, "R2P Down but not out After Libya and Syria", accessed February 7, 2020, http://www.project-syndicate.org/commentary/gareth-evanson-moves-by-china-and-other-brics-countries-to-embracehumanitarian-intervention.
[119] Andrew Garwood-Gowers, "China's 'Responsible Protection' Concept: Reinterpreting the Responsibility to Protect (R2P) and Military Intervention for Humanitarian Purposes", *Asian Journal of International Law,* 6(1), p. 21.

of developing countries especially with regard to the third pillar, and conveyed the criticisms to R2P in aftermath of controversial responses to humanitarian crises.[120]

In addition to these two initiatives, to ensure the implementation of R2P, the responsibility not to veto (RN2V) initiative was introduced in order prevent the P5 from blocking an action with a veto. In fact, although criticisms about eliminating the veto right granted to P5 have been available since the establishment Security Council, and ICISS went one step further and stated with its report that the P5 should practice "constructive abstention" instead of a veto at the point where lives of people are at stake and stressed that the P5 should not use the veto right unless their vital national interests are in concerned.[121]

Although the Secretary-General in his 2004 report made a similar emphasis on refraining from casting a veto in cases such as human rights abuses and genocide,[122] such idea was not included in the text of the WSOD. However, from this year forward, efforts to restrain the veto right have continued. In 2006, a group of states consisting of Costa Rica, Jordan, Lichtenstein, Singapore and Switzerland (Small Five, S5) stated with a report that P5 should not use the right to veto in cases of genocide, crimes against humanity and grave violations of international humanitarian law, and also the state who use the veto has a necessity to explain the reason to all UN Member States.[123]

In his 2009 report, Ban Ki-moon again called the P5 to refrain from using veto in case of manifest failure of states in order to meet their responsibility to protect the concerned population.[124] Despite the fact that the S5 group invited the P5 not to exercise their veto right in mass atrocity crimes in 2012 once again and similar initiatives were introduced in this period,[125] in 2013 China and Russia vetoed various draft resolutions regarding the crisis in Syria. This time France made calls to restrain the veto right of the P5. French Foreign Minister Laurent Fabius's article, which published in the New York Times, introduced the proposal of France. Accordingly, without any formal changes to the UN Charter, in cases of atrocity crimes P5 would restrain their veto rights based on the mutual

[120] See Garwood-Gowers, "China's 'Responsible Protection' Concept", pp. 1-30.
[121] ICISS, *The Responsibility to Protect*, pp. 51, 75.
[122] UN General Assembly, "A More Secure World", p. 68.
[123] Improving the Working Methods of the Security Council, A/60/L.49, 17 March 2006, p. 4.
[124] UN General Assembly, *Implementing the Responsibility to Protect*, p. 27.
[125] Enhancing the Accounability, Transparency and Effectivness of the Security Council, A/66/L.42/Rev.2, 15 May 2012, pp. 4-5.

commitment, and this code of conduct between them would exclude situations where the P5's national interests would be under threat.[126]

This initiative was followed by the political declaration prepared by France and Mexico in 2015 for the suspension of the veto in case of mass atrocity crimes. While the declaration recognized the role of the UN Security Council in maintaining international peace and security, it pointed out that the veto right, which is an obstacle to the international community's timely and decisive response to mass atrocities based on R2P, should not be used in such cases. This declaration was signed by 96 states by 2016.[127] In addition, the S5 group reorganized and introduced a new initiative with the participation of different countries in 2013 to increase accountability, coherence and transparency of the Council (the ACT Initiative).[128] In 2015, this group started to promote R2P by increasing the functionality of the Council under the name of "Code of Conduct regarding Security Council action against genocide, crimes against humanity or war crimes".[129] This conduct included a special commitment to prevent the P5 from using the veto right in resolutions concerning the crimes covered by R2P and as of 2018, 115 states, two of which are permanent members (France and the UK) and 2 observers supported this initiative.[130]

Such broad acceptance shows that the framework of the third pillar is not sufficient for a timely and decisive response and the inaction that stems from vetoes of the members of the Security Council, identified as the sole decision-making body, is one of the major obstacles to R2P's implementation. On the other hand, RN2V proposals do not advocate a restraint on the veto of the P5 only while considering military interventions on a case-by-case basis, but also many other coercive measures short of use of force (such as

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[126] New York Times, "A Call for Self-Restraint at the U.N.", Accessed May 19, 2020, https://www.nytimes.com/2013/10/04/opinion/a-call-for-self-restraint-at-the-un.html.
[127] The UN, *Security Council*, Accessed on May 19, 2020, https://www.un.org/en/genocideprevention/security-council.shtml.
[128] Global Policy Forum, Reforming the Working Methods of the UN Security Council - The ACT Initiative, Accessed on May 19, 2020, https://www.globalpolicy.org/component/content/article/200-reform/52474-reforming-the-working-methods-of-the-un-security-council-the-act-initiative.html.
[129] ICRtoP, The ACT Code of Conduct, Accessed May 19, 2020, http://www.responsibilitytoprotect.org/files/ACT%20CoC%20infographic.pdf
[130] Ibid.

targeted sanctions and travel bans).[131] Although these initiatives have not achieved a formal success, they have aptly pointed to the shortcomings of the decision-making mechanisms within the UN and the R2P framework, and arguably became an important indication of the implementation of preventive methods, where actors other than the Security Council can also be active.

The R2P debates at the UN General Assembly have also prioritized preventive methods under the second pillar and adoption of non-forceful measures under the third pillar. The 2009 meeting for the implementation of R2P is very important in terms of being the first formal debate for R2P before the UN General Assembly. Starting from the fact that R2P can put to work early warning mechanisms to stop mass atrocities before they happen, some members pointed out the differences between the logic of the concept and the *modus operandi* and there has been a consensus regarding the prioritization of prevention in the UN General Assembly.[132] Some states ignored the differences of R2P with the humanitarian intervention and expressed their concerns about the misuse of the concept. For instance, states such as Pakistan [133]and Mexico[134] considered R2P as the resurrection of the right to intervene and saw it as the violation to non-use of force principle. Some states expressly stated that the use of force should be applied only as the last resort if no other solution could be achieved through diplomatic means.[135] The point of consensus for states was the importance of prevention in general and when applying the measures under Pillar 3.[136] For instance, Ireland took the suggestions regarding the third pillar one step further and advocated that this pillar should be handled more clearly and focus should be placed on the peaceful methods under this pillar.[137] After all, as seen in the first formal debate, the third pillar of R2P was the most controversial aspect of the norm since it includes use of force and there has been a tendency to see R2P as an equivalent to the humanitarian intervention.

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[131] Ljupcho Stojkovski, "The Importance of the 'Responsibility not to Veto' Debate", in Vasilka Sancin (ed.) *Are We "Manifestly Failing" R2P?*, University of Ljubljana, (2017), p. 101-102.
[132] Gözen Ercan, "UN General Assembly Dialogues", p. 320.
[133] United Nations General Assembly, A/63/PV.98, p. 4
[134] United Nations General Assembly, A/63/PV.99, p. 19.
[135] For instance, Bosnia and Herzegovina, Kenya, the Republic of Korea and Japan; United Nations General Assembly, Sixty-third session, 98th plenary meeting, A/63/PV.98 (23 July 2009), pp. 3, 16, 19, 22.
[136] United Nations General Assembly, A/63/PV.98, p. 25
[137] United Nations General Assembly, A/63/PV.99, p. 2.

R2P found itself a place in the formal agenda of the UN General Assembly again in the meetings in 2018 and 2019. In these formal debates, states such as Syria, Cuba, Democratic People's Republic of Korea (DPRK), Russia, Sudan and Venezuela stood out as the most critical states about R2P and their arguments were mainly based on politically abusable nature of the norm as well as the violation of states' sovereignty.[138] Apart from these critiques, military intervention was stated to be against the will of states[139] and furthermore, they suggested the prioritization of non-forceful methods based on the idea that military intervention may cause more harm than intended.[140] The need to differentiate the third pillar from the humanitarian intervention was again emphasized.[141] As a response to the views that see Pillar 3 as a supportive factor for unilateral interventions,[142] it was proposed that collective action under this pillar includes non-coercive measures and also, every method, whether coercive or non-coercive, should be in accordance with the UN Charter pursuant to R2P.[143]

Although it has been more than 15 years since R2P was first addressed within the UN framework, serious discussions about the tools and scope of the principle continue. The deadlocks caused by the UN Security Council during the decision-making process and the inclusion of the use of force as a method under the third pillar of R2P constitute the vast majority of these controversies. The official discussions have also shown that there is a misinterpretation of the existing means under the R2P framework.[144] Since peaceful solutions are seen as more effective and legitimate than the use of force, as Qatar underlined,[145] it is necessary to discuss the methods of Pillar 3 in order to clarify the wide diversity of peaceful methods that can be used. There have been officials making efforts to overcome the misperception that sees R2P equivalent to the use of force in this regard; for instance, Ban Ki-moon made constructive contributions to the discussions on the third pillar and stated that the main target of the action under this pillar is to persuade the states to fulfill their legal responsibilities arising from the first pillar.[146] He also expressed that

[138] United Nations General Assembly, "99th plenary meeting, 72nd session".
[139] United Nations General Assembly, "100th plenary meeting, 72nd session".
[140] Ibid.
[141] United Nations General Assembly, "100th plenary meeting, 72nd session".
[142] Ibid.
[143] United Nations General Assembly, "100th plenary meeting, 72nd session".
[144] Gözen Ercan, "UN General Assembly Dialogues", p. 331.
[145] United Nations General Assembly, A/63/PV.99, p. 13.
[146] United Nations General Assembly, Timely and Decisive Response', p. 4.

the use of force is only a precaution that should be taken only as a last resort[147] and pointed out in his 2015 report that the illusion that merely associates the third pillar with the use of force has not been overcome yet.[148] Therefore, taking into account the ideas concerning the humanitarian intervention which put forward by the states during the formal debates, the works of scholars and the reports of the Secretary-General, there is an obvious need for attempts to prioritize the preventive and peaceful methods and to correct the misunderstanding regarding the third pillar, which Bellamy describes as the "most controversial and least understood" side of R2P.[149]

1.4. Conclusion

Since the inclusion of R2P within the UN framework as a result of lessons learned from humanitarian intervention cases of the post-Cold War period, it has often been subjected to criticisms in many aspects such as having of the use of force as a coercive measure. While this aspect of R2P caused the confusion of the concept with the humanitarian intervention, specifying the UN Security Council as the only authority for the decision of an intervention accompanied a number of criticisms regarding the principle once again. However, it is thought that these constructive or destructive comments ranging from the legal position of the concept to its implementation phase point to a general acceptance as well as the development and diffusion of the concept as an emerging norm.

The use of force, which is just one of the coercive methods under the third pillar of R2P, has been the Achilles' heel of the norm. As can be inferred from "the old neo-interventionist wine in a new bottle"[150] comments for R2P, the misconceptions about the norm persist. Therefore, it is necessary to examine in detail the peaceful and coercive measures other than the use of under the framework of the third pillar. It is believed that only by using the legal protection measures, R2P can be clearly distinguished from the humanitarian intervention doctrine, and concrete steps can be taken to achieve the primary goal of prevention.

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[147] Ibid., p. 3.
[148] Report of the Secretary-General, "A Vital and Enduring Commitment".
[149] Bellamy, "The First Response", p. 75.
[150] Gareth Evans, "Protecting Civilians Responsibly", accessed February 7, 2020, https://www.project-syndicate.org/commentary/gareth-evanson-moves-by-china-and-other-brics-countries-to-embrace-humanitarian-intervention Protecting Civilians Responsibly

CHAPTER 2

PEACEFUL MEASURES AVAILABLE TO R2P

In the immediate post-WSOD period, it is not possible to argue that R2P was applied in a timely and effective manner in any of the ongoing crises. After Edward Luck was appointed as the Special Adviser to the Secretary-General on R2P to further develop the norm conceptually and institutionally, he first aim to clarify the scope and means of the norm,[151] and as a result of this effort, the first UN Secretary General report on R2P, "Implementing the Responsibility to Protect", was published in 2009. While the report proposed a comprehensive implementation based on three-pillar strategy, it also answered questions about the meaning and scope of the principle.[152] Another important thing that underlined by the report was the issue that the main focus of R2P should not be placed on the reaction phase when states fail, but to be placed on helping them achieve this responsibility. Although this three-pillar strategy has a narrow structure in terms of targeting prevention of four atrocity crimes, it can also be considered as deep in terms of its aim to use all the instruments in the UN system for R2P.[153] The report, which was submitted to the UN General Assembly on 12 January 2009, after long discussions, was adopted with the signature of the 67 states on 14 September 2009, by the decision of the UN General Assembly numbered 63/308. Thus, the institutional implementation strategy of R2P was officially based on the three pillars.[154]

The first pillar, which is defined by Paragraph 138 and deals with the individual role of the states in protecting their populations, (whether they are citizens of the concerned country or not) from the four atrocity crimes, is defined as "the bedrock of R2P" by the Secretary-General.[155] In addition, the Secretary-General noted that states should be supported by the peer-review system to fulfill their responsibilities arising from this pillar

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[151] Edward C. Luck, "The Responsible Sovereign and the Responsibility to Protect", *Annual Review of United Nations Affairs*, Oxford: Oxford University Press, (2007), pp. xxxv.
[152] United Nations General Assembly, *Implementing the Responsibility to Protect*, para. 10(a).
[153] United Nations General Assembly, *Implementing the Responsibility to Protect,* para. 12.
[154] United Nations General Assembly, The Responsibility to Protect: Resolution / adopted by the General Assembly, 7 October 2009, A/RES/63/308.
[155] Alex J. Bellamy, "The Three Pillars of the Responsibility to Protect", *Pensamiento Propio*, 41(20), (2015), p. 45.

and should be a party to the legal documents concerning human rights law and the refugee law, as well as the Rome Statute of the ICC.[156]

Again within the framework of Paragraph 138, Ban drew attention to a number of important aspects regarding the second pillar, which deals with the preventive and early warning mechanisms to help states fulfill their responsibilities.[157] Under this pillar, the international community should encourage not only states to fulfill their responsibilities arising from the first pillar but also both parties to reach a consensus.[158] The aid to states in fulfilling their responsibilities also includes supporting that state's security system to make it legitimate and effective. Finally, he emphasized that the international community should provide states with capacity building aid and economic support in order to prevent atrocity crimes.[159] Thus, this provision is essentially an element deemed appropriate for states which already had systemic problems even before the crisis. In addition, the Secretary-General emphasized that the UN and regional organizations can assist the concerned state by increasing civilian and police capacity in cases where the mentioned crimes are committed by non-state actors.[160] The second pillar has been reconsidered in the 2014 report of the Secretary-General and he made certain recommendations to states, such as strengthening existing mechanisms and institutions, investing in tools to push states to fulfil their responsibilities, designing or strengthening capacity-building programs and ensuring coordinated assistance to fulfill the responsibilities arising from this pillar.[161]

Unlike the first two pillars identified within the framework of the "responsibility to prevent", the third pillar which refers to timely and decisive reaction is detailed in light of Paragraph 139. In fact, as it can be understood from the wording that states agreed on in 2005, this pillar consists of two main parts. The first one, which takes noted in the first clause of the paragraph 139, establishes that the international community should use diplomatic, humanitarian and other peaceful means to prevent atrocity crimes in

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[156] Bellamy, "Three Pillars", p. 36.
[157] UN General Assembly, *Timely and Decisive Response*, para. 22.
[158] *Implementing the Responsibility to Protect,* para. 32.
[159] Ibid., para. 43.
[160] Ibid., para. 40.
[161] United Nations General Assembly, Report of the Secretary-General, *Fulfilling Our Collective Responsibility: International Assistance and the Responsibility to Protect.,* A/68/947- S/2014/449, 11 July 2014, para. 77.

accordance with Chapters VI and VIII of the UN Charter. On the other hand, the second part underlines the international community's responsibility to take a collective action "in a timely and decisive manner" in accordance with Chapter VII of the UN Charter in case the individual state is "manifestly failing" and the peaceful methods are also insufficient. At this point it is required to pay attention to the terminology as the change in wording aimed to address the concerns of states. The phrase of "manifestly failing" is used instead of the notion of the "failed state" and so an "unfolding process" is underlined by this paragraph.[162]

In his 2009 report, the Secretary-General's emphasis was on Pillar 3, wherein he underlined that military intervention was only one of the measures which R2P can be utilized. He also emphasized that non-coercive methods were the most important measures under Pillar 3.[163] The report suggested that each pillar is mutually interdependent and if the first two pillars became successful, the need to apply the third pillar might disappear. At the point of a need for the application of the third pillar, tools available for a timely and decisive response are much more than the use of force. This report was a very critical threshold for the Secretary-General's implementation strategy.

Although the Secretary-General in the 2009 report stated that there is no sequence among these pillars,[164] the RwP initiative introduced after the Libyan intervention has made a chronological order among them and suggested that if the peaceful methods fail, it is time for the other coercive methods or the use of force. However, in the UN General Assembly dialogues in 2012, the Member States rejected "the chronological sequencing" by considering the specific situation of each case and they decided to apply a timely and decisive response with "the least forceful interference" to protect populations.[165]

It is noteworthy that the first part of Pillar 3 is in fact directly related to Pillar 2. In some cases, measures of support and assistance under the second pillar coincide with the measures under the first part of the third pillar. This reaffirms the idea that the three pillars are interlinked and that they complement each other. Therefore, what is critical for a successful R2P implementation is to identify the legal measures recognized under the UN

[162] Bellamy, "The First Response", p. 11.
[163] United Nations General Assembly, *Implementing the Responsibility to Protect,* para. 49.
[164] Bellamy, "Three Pillars", p. 52.
[165] Ibid., p. 53.

Charter regardless of which pillar it pertains to.[166] In addition, there are a variety of actors who may carry out peaceful measures under the second and third pillars. Within the framework of the UN, in addition to the Security Council and the General Assembly, other UN bodies such as the Human Rights Council (HRC), the Peacebuilding Commission and the Economic and Social Council, the UN Secretary-General, as well as regional and sub-regional arrangements, non-governmental organizations (NGOs), and domestic civil society groups can take a role in the application of the peaceful means.[167] Although it differs from case to case, arguably collaborative effort is the most effective third pillar implementation form as seen in various cases.[168]

When it comes to peaceful methods within the scope of the third pillar, there is no "silver bullet" or a list of measures restricts the variety of the methods that can be applied. This is why on a case-by-case basis, measures that can be adopted and their impact may vary from case to case.[169] What is the most important in determining method of peaceful resolution is that it should be able persuade the perpetrators about the costs and consequences of their actions.

The most important feature that gives functionality to the peaceful methods is that for the application of these methods authorization of a UN body is not compulsory. Moreover, as will be discussed in the next section, peaceful methods are much more possible to implement since the action is not based on the decision of a single body as in the case of coercive methods. In addition, although these methods may sometimes be ineffective when applied alone, if several methods are applied together, then not only potential perpetrators may be prevented from committing the atrocity crimes, but also R2P's primary goal of prevention can be achieved and possible victims can be protected. In this sense, advancing these peaceful methods, which have been mostly ignored to date, will bring to the forefront the legal measures of protection within the scope of R2P and will be a positive step towards ensuring prevention and/or early response.

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[166] Ibid., p. 13.
[167] Bellamy, "The First Response", p. 30.
[168] Ibid., p. 21.
[169] Ibid., p. 27.

2.1. Peaceful Settlement of Disputes

Although it is possible to base the idea of a peaceful settlement of disputes much earlier, in its contemporary sense multilateral agreements have been made for the mandatory settlement of international disputes after the establishment of the League of Nations (LN). The "Geneva Protocol for the Pacific Settlement of International Disputes", signed in 1924, contains important elements in terms of making the suggestions of the mediators binding for the parties, bringing the dispute which was not resolved by other peaceful means before international arbitration and accepting the mandate of the Permanent Court of International Justice (PCIJ) for all legal disputes.[170] Then, the Locarno agreements in 1925 introduced regulations for the acceptance of compulsory mediation by the parties of the dispute and the enforcement of international arbitration.[171] In 1928, the Briand-Kellogg Pact refused war as a policy tool and suggested that regardless of the origin of the problem, all disputes should not be solved by any method other than pacific/peaceful means.[172] However, these attempts, which are frequently criticized for not having any sanctioning mechanism and being too idealistic, proved to be unsuccessful.

After the establishment of the UN, peaceful settlement of international disputes moved to a further point and unlike previous attempts, the UN Charter imposed a ban on the use of force, including the threat to use force, in addition to asserting the principle of peaceful settlement of disputes. Apart from the UN Charter, the duty to settle international disputes through peaceful means is included in numerous bilateral and multilateral agreements.[173] Moreover, as stated by the International Court of Justice (ICJ), it is accepted as a customary norm of the international law.[174] The provisions for peaceful resolution are addressed under the heading of "Pacific Settlement of Disputes" in Chapter VI of the UN Charter. While the UN Charter has assigned the peaceful resolution of the disputes primarily as a duty of the state parties, the organization's responsibility in this regard has

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[170] League of Nations, *Protocol for the Pacific Settlement of International Disputes*, 2 October 1924.
[171] Willem R. Bisschop, "The Locarno Pact. October 15-December 1, 1925", *Transactions of the Grotius Society,* 11, (1925), pp. 79-115.
[172] Miller Center, "July 24, 1929: Address on Kellogg-Briand Pact", accessed March 30, 2020, https://millercenter.org/the-presidency/presidential-speeches/july-24-1929-address-kellogg-briand-pact
[173] For example; 1947 Inter-American Treaty of Reciprocal Assistance, 1949 North Atlantic Treaty, 1955 Warsaw Pact, 1955 Bandung Conference.
[174] Hans Blix, "The Principle of Settlement of Disputes", The Legal Principles Governing Friendly Relations and Co-operation Among States in the Spirit of the United Nations Charter, Leyden, A.W. Sythoff, (1966), p. 51.

rather been secondary. Nevertheless, within the context of R2P, in accordance with Paragraph 139 of the WSOD, peaceful settlement of disputes as enshrined under Chapter VI is a priority.

According to the first Article of Chapter VI (Article 33), those who are parties to the dispute should first of all seek solutions by negotiation, inquiry, mediation, conciliation, arbitration and judicial settlement and then they can resort to regional organizations or agreements, or use any other means relevant depending their choice.[175] The second paragraph of Article 33 states that when necessary the UN Security Council may invite the parties to resolve their dispute peacefully,[176] and may initiate an investigation to determine whether the persistence of the dispute tends to endanger the protection of international peace and security.[177] It may also suggest appropriate settlement methods or ways at any stage of the dispute or similar situation.[178]

Another measure that R2P handled together with Chapter VI and referred to as part of the first phase of the third pillar is resort to regional arrangements under Chapter VIII of the Charter. Article 52(2) stipulates that regional organizations will endeavor to peacefully resolve disputes through agreements or organizations before referring them to the UN Security Council.[179]

In the next section, peaceful methods, which are possible to bring together under the headings of diplomatic measures, judicial measures and international organizations, will be mentioned first, and then other possible resolution methods that can be implemented under the R2P framework will be studied based on the proposition that states can use "other peaceful means of their own choices".[180]

2.1.1. Negotiation

As a diplomatic measure regarding the resolution of international disputes, negotiation was the first method discussed in Article 33, because this method naturally precedes and

[175] UN, *Charter of the United Nations*, 24 October 1945, Article 33.
[176] Ibid., Article 32(2).
[177] Ibid., Article 34.
[178] Ibid., Article 36.
[179] Ibid., Article 52.
[180] Ibid., Article 33.

as the ICJ highlights that negotiation is "a principle which underlies all international relations".[181] In its simplest terms, this measure, which is carried out mutually by the parties without the involvement of a third party, is generally a part of all diplomatic dialogues. While some authors find it sufficient for the parties to come together in order to identify a process as a "negotiation", some accept consultations, multilateral and/or diplomatic conferences, which continue regularly between the parties, as a part of the negotiation process. There are also those who argue that negotiation as a peaceful settlement method requires a more intense contact between parties than a simple consultation.[182] Thus, despite these different views, this method is generally accepted as the most basic resolution method.

Negotiation is the very first dispute settlement method that can be applied regardless of the concerned government's nature, unlawfulness or tendency to violence.[183] Also, it is often a precondition that an international court seeks before admitting the case for a judicial process.[184] For example, in order for a dispute to be brought to the ICJ, diplomatic negotiations must have been held between parties and the failure to obtain a result from these processes should be proved.[185] In addition, some international agreements have a precondition regarding the resolution of the disputes (which arise on the basis of the agreement) through negotiation. For example, Article 41 of the 1978 "Vienna Convention on Succession of States in respect of Treaties" stipulates that a dispute arising from the implementation of the convention could be resolved by negotiation upon the request of any of the state parties.[186] In general, this method is based on the mutual consent of the states.

One of the most important reasons why negotiation is such a preferred method is its low-risk position for the parties. Because this method is not subject to any rule of law that is compulsory to be complied with and as there is no third-party involvement. If the parties cannot reach a consensus regarding the solution, they have the initiative to discontinue

[181] ICJ, North Sea Continental Shelf Case, p. 86.
[182] See also Christian Tomuschat, "Article 33", in *The Statute of the International Court of Justice*, Zimmerman (ed.), p. 510.
[183] Emmanuel De Groof, "First Things First: R2P Starts with Direct Negotiations", *The International Spectator*, 51(2), (2016), p.37.
[184] Enver Bozkurt, *Devletler Hukuku*, Ankara: Legem, p. 246.
[185] Ibid., p. 251.
[186] United Nations General Assembly, Vienna Convention on Succession of States in respect of Treaties, 6 November 1996, Article 41.

the process and therefore, they have full control over the process. Who will hold the meeting under which conditions and the content of the topics to be discussed are also left to the preferences of the concerned parties. Although the negotiations that should be carried out in good faith are conducted through diplomatic channels, they can also be carried out by joint commissions. In addition, if there are more than two parties as the sides of the dispute, negotiations can be carried out multilaterally and verbally as well as written (*note verbale* or *memorandum teatisi*). Also, it would not be wrong to argue that, even if the problem is not resolved through negotiations, through this method the individual claims of the parties can be clarified, since it allows the parties to understand each other without a third-party involvement.

From an R2P perspective, it is possible to see negotiation as the first step and a crucial part of the third pillar since it allows the international community to remind the states their responsibilities which stem from the first pillar in the first place and encourage them in this sense. Furthermore, understanding the state's unwillingness or inability to fulfill its responsibility can be achieved through negotiation process as well. If the party responsible for the conflict is the state itself, reminding its responsibility and establishing a one-to-one dialogue on the resolution of the problem does not mean to recognize this violation of the state. On the contrary, no matter how rogue a state is, negotiation is an effort to persuade perpetrators to reverse the situation by considering their demands and goals. Secretary-General Antonio Guterres supported this view in his 2019 report and underlined that negotiation has a potential to change the behavior of perpetrators in situations of atrocity crimes.[187] In addition, ceasefire or humanitarian corridors can be established through negotiations and thus, civilians can get out of the destructiveness of atrocity crimes. In principle, direct negotiation is a measure that should be applied even after coercive action in order to find the least common denominator during the rebuilding period.[188]

In particular, it is even more important to use negotiation if the states are in a transition period in the wake of the conflict or under the rule of an interim government, whether or not a coercive method was used under R2P. Because in such transition periods, the state

[187] United Nations General Assembly, Report of the Secretary-General, Responsibility to Protect: Lessons Learned for Prevention, p. 8.
[188] ILC, *Draft Articles on State Responsibility*, Article 52(1a).

may have a more fragile structure both institutionally and constitutionally. Moreover, at this point, the involvement of the international community or any other third party through other method may lead to comments on the manipulation of this fragile structure. Therefore, it would be a better step to come to a compromise with mutual suggestions through direct negotiations.

2.1.2. Commission of Inquiry and Conciliation

One of the main problems in the resolution of disputes is that the parties to the dispute generally make different claims regarding the crux of the problem. For this reason, in order to resolve the dispute more easily and reach a consensus, the events that cause the dispute and the current situation must be clearly stated. At this point, inquiry is a peaceful resolution method that is carried out by an impartial investigation commission to reveal the events leading to the dispute, the legal claims underlying the opposing views of the parties and determining the result with a non-binding report.

The procedure of inquiry, which was first used in the Maine incident between Spain and the US and introduced as a method in the 1899 La Haye Convention,[189] was further developed by the 1907 La Haye Convention. Accordingly, in the disputes that are not related to honor and vital interests, an investigation in an impartial and careful way to clarify the material elements would be initiated. Thus, it was found beneficial to establish an international inquiry commission that would facilitate the resolution of the disputes.[190] The commission of inquiry, which continued its development after La Haye and finally find themselves a place under the UN framework, can be carried out by real persons or institutions acting as an impartial investigator or actual investigation institutions. The commission of inquiry, which acts upon the consent of the parties, enables the resolution to the extent that it can reveal the material facts of the dispute.[191]

The problem that the material facts related to the dispute cannot be determined objectively is one of the main obstacles to the peaceful resolution of an international dispute. At this point, a fair review of the problem with an impartial commission plays a critical role in

[189] John G. Merrills, *International Dispute Settlement*, Cambridge: Cambridge University Press, (2011), p. 44.
[190] Seha L. Meray, *Devletler Hukukuna Giriş II*, Ankara, (1975), p. 210.
[191] Merrills, *International Dispute Settlement,* p. 43.

the resolution process. However, inquiry commissions are not intended to solve the problem directly but to identify the facts acquired through the investigation. The results are presented with a report, which is not regarded as an arbitral award and it lacks legally binding powers. Moreover, the commission is not tasked with providing a solution in its report, and hence, the outcome of the report is simply a positive contribution to the resolution of the dispute.

While the parties can freely decide whether the facts presented in the report should be considered in terms of the resolution of the dispute with a report, the states that wish to benefit from this procedure should have a special agreement among themselves. With this agreement, the procedures for the establishment of the commission are also determined and the inquiry commission, which consists of an odd number of members, acts within this framework.[192]

When it comes to conciliation, although it is similar to the commission of inquiry, it is a more precise and distinct method compared to other diplomatic methods since it offers a direct solution instead of the recommendation of a third party. Unlike inquiry, it includes not only determining the material elements of the dispute, but also suggestions for the resolution of the conflict. In other words, conciliation is a peaceful method involving the preparation of a report by a commission charged with investigating the incident by hearing the claims of the disputed parties and then, the presentation of the commission's solution proposal. This latter aspect of proving a solution proposal is what separates the method of conciliation from inquiry. If the parties agree to the proposal of the commission, this report turns an agreement between parties. However, if the parties do not agree on the proposal, the commission's report remains only as a text covering the investigation. Conciliation basically includes the characteristics of other peaceful resolution methods in addition to the inquiry; for instance, it can utilize the suggestions brought by a third party like mediation.

Conciliation has its roots in the past as well, the establishment of conciliation commissions in interstate disputes first appeared in the aftermath of World War I. The first conciliation commission was specified by the agreement between Sweden and Chile in 1920 and with this treaty, the parties accepted the obligation to present the disputes

[192] Mehmet Gönlübol, *Uluslararası Politika İlkeler, Kavramlar, Kurumlar*, Ankara, (2014), p. 372.

between them to the commission before taking the case to the LoN.[193] Then, with the establishment of the UN, this method was further developed.

In its current form, the conciliation commission tries to explain the questions regarding the dispute, conducts research and collects information about the objections or makes proposal to enable an agreement between the parties in general. Commission records are confidential, and the commission must reach a conclusion within 6 months after the application of the parties. State parties are not obliged to accept the conclusion and/or the proposed solution,[194] and the commission can give the parties time to decide on the suggested solution after the examination of the case. As for the conclusion, the conciliation commission does not have to strictly adhere to the material rules of international law in its proposal, as it can also recommend an equitable solution that would be accepted by both parties.[195]

From the scope of R2P, as the UN Secretary-General said in 2009, according to Article 34 of the UN Charter, the Security Council may investigate any dispute that may cause an international conflict and the General Assembly has similar rights in accordance with Articles 11, 12, 13, and 14 of the Charter.[196] In other words, in cases where atrocity crimes arise, an inquiry or conciliation commission can be appointed by the initiative of the Security Council or the General Assembly. In addition, many regional organizations, NGOs and national entities (such as Syrian Human Rights Observatory) also have their own commissions of inquiry. Therefore, Security Council authorization is not a requirement for the action in this regard and these two methods can also be handled by many actors. Moreover, the commission's investigations in the region where the atrocity crimes are committed will help to identify which groups are in charge of these crimes and hinder the preparations of the perpetrators. Similarly, the result of the report prepared by a conciliation or inquiry commission invites the international community to be prepared against a crisis that escalates. In this respect, these reports will also assert important indicators for whether it is a suitable time for taking a timely and decisive action in the region. Thus, while these two methods can increase the cost of the crime for the

[193] Merrils, *International Dispute Settlement,* p. 59.
[194] Bozkurt, *Devletler Hukuku*, p. 262.
[195] Suat A. Bilge, "Milletlerarası Uyuşmazlıkların Diplomatik Yollar ile Çözülmesi", *SBFD*, XVII(2), (1962), p. 209.
[196] Bellamy, "The First Response", p. 30.

perpetrators by overturning the costs and benefits. Of these two methods, inquiry is not a solution by itself since it does not suggest a binding proposal in terms of resolving the conflict. For this reason, it can be more effective in preventing atrocity crimes if it is supported by other peaceful methods.

2.1.3. Good Offices and Mediation

If there is no ground for negotiation process between the parties to the dispute or if the meeting has not been concluded, the involvement of a third party for preparing a ground for the negotiations is necessary. Good offices at this point means that a third party, a state (or several states) or an international organization is involved in the process for a peaceful resolution. In fact, although good offices as a resolution method cannot find a place among the methods listed in Article 33, this method has developed through customary international law and in Article 5 of the 1982 "Manila Declaration Regarding the Peaceful Resolution of International Disputes", good offices initiative is also listed among other peaceful resolution methods.[197]

The good offices initiative aims to bring the parties together, to encourage them to increase information exchange, and thus, to eliminate the misunderstandings between them. In addition, there are opinions that deem it appropriate for good offices to be able to make suggestions regarding the resolution of the dispute during the negotiation process.[198] As a result of these similarities, good offices is often referred to together with mediation, and even in the 1899 and 1907 La Haye Conventions, both methods are covered under the same title. Again, during the preparation phase of the La Haye Peace Conference the differences between good offices and mediation methods were addressed and it is stated that the main difference between them stems from the intensity of the involvement.[199] Therefore, it is possible to say that the good offices method plays a more passive role than the third person's mediation, and it does not have the authority to

[197] United Nations General Assembly, *Manila Declaration on the Peaceful Settlement of International Disputes*, 15 November 1982, A/RES/37/10.
[198] Kjell Skjelbaek, "The UN Secretary General and the Mediation of International Disputes", *Journal of Peace Research*, 28(1), 1991, p. 110.
[199] Articles 2, 3 and 6.

participate in the meetings or to organize the talks after preparing the ground for the negotiations of the parties.[200]

In order to undertake this task, a third actor who is not a party to the dispute may propose to take the role of the good offices and states that are a party to the dispute may request a third actor to take such an initiative as well. In either way, good offices is a method that depends on the demands of the parties and the suggestions of the good offices only have an advisory nature. In order to make them legally binding for the parties, the state who proposed the solution must use a right (e.g., a contractual right) that stems from international law.[201]

On the other hand, mediation is a method where an active third-party is involved in the resolution process and functions as a bridge when the parties refuse to speak to each other or come together. This role, which can be undertaken by various subjects of international law such as law enforcement agencies, international organizations or other real persons, not only brings the disputed parties together to negotiate, but also offers solutions by participating in the following processes.[202]

While the history of mediation dates back to ancient times,[203] the practice of mediation in the resolution of conflicts between states has been used more frequently since the beginning of the 20th century. For instance, in 1905, the US president Theodore Roosevelt took the role of mediator to end the war between Russia and Japan.[204] Mediation, which was also adopted at the 1907 La Haye Peace Conference by the participant states, has also been set out in the La Haye Convention as a method that states should resort to before using force as far as the situation permits.[205]

Mediation, which has gained more significance with the machinery of the UN system, is seen as a very preferred method due to its cost-effective and flexible aspects, and that it

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[200] Suat Bilge, "Milletlerarası Uyuşmazlıkların", p. 199.
[201] Mahmut Reşit Belik, "Devletler Hukukunda Hukuki Tasarruflar", *İHFİD*, XXXII(4), p. 90.
[202] Thomas Buergenthal and Harold G. Maier, *Public Internation Law in a Nutshell*, (1985), p. 66.
[203] Jacob Bercovitch, Theodore J. Anagnason, Donette L. Wille, "Some Conceptual Issues and Empirical Trends in the Study of Successful Mediation in International Relations", *Journal of Peace Research*, 28(1), 1991, p. 7.
[204] Leland M. Goodrich and Edvard Hambro, *Birleşmiş Milletler Antlaşması Şerh ve Yorumlar*, Ankara, (1954), pp. 261-262.
[205] Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 October 1907.

can be undertaken by various actors as mentioned above.[206] In addition, while states which are parties to the dispute may request an international actor to act as a mediator, a third party may offer to take this role for a specific case. The resolution method proposed by the mediator is not legally binding for the parties and the most important feature of mediation in legal terms is that its effectiveness depends on the preferences of the parties.[207]

Good offices and mediation, whose main purposes are to persuade perpetrators to end the atrocity crimes and establish peace, also have great importance in reminding states of their responsibilities, legal obligations and immorality of committing atrocity crimes. In addition, these two measures which prepare the ground for discussing the options to end the violence in the concerned region, can also be used to offer incentives for solution-oriented behaviors or to negotiate on specific arrangements to protect vulnerable populations such as giving access to humanitarian aid.

Secretary-General referred to mediation in his 2019 report on R2P and stressed that it is open to be used in the process both for addressing the political reasons of the atrocity crimes and for preventing escalation of conflicts.[208] As they lack binding powers, these measures may not be able to change the current behavior of the perpetrators for good, yet when combined with other peaceful methods they can be useful in understanding the expectations of the parties, creating pressure on the perpetrators, serving as a way of moral persuasion and attracting the attention of the third parties to the atrocity crimes in the region. It is also believed that R2P may not be a victim of short-term political interests if a more assertive mediation role has been played in cases that brought the discussions about R2P to the peak in recent years.

2.1.4. Arbitration and Judicial Settlement

Arbitration, which is one of the two peaceful measures that has legally binding power on the parties, in its contemporary sense was first described in Article 37 of the 1907 La

[206] For example, Yasser Arafat took the role of mediator in the 1977 Egypt-Libya conflict.
[207] Bozkurt, *Devletler Hukuku*, p. 255.
[208] Report of the Secretary-General, *Responsibility to Protect: Lessons Learned for Prevention*, p. 8.

Haye Convention which states that international disputes would be resolved in accordance with international law by the judges chosen by the disputed parties.[209]

Article 15 of 1899 the "La Haye International Peaceful Resolution Agreement" stipulated two criteria for arbitration: Determination of the arbitrators by the state parties and conclusion of the arbitral award within the framework of the international law. In this way, the decision to be made by the arbitrator was planned to be accepted in a fair manner by the parties. The determination of the disputed issue, the necessity of the parties to agree on the rules to be followed and the necessity of the arbitrator to be elected or accepted distinguished arbitration from diplomatic means, and most importantly, the parties are obliged to comply with the arbitrator's decisions, in other words, the award is legally binding.[210] The document in which the dispute and the rules to be applied are determined by the parties is called *compromis*, and the rules regarding the judgement may also be discussed in this contract. In arbitration, which provides more flexibility to the parties compared to the judgement of the international courts, the arbitrator can also decide *ex aequo et bono*[211] as well as on the basis of prevailing international law rules upon the request of the parties.[212]

International arbitration is usually formed as an *ad hoc* body, with one arbitrator chosen by the parties of the dispute and with the participation of one or three judges selected by these arbitrators, the parties and a third state or five judges of the ICJ. Therefore, while the decision-making based on the principles specific to the related issue determined by the parties in dispute through their designated arbitrators; international courts have certain methods, centers and judges and thus, the rules and the procedures to be followed are determined in advance. In addition, in arbitration, the awards are applicable only to the parties in dispute within the confines of the dispute in question. Moreover, again arbitration is sometimes considered as a more preferable measure than judicial settlement since it is particularly advantageous due to the fact that some disputes arise in a field that

[209] Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 October 1907, Article 37.
[210] Bozkurt, *Devletler Hukuku*, p. 264.
[211] According to the right and good.
[212] Goodrich and Hambro, *Birleşmiş Milletler Antlaşması*, p. 262.

requires expertise or the ability to complete the process more quickly and flexibly than the relatively heavily functioning judicial bodies such as the ICJ.[213]

On the other hand, judicial settlement includes a solution by a legally binding decision which is taken by a permanent body consisting of independent and highly qualified judges. Today, the most typical instance of the international judiciary is the ICJ which was formed with the establishment of the UN and has assumed the duty of the Permanent Court of International Justice (PCIJ) of the LoN. The ICJ has 15 judges who are elected for nine years and the procedure of the Court is regulated by the provisions of the Statute which is in the annex of the UN Charter. According to Article 36(1) of the Statute of the ICJ, all cases brought to the Court and all matters envisaged in the UN Charter or international treaties in force fall within the jurisdiction of the Court.[214] The ICJ cannot handle an incident spontaneously, but it must be brought to the ICJ by the states parties as its mandate depends on the consent of the concerned parties. In other words, in the absence of the will of the parties to the dispute, the ICJ cannot use *ex officio*[215] powers in this direction. Although the recognition of the mandatory jurisdiction of the Court can be carried out before any dispute arises, recognition of discretionary jurisdiction takes place after state parties show their will to apply to the Court after the dispute breaks out. Also, to be able to bring a dispute before the ICJ, the Court's mandatory jurisdiction can be recognized through a special agreement or an optional clause and *forum prorogatum*[216] in accordance with Article 36(2) of the Statute of the ICJ.[217]

There are several reasons for states to abstain from applying to international judicial bodies for resolving their disputes.[218] The first of these reasons is that the decisions of the international judicial bodies are binding (Article 94 of the UN Charter) and lead to the obligation to accept a potentially undesired decision on the part of the state parties, which makes it hard to get the consent of the related parties. In addition, the time elapsed until the end of trial may prolong the dispute. Also, since the international judiciary is limited

[213] Yücel Acer and İbrahim Kaya, *Uluslararası Hukuk Temel Ders Kitabı*, Ankara, (2018), p. 438
[214] United Nations, *Statute of the International Court of Just*ice, 18 April 1946.
[215] By virtue of one's position.
[216] The court is authorized by a contract.
[217] UN, *Statute of the International Court of Justice*, Artcile 36(2).
[218] John G. Merrills, *Anatomy of International Law: A Study of the Role of International Law in the Contemporary World*, London: Sweet&Maxwell, (1976), pp. 11-15.

to the framework enabled by the documents brought by the parties before the Court, it can only decide on certain aspects of the dispute.[219]

Article 34(1) of the Statute clearly establishes that only states can be a party to the cases before the Court.[220] These rules impose limitations as to the use of this method in the implementation of R2P in cases where perpetrators are non-state actors. Such approach results from the manifestation of the classical view that accepts states as the only subjects of international law, which was a view that prevalent at the time of the establishment of the ICJ. Although non-governmental organizations, individuals and other organizations will not be able to bring the case before the ICJ,[221] there is not a legal obstacle for arbitration in such cases.[222]

Nevertheless, within the framework of R2P, both methods are of relevance. For example, in the case of Bosnia-Herzegovina, the ICJ ruled that Serbia violated the Genocide Convention.[223] Again, considering the example of genocide, any state party to the Genocide Convention on the basis of Article IX may apply to the ICJ and sue the state where these crimes have been committed on the basis of an internationally wrongful act, and without the need to establish a physical connection to the region.[224] In addition, since the obligation of not committing the crimes referred by R2P is an *erga omnes* rule, a state party to the agreement bears responsibility towards other states. As an instance, Gambia, which does not have a physical connection with Myanmar, brought the Rohingya genocide case to the Court against Myanmar.[225] The legal remedy for a case indicates that the international community will not tolerate this action any longer, however, it is often claimed that the length of the proceedings are problematic. For instance, the case brought

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[219] Michael W. Reisman, "Has the International Court Exceeded Its Jurisdiction?", *AJIL*, 80(1), (1986), p. 128.
[220] United Nations, *Statute of the International Court of Justice*, Article 34(1).
[221] David Schweigman, The Authority of the Securiy Council Under Chapter VII of the UN Charter: Legal Limits and the Role of the International Court of Justice, (2001), p. 211.
[222] LawMath Nordmann, August Reinisch, Cedric Ryngaert, *Non-State Actors in International Law*, Bloomsbury Publishing, (2015), p. 52.
[223] International Court of Justice, Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina v. Yugoslavia), 11 July 1996.
[224] UN General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, United Nations, Treaty Series, vol. 78, p. 277.
[225] See also Human Rights Watch, "Questions and Answers on Gambia's Genocide Case Against Myanmar before the International Court of Justice", Accessed 5 May, 2020, https://www.hrw.org/news/2019/12/05/questions-and-answers-gambias-genocide-case-against-myanmar-international-court

by Bosnia against Serbia lasted almost 15 years. In this vein, while R2P crises require an urgent solution to prevent atrocity crimes, and lengthy trials seem to fail to prevent the perpetration of atrocity crimes at the first stage, the Court may contribute to prevention or early reaction with preliminary measures (such as deciding for a cease-fire during the trial period).

Arbitration is seen as a more preferable method for the implementation of R2P in terms of making non-state actors a side of the investigation process, as well as having a faster functioning system to solve a particular case. Thus, this method minimizes the threat of losing evidence in this process. However, if one of the parties is a non-state actor, pursuing a legal settlement may be perceived as an official recognition of the non-state actor by the state actor. Although this "recognition issue" usually leads to the abstention from this measure by states, it is also possible for the parties in dispute to accept this method since it leads to a legally binding and solution-oriented settlement.

2.1.5. Resorting the Regional Agencies and Chapter VIII

Article 33 of the UN Charter has established the basis of the resolution of international disputes that threaten international peace and security. Accordingly, different bodies within the UN as well as regional arrangements can play a role in the peaceful settlement processes. It is possible to say that the Security Council, which has the duty to protect international peace and security, is also the main authority in the resolution of international disputes. First of all, the Security Council may invite states that are in conflict, if deemed necessary, to resolve the dispute by means of negotiation, investigation, mediation, conciliation, arbitration or judicial settlement as specified in Article 33. Moreover, it may suggest other appropriate resolution methods or remedies. On the other hand, the Security Council may initiate an investigation to determine whether the continuation of a dispute would jeopardize the protection of international peace and security or not. According Article 37(2), if the Security Council believes that the persistence of a dispute endangers international peace and security, it may also suggest other appropriate remedies. In the case of a legal dispute, the Security Council generally advises the parties to resort to the ICJ. It is noteworthy that such a recommendation of the Council, as a rule, does not have a binding effect, but it is assumed that there is a

psychological value and the pressure component.[226] On the other hand, the General Assembly has the right to discuss and advise on any issue that is brought before it regarding the international peace and security. However, since the decisions here are advisory, they do not have a binding power on the parties.

In addition to the reference to in Article 33 on the role of regional organizations with regard to the resolution of the disputes, under Chapter VIII, Article 52(2) notes that the UN members who enter regional agreements or create such organizations will endeavor to resolve disputes through peaceful means, before submitting them to the Security Council. The Security Council should also encourage peaceful resolution of local disputes through such regional agreements or regional organizations, according to this article.[227] Article 53 exceeds peaceful methods and includes provisions on use of force; accordingly, it is stated that the Security Council, will benefit from regional agreements or institutions for the implementation of coercive measures taken under its authority, if necessary, and no coercive action will be taken under regional agreements or by regional institutions without the permission of the Security Council. In fact, the provisions of this section are highly controversial because the UN Security Council has been given substantial control over regional organizations and also, Article 53 of the UN Charter makes it possible to implement the use of force by regional organizations although the Security Council authorization is deemed necessary for taking action.

As in Chapter VIII, the expression "regional agencies/arrangements" has not been sufficiently explained in the documents related to R2P. However, references to Chapters VI and VIII under R2P are fully dedicated to the role of regional organizations in the protection of international peace and security. In this regard, Articles 33 and 52 complement each other. In fact, this is a manifestation of the importance of regional organizations and as why these organizations are seen as valuable partners for the implementation of R2P. Furthermore, although Article 53 left the door open to regional organizations for coercive actions including the use of force, an important limit was drawn by linking this decision to the Security Council. Therefore, essentially, regional organizations are asked to increase their early warning capacity with information-sharing

[226] Bozkurt, *Devletler Hukuku*, p. 266.
[227] UN, *Charter of the United Nations*, Article 52(3).

and keep the Council fully informed about the methods they will apply while ensuring international peace and security as stated in Article 54 of UN Charter.[228] Regional organizations' efforts to pursue an active path with peaceful methods in order to prevent atrocity crimes may help to alter the views that perceive R2P as a means of an outside intervention and it is also an effort for the regional acceptance of R2P.

Many regional organizations have played important roles in peaceful resolution of disputes to date, for example, the African Union (AU), which has already adopted R2P's point of view on topics such as the notion of state sovereignty and the responsibility to react in situations of genocide, war crimes and crimes against humanity,[229] played an important mediator role in the case of Kenya. In addition, in the Libyan case, this time the Arab League played an important role in Resolutions 1970 and 1973 processes, as will be discussed in Chapter 3.[230] Likewise, the OSCE also serves as an important example for R2P's regional operationalization, because the Member States define it as an organization for the peaceful settlement of disputes and early warning mechanism for the prevention of conflicts in the region.[231] Especially many European Union (EU) Member States are in the process of integrating R2P regionally.[232] Thus, the operationalization of R2P at the regional level in application of peaceful methods has a great importance to show that the misconceptions of the concept are being eliminated and regional dissemination can be ensured.

2.1.6. Other Possible Peaceful Means under the R2P Framework

The last of the means listed in Article 33 is "other peaceful means of their choices", which leaves states an open door for various possible peaceful measures in accordance with the UN Charter based on their preference. It is not possible to list these "other" measures

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[228] Jan Wouters, Philip De Man and Marie Vincent, *The Responsıbılıty to Protect and Regıonal Organısatıons: Where Does the Eu Stand?*, Leuven Centre for Global Governance Studies, Policy Brief No. 18, (2011), p. 14.

[229] See also Article 4 (j) of the Constitutive Act ("The right of Member States to request intervention from the Union in order to restore peace and security").

[230] See also Global Centre for the Responsibility to Protect, "The Responsibility to Protect and Kenya: Past Successes and Current Challenges", policy brief, 13 August 2010, accessed April 9, 2020, http://www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/ASAZ-883JDUfull _report.pdf/$File/full_report.pdf

[231] 1999 Istanbul Document, Article 7, 1992 Helsinki Document, Section III ("Early Warning, Conflict Prevention and Crisis Management, Peaceful Settlement of Disputes").

[232] Wouters, *The Responsıbılıty to Protect and Regıonal Organısatıons,* p. 18.

since they do not have any time and category limitations. However, this section will address a few peaceful methods that can be implemented under R2P to prevent atrocity crimes in accordance with the legal framework.

The first of these methods concerns the role of the public in the conflict. Civilians living in the region, in which human rights violations take place, play an important role in announcing these violations to the world through social media or their legal protests following the start of the crisis. Likewise, civilians living in different countries also play an important role in bringing the issue to the agenda of their government and moreover, the international community. The position of nongovernmental organizations such as Human Rights Watch, the International Crisis Group and also Amnesty International are significant at this point in order to increase international awareness with the detailed reports they prepare. These organizations and/or civilians are generally the first actors to bring the discrimination and hate speech in the region to the attention of the public. In addition, domestic organizations, such as women's groups, can draw attention to the situations of women in the conflict region where violations are occurring, and invite regional governments to act accordingly.[233] Thus, this method can be an important measure in terms of increasing the awareness of the international community and pushing it to take action to resolve the dispute, since it will be too naive to think it could persuade a government which is responsible for the violations or unable to prevent and protect its populations to do otherwise.

Human rights mechanisms under the UN or regional organizations can also play a role in dispute resolution. For example, the Human Rights Council (HRC) is a UN body to support human rights and it can organize inquiry commissions in any region, monitor the activities and call parties to a disputes to comply with human rights law by establishing a dialogue with them.[234] As the Secretary-General notes, these initiatives can play an important role in preventing atrocity crimes.[235] Regionally, organizations such as the Council of Europe, the OSCE and the Association of South East Asian Nations (ASEAN) have sub-organizations to promote international human rights and they are functional in

[233] Bellamy, "The First Response", p. 34.
[234] Bellamy, "The First Response", p. 37.
[235] United Nations General Assembly, *Timely and Decisive Response,* para. 22.

calling members to act together against atrocity crimes through support such as monitoring and reporting.

Furthermore, aiding the population that has been harmed by or are suffering from the violations committed in the region, with basic needs such as food and shelter in order to minimize the negative impact on them. This support can be important in preventing displacement of individuals, and it is s straightforward method that can be taken by the international community in fulfilling its responsibility to protect the concerned population while trying other diplomatic or legal ways to solve the problem between the parties. This responsibility can also be carried out with organizations such as the Red Cross, the World Food Programme, the United Nations High Commissioner for Refugees (UNHCR), regional organizations or individual initiatives of states. Also, the actors who take this initiative can request establishment of safe corridors, zones, or temporary ceasefires to help people in need. Although this method is not a definitive solution for the dispute between different actors, it is essentially one of the most important measures for "timely and decisive" response for the protection of people and it may help civilians to suffer less while other methods are being used.

In cases where the international community is insufficient to prevent displacement, another peaceful method can be ensuring the protection of refugees and internally displaced persons (IDPs). According to Bellamy, the relationship between refugee protection and R2P has been in existence since the principle was first introduced, and forced migration movements are one of the first indicators that the concerned state is unable or unwilling to protect its populations from atrocity crimes. [236] Today, in countries that are in a state of internal conflict or unrest, people often have to move to other countries as they face with the threat of mass atrocity crimes.[237] Thus, the threats or mistreatment faced by these people are seen as an important barometer to see whether the conflict in question contains mass atrocity crimes or not. [238] As Gallagher notes, the mass move of IDPs and refugees is an important sign that a state cannot fulfill its responsibility to ensure the safety and well-being of its population, and so, this responsibility should be

[236] Alex J. Bellamy, "Safe Passage and Asylum Key to Fulfilling Responsibility to Protect", accessed April 04, 2020, https://theglobalobservatory.org/2015/09/syria-refugees-unhcr-aylan-kurdi/
[237] Davies and Glanville, (ed.), *The Responsibility to Protect and International Law*, p. 2.
[238] Brian Barbour and Brian Gorlick, "Embracing the 'Responsibility to Protect': A Repertoire of Measures Including Asylum for Potential Victims", *International Journal of Refugee Law,* 20(4), (2008), p. 540.

borne by the international community as the third pillar suggests.[239] These displaced people commonly cannot meet their basic needs and they become even more vulnerable. Since IDPs remain within the borders of their country of origin and the concerned state is either insufficient or unwilling to protect these people, the governments in charge should be supported to fulfill their responsibility to protect IDPs from possible negative effects of displacement and they need to end the threat/situation that will lead to the appearance of asylum seekers. Also, the international community should pay considerable attention to implementing the "Guiding Principles on Internal Displacement", which is a fundamental document regarding the rights of IDPs although it is not a legally binding one.

Looking at the status of the refugees, although the 1951 Convention on the Status of Refugees and its 1967 Protocol set out basic rights and freedoms for refugees legally, due to the security and sovereignty focused perspectives of states in the post-1990 period, asylum was started to be treated as a privilege rather than a right. For this reason, immigration that emerged as a result of internal conflicts has not been adequately responded and the world agenda has faced with refugee protection crises, especially in the last 10 years. In fact, when a person, who does not have protection in her/his own country, takes refuge within the borders of another country, the responsibility to protect this person automatically switches to the third state according to R2P.[240] As can be inferred from Paragraph 138, the first pillar of R2P does not set citizenship as a criterion for the individual responsibilities of states. Hence, while protecting the people who fled their countries and entered into the borders of another state is the responsibility of this new host country; supporting the host state financially and sharing the burden via other sorts of aids, if these states have insufficient capacity to provide a safer environment for asylum-seekers and refugees, are among the other responsibilities of the international community under the second pillar.

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[239] Adrian Gallagher, "Syria and Indicators of 'Manifest Failing'", *International Journal of Human Rights*, 18(1), (2014), p. 9.

[240] Jennifer Welsh, who has taken on the role of Special Advisor on the Responsibility to Protect, stated that Jordan fulfilled its responsibility to protect by accepting Syrian refugees and confirmed this understanding. See Jennifer Welsh, "Fortress Europe and the Responsibility to Protect: Framing the Issue", European Union Institute Forum, 17-18 November 2014, p. 3.

On the other hand, it is possible to evaluate the protection of refugees within the framework of the responsibility of the international community to respond the case in a "timely and decisive" manner. In such cases providing refugee status to the people who fled their countries due to the life-threatening situation may reduce the number of casualties. According to Barbour and Gorlick, the international community is able to fulfill its responsibility arising from Pillar 3 in the easiest way by providing asylum and other protection methods regarding asylum seekers and refugees.[241] During his term as the Secretary-General, Ban supported such view by repeatedly arguing that the full implementation of international refugee law is a step for states to undertake their protection responsibilities.[242] Valentino also supports this idea by claiming that the devastating consequences of the vast majority of brutal crimes in the twentieth century can be overcome by providing a more significant international response to the refugees and asylum seekers.[243] Therefore, protecting IDPs and refugees is considered to be an important peaceful method in terms of preventing civilian losses and achieving protection, which is the main purpose of R2P.

2.2. Conclusion

The view that considers R2P equal with the use of force and humanitarian intervention generally focuses on the coercive methods under the third pillar of the principle. However, exhaustion of the peaceful methods before implementing the coercive measures is a prerequisite referred by the third pillar and these peaceful methods are addressed in Chapter VI of the UN Charter. Apart from the peaceful methods listed under Article 33, the Charter also allowed for other peaceful methods that can be applied by the disputed parties. With more attention placed on these peaceful methods and improved mechanisms—which can be implemented by the parties on their own initiative without requiring a decision by the Security Council—coercive methods would be needed much

[241] Barbour and Gorlick, "Embracing the 'Responsibility to Protect'", p. 533.
[242] UN General Assembly-Security Council, "The Role of Regional and Subregional Arrangements in Implementing the Responsibility to Protect", A/65/877–S/2011/393, 28 June 2011, p. 4; UN General Assembly- Security Council, "Responsibility to protect: State Responsibility and Prevention", A/67/929–S/2013/399, 9 July 2013, p. 2; UN General Assembly- Security Council, "Fulfilling Our Collective Responsibility: International Assistance and the Responsibility to Protect", A/68/947–S/2014/449, 11 July 2014, p. 16.
[243] Alise Coen, "The Responsibility to Protect and the Refugee Crisis", accessed April 29, 2020, https://sustainablesecurity.org/2016/03/09/the-responsibility-to-protect-and-the-refugee-crisis/

less. Moreover, the dependency on the Security Council would be lessened and veto-led deadlocks can be reduced. Considering the emphasis on "responsibility to prevent" by Member States in the last decade of R2P and its place as the official agenda item in the General Assembly discussions suggest a trend towards an R2P approach which is moving away from the contested use of force and highlighting the necessity to focus on the peaceful methods.[244] Besides, it is argued that peaceful methods are much less controversial than taking coercive measures to protect potential victims of mass atrocities.[245] Arguably, when crimes are being committed in a region, people who are already vulnerable maybe further victimized by coercive operations in the region. It would also be less costly to use peaceful methods to end conflicts that endanger the life and safety of the people living in that region. Also, the use of more than one of these methods simultaneously and in sync by a wide range of actors without requiring Security Council authorization can make a significant difference in terms of delivering a response at the early stages of a crisis. Nevertheless, these peaceful measures may fail to provide the necessary protection based on the responsiveness of the state in conflict. At this stage, coercive methods can be applied in accordance with Chapter VII, which includes measures up to and including the use of force. In this regard, the subsequent chapter examines the methods that can be addressed under Chapter VII.

[244] Gözen Ercan, "UN General Assembly Dialogues", pp. 313-332.
[245] Barbour and Gorlick, "Embracing the 'Responsibility to Protect'", pp. 533–566.

CHAPTER 3

COERCIVE MEASURES AVAILABLE TO R2P

International law, as a general rule, prohibits resorting to coercion to influence state behavior. However, under certain circumstances coercive measures up to and including the use of force are permitted. The coercive measures that can be adopted by the UN in ensuring international peace and security are regulated under Chapter VII of the UN Charter and while using these measures, which are included within the duties and powers of the Security Council, it is necessary to act in accordance with the UN's goals and principles.

Article 39 establishes that if the Council finds that international peace and security is disrupted or violated with a threat or an act of aggression, then it can decide on which measures to be taken in accordance with Articles 41 and 42. Pursuant to Article 41, the Security Council may decide measures that do not involve the use of armed forces, and it can call on the Member States to implement the measures which are taken by the Security Council. These measures may include ceasing economic relations, as well as rail, sea, air, postal, telegraph, radio and other means of communication and transportation, and also suspending diplomatic relations. Article 42 emphasizes that if the UN Security Council states that the measures provided under Article 41 will be or are insufficient, it may take any action deemed necessary (such as blockade and other "peaceful operations" by the UN to protect or restore international peace and security). Moreover, Article 51, which is the last article of Chapter VII, establishes that "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security".[246] Thus, this article creates an exception to the principle of the prohibition of the use of force, which is one of the basic norms in the UN system and embodied in Article 2(4) of the UN Charter.

[246] United Nations, *Charter of the United Nations*.

Since self-defense is an inherent right that can be practiced in response to an act of aggression and thus, constitutes a provisional exception, perhaps the main exception to "the prohibition of the threat and use of force" is the Security Council's authorization. Any action taken by the decision of the Security Council under Article 42 has to be in line with the coercive methods up to and involving the use of armed force, and should be geared towards the primary responsibility of the Security Council to protect international peace and security.[247] Thus, unlike in war, the application of the coercive measures should not involve a general purpose to completely neutralize the other party.

In general terms, coercive measures short of war are not systematically addressed and listed under the UN Charter. However, besides the main exceptions provided by Articles 42 and 51, international law accepts and restricts certain measures that can be taken by states whose rights have been violated or whose interests have been damaged.[248] Countermeasures and coercive methods, which can be divided into general subtitles as retorsion, reprisal and intervention will be discussed in this Chapter in relation to the framework of R2P.

3.1. Retorsion and Reprisal

With retorsion, it is traditionally understood that a state responds against the behavior of another state that was not illegal but damages its interests in ways that are not prohibited by the international law.[249] However, today, retorsion has been differentiated from this traditional view and responding to an illegal act of a state by means that are not in violation of international law can also be accepted as retorsion.[250] There is no legal obstacle to this new classification, and the important thing in both definitions of retorsion is that a state should use measures that remain within legal limits while responding to an act that harms its interest.[251] Therefore, lawfulness is the first condition to use retorsion, wherein a state responds with a counter action to cause harm to the interests of the other state.[252] As retorsion constitutes an unfriendly but legal response, it is not prohibited by

[247] Erdem Denk, *Uluslararası Örgütler Hukuku Birleşmiş Milletler Sistemi*, Ankara: Siyasal, p. 240.
[248] Bozkurt, *Devletler Hukuku*, p. 270.
[249] Meray, *Devletler Hukukuna Giriş II*, p. 412.
[250] See, for instance, Jean Combacau, "Retorsion" in *Encyclopedia of Public International Law*, (2002), p. 335.
[251] Hüseyin Pazarcı, *Uluslararası Hukuk*, Ankara, (2012) p. 438.
[252] Pazarcı, *Uluslararası Hukuk,* p. 439.

international law, and is not in contradiction with the UN Charter. This also explains why retorsion is not expected to be carried out in exactly the same way and with the same means against the action that caused it, unlike retorsion does.

Measures that can be adopted as part of retorsion are at the discretion of the state concerned. It is possible to specify the main retorsion measures that are available to states in international practice as follows: enforcing strict rules for citizens of the other state, setting high tax rates and different tariffs in trade relations with the other state, closure of ports to the other state's ships, cessation of trade relations with the relevant state, cutting economic and technical assistance in a way that does not violate existing bilateral or multilateral treaties, declaration of diplomats as *persona non-grata*, limiting the movements of their diplomats within the country, boycotting the goods of that state, putting visa requirement for citizens of the other state or prohibiting their entry into the country.[253]

On the other hand, reprisal—which is one of the traditional countermeasures and has its origins in Code of Hammurabi[254]—can be described as a response to an illegal act of a state in the same manner.[255] In other words, it means that a state, which was harmed as a result of an unfair and illegal action of another state, takes forceful measures in order to prevent the repetition of such unfair and illegal action, or to ensure the compliance of the damaging state in accordance with international law. Therefore, it is claimed that this action gained legitimacy since it is a response to an act against international law.[256] Kelsen explains this controversial concept as "acts, which although normally illegal, are exceptionally permitted as reaction of one state against a violation of its right by another state".[257]

As can be understood from the definition, although retorsion and reprisal are similar in terms of their meanings, there are features that distinguish the two. Firstly, while retorsion

[253] Pazarcı, *Uluslararası Hukuk,* p. 439.
[254] Among the articles 196 and 200 of the mentioned code, examples of explicit harm are given with "eye for an eye" clauses. See also, Yale Law School, accessed April 30, 2020, https://avalon.law.yale.edu/ancient/hamframe.asp.
[255] Lawrence Oppenheim and Hersch Lauterpacht, *International Law II*, London, (1952), p. 136; Robin W. Tucker, "Reprisals and Self-Defense: The Customary Law", *A.J.I.L.*, 66, (1972), pp. 586-595.
[256] Meray, *Devletler Hukukuna Giriş II*, p. 414.
[257] Hans Kelsen, *Principles of International Law*, New York: Rinehart & Co, (1952), p. 23.

constitutes a way against behavior that does not violate international law but harms an interest, the existence of an action against international law is required for reprisal to be justified. Secondly, while the measures to be taken under retorsion have to be actions in accordance with international law; reprisal countermeasures may also include actions that are against international law.[258]

In addition, there are also some nuances that differentiate reprisal and actions pertaining to self-defense. While reprisal can be applied for all kinds of interests or law violations, in order to use the right of self-defense, there has to be an act of aggression. While the aim of reprisal is to punish the other state, the main purpose of the state in self-defense is to defend itself against the attack. Moreover, the state which applies retorsion measures does not have to act within a limited period after the attack which causes this response; however, in self-defense, the countermeasure should be taken in a short span of time after the first action and until the Security Council takes the necessary measures. Again, the claim of the damaged state for compensation should not be accepted in order to be able to resort to reprisal but such a condition is not sought for self-defense.[259]

Considering the conditions under which the measures of reprisal can be used, if the act of the other state does not violate international law or an international obligation, it is not possible for the state to proceed with reprisal. In such a case, the state responding with reprisal is held responsible for an internationally wrongful act. The second condition for the application of reprisal is that the state that was harmed must make a request for the compensation[260] of the damage caused by the negligent state.[261] Another condition that is necessary for a state to use reprisal is that the state which will respond with reprisal should direct this action only against the state who caused the damage, and a third party should not be affected by this response. Furthermore, the action must be proportionate to the

[258] Pazarcı, *Uluslararası Hukuk,* pp. 439-440.
[259] İlyas Doğan, *Devletler Hukuku*, Ankara: Astana Yayınları, (2013), p. 166.
[260] For instance, in the Nauliaa incident between Portugal and Germany during the First World War, after the killing of three German citizens in the Portuguese colony of Nauliaa when Portugal was still neutral, the German army, as a countermeasure, attacked the border of this post colony of Portugal and caused destruction. Then, the dispute was subsequently submitted to international arbitration, and in the decision of the German-Portuguese Arbitration Tribunal concerning the Nauliaa Case in 1928, it was decided that Germany's attack was unfair, stating that Germany used force without asking Portugal to rectify the situation (Pazarcı, *Uluslararası Hukuk,* p. 440).
[261] Richard A. Falk, "The Beirut Raid and the International Law of Retaliation", *A.J.I.L.*, 63(3), (1969), p. 431.

violation committed by the other state.[262] However, this proportionality does not mean the necessity to respond with the same actions and in the same way.[263]

Reprisal, which was initially considered as an unlimited realm of authority, is divided into two as belligerent reprisals which take place during an armed conflict[264] and non-armed/non-belligerent reprisals (also known as countermeasures) which are carried out during the peacetime. With the formation of new rules in international law, reprisal has been subjected to some limitations especially since the beginning of the 20th century. The 1907 Drago-Porter Convention and then the LoN made it compulsory to apply peaceful methods before responding with reprisal. Later with the UN Charter's prohibition of the use of force, it has become prevalent that reprisals, which are used as countermeasures, should not contain the use of force.

Non-belligerent reprisals may include methods such as not applying a treaty measure or a rule of conduct, taking economic measures or expelling the citizens of that country collectively. On the other hand, belligerent reprisals may include measures such as pacific blockade, pacific occupation and pacific bombardment. Reprisal can be applied against the violating state/party. For instance, ships carrying the flag of that country can be seized, treaties can be suspended, and/or a part of the country may be occupied within this scope. Just as reprisal can be applied against an act contrary to the state's obligations, not fulfilling an obligation in response can also be used as a reprisal method. However, reprisal is not limited to these methods and there is no requirement in international law to use certain reprisal methods; thus, a state can adopt any proper method as long as it meets the criteria.[265] This is also why, depending on the circumstances that they are adopted in, some of the methods that are generally considered as retorsion may count as an act of reprisal.

As for measures of belligerent reprisal, it is necessary to examine them closely since their implementations are controversial and legally prohibited due to the coercive means. For instance, pacific blockade, as a term of international law, can be defined as the cessation of all kinds of material and military transportation from the sea route by controlling the

[262] Ibid., p. 432.
[263] Bozkurt, *Devletler Hukuku*, p. 276.
[264] See, Frits Kalshoven, *Belligerent Reprisal*, Leiden: Martinus Nijhoff, (1971).
[265] Keskin, *Uluslararası Hukukta Kuvvet Kullanma*, p. 95.

coasts and harbors of the concerned state through warships for the purpose of putting both material and psychological pressure on that state.[266] Although the question that whether or not peaceful blockade has any difference from the blockade during the wartime is a matter of debate,[267] in order to talk about the former, there should be no war relationship between the parties. Although this measure involves the use of force inherently, it has been accepted as a peaceful measure since there is no *animus belli* between the concerned states and the parties do not have belligerent status.[268]

Other reprisal methods mentioned in many sources are peaceful occupation and bombardment. Despite the fact that a state which uses force against another because of the unfair and illegal act of that state, since there is no *animus belli* between the parties, occupation or bombardment are accepted as peaceful methods according to some.[269] However, it is also a matter of fact that these methods had the potential to cause a war.[270] In the case of an international dispute (without a conventional requirement and without the consent of the occupied state), occupation of a state's territory or part of it by another state and detaining this land until the resolution of the dispute is called temporary occupation. On the other hand, the bombing of some places of a country by another is defined as bombardment.[271] There are many examples of occupation and bombardment in the history of international law, and such reprisals are generally considered to be inconsistent with international law due to reasons of disproportionality and the harm this may cause to civilians. Thus, while these methods were widely used in the past, in the post-LoN era, and especially the post-Charter period, these measures are no longer acceptable under international law.[272]

The issue of which actors can use these coercive methods is important for R2P's implementation. Today, states do not have the monopoly to apply sanctions. As for matters related to international peace and interstate relations, Security Council mandated

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[266] Albert E. Hogan, *Pacific Blockade*, Oxford, (1908), p. 11; Meray, *Devletler Hukukuna Giriş II*, p. 420; Pazarcı, *Uluslararası Hukuk,* p. 442.
[267] Hogan, *Pacific Blockade*, p. 183; Pitman B. Potter, "Pacific Blockade or War", *A.J.I.L.*, 47(2), (1953), p. 273.
[268] Pazarcı, *Uluslararası Hukuk,* p. 442.
[269] Ibid.
[270] İlhan Lütem, *Devletler Hukuku Dersleri. Mahiyet, Gelişme, Kaynaklar, Şahıslar*, Ankara, (1959), p. 669.
[271] Zeki Mesud Alsan, *Devletler Hukuku Dersleri*, Siyasal Bilgiler Okulu, (1947), p. 570.
[272] Alsan, *Devletler Hukuku Dersleri*, p. 571.

sanctions are deemed lawful,[273] while states are expected to apply peaceful methods for the resolution of their disputes. However, given the transformation in wars and rise of intrastate conflicts, in the recent decades coercive methods which target prevention of atrocity crimes have emerged.[274] Within the framework of R2P, alongside UN authorized sanctions, governments and/or regional organizations have been using coercive methods short of the use of force to protect populations from atrocity crimes.[275]

Regarding reprisals involving the use of force, according to Brierly, armed actions would be a clear violation of international law and it is beyond the discussion.[276] Kalshoven challenges this idea arguing that although the Charter's specified articles as well as related UN documents[277] prohibit the use of force, they have not removed the uncertainty for the legitimacy of using force in reprisals.[278] Within the scope of Pillar 3 of R2P, the international community's implementation of any of the mentioned coercive methods is possible under the authority of the UN Security Council in a lawful manner. Nevertheless, unilateral and/or unauthorized implementations are subject to debate depending on which specific means is adopted. Likewise, intervention, which is the focus of the next section, remains a controversial issue, and is the Achilles heel of R2P.

3.2. Intervention

In its broadest sense, intervention can be described as the examining of and giving advice on an issue which is a matter that falls under the national jurisdiction of a state.[279] Hence,

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[273] Alexander Orakhelashvili, "The Impact of Unilateral EU Economic Sanctions on the UN Collective Security Framework: The Cases of Iran and Syria" in Marossi and Bassett (eds.), pp. 7-8.
[274] Eleni Katselli Proukaki, *The Problem of Enforcement in International Law: Countermeasures, the Non-injured State and the Idea of International Community*, Routledge, (2010), p. 331.
[275] For example, in the case of the Democratic Republic of Congo (DRC), the EU and the US applied travel bans and arms embargo (Matthew Tempest, "EU slaps DR Congo officials with sanctions after anti-Kabila deaths", Euractiv, 13 December 2016).
[276] James L. Brierly, Josef L. Kunz, *The Law of Nations*, New York: Oxford University Press, (1936), p. 415.
[277] For instance, in the 1970 "Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States, A/RES/2625(XXV)" it is stated that it is a duty for states to avoid reprisal measures involving the use of force. This understanding was later reiterated in with the 1981 "Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States, A/RES/36/103" that avoidance duty of states from armed interventions also include using force in reprisals.
[278] Frits Kalshoven, "Belligerent Reprisals", Netherlands Yearbook of International Law, 21, (1990), pp. 6-7.
[279] Raymond J. Vincent, *Nonintervention and International Order,* New Jersey: Princeton University Press, (1974), p. 3.

it is inherently a political concept that is used to cover all kinds of interference in the affairs of states. However, in international law, the term "intervention" means the involvement of a state in the internal or external affairs of another state in a compelling or imperative way in order to change the attitude of that state or to create some changes in that state.[280] Considering these types of practices, a movement close to an attack, political propaganda and aid to political parties, factions or terrorist groups in that state,[281] discontinuation of economic aid, application of embargo, interference in the internal affairs of a state can be referred to as intervention. By definition, to consider a specific action as intervention, there is no need to use force; actions that do not involve such use of force are not violations of Article 2(4) but they may violate the principle of non-interference. Nevertheless, it is also noteworthy that within the current international system, human rights are no longer matters strictly confined to the internal affairs of states since they are protected by international conventions. In this vein, within the context of this thesis when the term intervention is used it will be referring to interventions including the use of force, which are in essence in violation of Article 2(4) of the Charter.

As a general principle,[282] Article 2(7) of the Charter establishes that no provision of the Charter allows the involvement of the UN in the issues of states which are under their national jurisdiction. Along with the principle of the sovereign equality of states, which is specified in Article 2(1), this principle establishes that states have an inherent right to choose their political, economic, social and cultural systems without any external

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[280] Oxford Public International Law, accessed May 5, 2020, https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1434.

[281] In the 1986 Nicaraguan case decision, the ICJ admitted that, the country using a military action or supporting destructive or terrorist activities in another state violated both prohibition of force and non-intervention principle.

[282] Documents such as the 1949 "Draft Declaration on Rights and Duties of States, A/RES/375", the 1965 "Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, A/RES/2131(XX)", and the 1970 "Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, A/RES/2625(XXV)" have reiterated paragraphs 1 and 7 of Article 2. By 1981, with the Resolution 36/103 of the UN General Assembly it was determined that states would refrain from taking measures to create new military blocks, establishing interventionist forces or military bases and other military settlements and they would not use their external economic aid programs as a means of political pressure or coercion against another state and for that purpose they will not resort to economic reprisals or blockades. Australia, Canada, France, Germany, the Netherlands, the UK and the US voted against this decision (Vaughan Lowe, "The Principle o f Non-Intervention: Use o f Force", in *The UN and the Principles o f International Law,* (ed.) V. Lowe ve C. Warbrick, London, New York, Routledge, (1994), p. 68).

intervention.[283] Moreover, Article 2(7) also highlights that the non-interference principle cannot in any way prevent the enforcement of coercive measures envisaged in Chapter VII, and hence enables the implementation of the authorized by the Security Council.

Against this legal backdrop, within the context of humanitarian considerations, some consider intervention as an appropriate and legal way of coercion under international law. In this regard, it is important to identify different sorts of interventions and discuss their legality.

3.2.1. Humanitarian Intervention

Humanitarian intervention, which is included within the scope of R2P's third pillar, gained prominence with the human rights violations that occurred during the civil wars in the post-Cold War era. It can be described as the use of military force by a state to another without the permission of the concerned state in order to prevent humanitarian crises caused by severe and widespread violations of human rights in that state.

There are different opinions about the applicability of humanitarian intervention. According to some scholars, since the UN Charter clearly prohibits the use of force against the sovereignty and territorial integrity of a state, any use of force that exceeds this rule would be contrary to the international law. According to those who advocate this view, allowing humanitarian interventions as an exception to the non-use of force principle in order to protect a group of people under the domination of a state can be exploited very easily. Moreover, the case of human rights violations does not provide the UN with the power to interfere in a state's affairs. Nevertheless, the UN has authority to enforce the provisions of Chapter VII in aggravated violations wherein national authorities are unwilling or unable to stop these violations.[284] In this fashion, in the 1990s, the Security Council authorized a number of interventions concerning humanitarian crises such as those in Northern Iraq, Somalia and Bosnia-Herzegovina. Overall, a point of

[283] Asbjom Fide, "Outlawing the Use o f Force: The Efforts by the United Nations*",* in *The United Nations and the Maintenance o f International Peace and Security,* UNITAR, 1987, p. 117.
[284] Rattan, "Changing Dimensions of Intervention", p. 2.

consensus for scholars is that the authorization of a military intervention by the Security Council makes it a lawful intervention.[285]

On the other hand, regarding the unilateral humanitarian intervention, some are of the opinion that in cases of massive human rights abuses, intervention by a single state or a group of states or a regional organization can be implemented as a last resort even without a Security Council authorization, and some others argue that international human rights law provides a legal basis for such intervention. However, critics of such view argue that unilateral and/or unauthorized humanitarian interventions are contrary to contemporary international law. According to Louis Henkin, it is also dangerous to legalize unilateral or unauthorized interventions, because it provides an opportunity to abuse the concept.[286] Kosovo intervention, in particular, constitutes an important threshold in this regard. The ICJ highlighted the special responsibility of the UN Security Council in the "Legality of Use of Force Case" between Yugoslavia and the US, and found that the unilateral intervention cannot be considered as legal.[287] At this point, R2P, which was introduced after and in the light of the case of Kosovo among others, changed the perception of right to intervene to a responsibility of the international community and introduced an innovation for interventions made within this scope. If humanitarian interventions are considered to be continuing under R2P, it can be argued that they are now narrowed down and regulated by the Security Council. Accordingly, as Paragraph 139 of WSOD has established, it is the Council that decides the use of force in accordance with Chapter VII in cases of the atrocity crimes that constitute the scope of R2P.

3.2.2. Intervention by Invitation

Intervention by invitation, which can be explained as the launch of a military operation by foreign troops to an internal armed conflict through an invitation made by the legitimate government of the concerned state, is accepted as a lawful act according to international law.[288] Although Article 2(4) of the UN Charter prohibits the use of any kind of armed force on the territory of another state, if a state gives its consent to the use of the

[285] Gözen Ercan, *Debating the Future of the Responsibility to Protect*, p. 50.
[286] Rattan, "Changing Dimensions of Intervention", p. 5.
[287] ICJ, Legality of Use of Force (Yugoslavia v. United States of America), (1999), ICJ Report 803.
[288] Ibid., p. 121.

force in a conflict that is taking place on its own territory, this does not constitute a violation of the prohibition of the use of force. As the intervention is based on the invitation of the legitimate government, the presence of foreign military forces does not violate the "territorial integrity and political independence" of a state. Therefore, it is possible to argue that this type of intervention constitutes a provisional exception to the prohibition of the use of force.[289] Moreover, it is noteworthy that the prohibition of use of force was formulated to impose an interstate level restriction rather than limiting the state's jurisdiction, hence, the government's request for an intervention does not constitute a violation of this prohibition.[290] Nevertheless, the invitation for the intervention must be explicitly issued by a legal government, in some cases an implied acceptance is considered as sufficient for the existence of the consent and it is a basic requirement that the demand is not obtained through pressure.

According to Woocher, state approval in responding to humanitarian crises is a factor that reconciles the dilemma between the prohibition of the use of force and the international community's responsibility to protect.[291] Within the context of R2P, in cases where non-state actors are the perpetrators of the atrocity crimes and the government is unable to prevent these crimes, intervention by invitation based on the consent of the legitimate government can enable the state to uphold its responsibility. Nevertheless, when the government in question is the source of the humanitarian crisis, this method would not be applicable as the state authorities would not extend their consent for external involvement, and most probably a humanitarian intervention would be carried out by force.

3.3. Other Coercive Measures

Although R2P as an idea that is based on the aim of the protection of vulnerable populations qualifies the adoption of the use of force "only as a last resort", the misconception that sees it as an equivalent of humanitarian intervention continues to hamper its implementation. As Bellamy aptly puts it, this "chronic capacity shortfall"[292]

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[289] David Wippman, "Military Intervention, Regional Organizations, and Host-State Consent", *Duke Journal of Comparative & International Law,* (1996), pp. 209-240.
[290] Gray, *International Law and the Use of Force*, p. 75.
[291] Lawrence Woocher, "The Responsibility to Prevent: Towards a Strategy," in W. Andy Knight and Frazer Egerton (eds.), *Routledge Handbook on the Responsibility to Protect*, London: Routledge, (2012).
[292] Bellamy, "The First Response", p. 5.

in implementing peaceful measures has dominated discussions about the principle. Thus, the preventive methods under the third pillar of R2P are generally overlooked.

In its report, the ICISS established that other coercive measures, including various political, economic and military sanctions, should be exhausted before taking the decision to apply a military operation.[293] According to Evans, sanctions are vital because there should be a tool between "the words and war"[294] and they are significant not only in the reaction phase but also in the prevention phase since it is thought that they can prevent the escalation of the crisis.[295]

In order for R2P to be better understood and applied, it is necessary to overcome use of force-oriented approaches that create prejudice about the principle. For this reason, prioritizing the prevention phase through peaceful methods and then coercive methods that do not include the use of force (in cases where the peaceful methods are proved to be inadequate) will allow both to lessen the loss of lives with early reactions and enable states to fulfill their individual responsibilities within the framework of international law.[296]

The first of these elements is various smart economic sanctions, such as trade embargoes, financial sanctions and travel bans which will only impose on the people who are responsible for the atrocity crimes. These economic sanctions, which can be handled within the scope of retorsion and reprisal, can be accepted as significant measures in the R2P toolbox since they will not drag the international community to controversial applications such as intervention, blockade and bombardment. In addition, referral to ICC, which is a legal method based on judging the persecutors who caused atrocity crimes, will be discussed and then the peacekeeping forces, which is a civilian focused UN operation held with the invitation of the concerned state, will also be considered within the framework of R2P in this section.

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[293] ICISS, *The Responsibility to Protect*, p. 29.
[294] Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, Washington DC: Brookings Institution, (2008), p. 114.
[295] Ibid., p. 94.
[296] Alex J. Bellamy and Ruben Reike, "The Responsibility to Protect and International Law", Alex J. Bellamy, Sara E. Davies and Luke Glanville (eds.), *The Responsibility to Protect and International Law*, Boston: Martinus Nijhoff Publications, (2011).

3.3.1. Smart Economic Sanctions

Economic sanctions are seen as measures that cause more tangible consequences than diplomatic sanctions, and their importance to R2P surprises even those who have been involved in academic debates about the effects of various forms of economic sanctions.[297] Extensive economic embargoes imposed on former Yugoslavia, Haiti and especially Iraq in the early 1990s triggered new research and political debates on the negative humanitarian impacts of the sanctions. The shocking difference that international sanctions have caused the deaths of hundreds of thousands of Iraqi children has more precisely led to calls for smart (or targeted) sanctions on the political elites.[298] The UN members followed these calls by initiating three reform processes in the late 1990s,[299] and ultimately, comprehensive economic sanctions such as industry-specific trade embargoes, arms embargoes, financial sanctions, aviation and travel bans have been introduced.[300]

According to Lopez, these smart sanctions aiming to constrain perpetrators instead of addressing the public[301] can contain many measures such as suspension of loans and aids from international financial institutions to the national government, closing access of the government to overseas financial markets and banks, as well as controlling private goods that provide power supplies to the regime (particularly high-transactions and income-generating goods), weapons, computers and communication technologies if the perpetrator is a national government. Given that atrocity crimes are generally organized actions and cannot be maintained without the help of external actors, it is possible to say that the perpetrators will need communication paths, resources and these measures are very important in this respect.[302] These sanctions, the aim of which is to make it difficult to commit the concerned crimes by increasing the cost for the perpetrators, can be

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[297] Fiott and Koops, *The Responsibility to Protect and the Third Pillar*, p. 42.
[298]George A Lopez, George *A Cortright, Smart Sanctions: Targeting Economic Statecraft*, Lanham.
[299] The Interlaken Process on Targeted Financial Sanctions, the Bonn-Berlin Process on Arms Embargoes and Travel and Aviation Related Sanctions, and the Stockholm Process on the Implementation of Targeted Sanctions.
[300] Michael Brzoska, "From Dumb to Smart? Recent Reforms of UN Sanctions", *Global Governance*, 9(4), (2003), pp. 519-535.
[301] George A Lopez, *Mobilizing Economic Sanctions for Preventing Mass Atrocities: From Targeting Dictators to Enablers*, in S. Rosenberg, Tibi Galis, and Alex Zucker (eds.), "Reconstructing Atrocity Prevention", Cambridge University Press, (2015) p. 381.
[302] Ibid., p. 385.

imposed by states, a group of states, regional and/or international organizations or by civil society (such as withdrawal of an investment from this region). Furthermore, these targeted sanctions become more effective when they involve efforts coordinated by the UN Security Council.

Even though these smart sanctions has taken its place in the R2P literature[303] and studies evaluating their success in practice assume that this type of sanctions reduces negative humanitarian effects, there are also opinions that smart sanctions have a more limited effect on pushing the perpetrators to a particular behavior.[304] While some suggest that sanctions aspiring to end the armed violence are largely ineffective,[305] there are others arguing that smart sanctions, such as partial trade embargoes and aviation bans, can directly affect the welfare of the people generally, even though they only target the persecutors.[306] In addition, a sanction like arms embargo can effectively serve the benefit of the stronger side in an asymmetrical conflict, although it looks like neutral before the implementation. For instance, during the UN arms embargo imposed on Former Yugoslavia in the Bosnian War, Serbians controlled the Old Yugoslavian army and the domestic weapons industry, and the Croatians were also receiving weapon shipments secretly via the Adriatic Sea. Therefore, Bosnian Muslims were the ones who were affected the most by this "neutral" embargo.[307] Similarly, arms embargoes implemented during the current cases within the R2P framework have been criticized for turning conflicts in favor of the stronger side.

Despite these problematic aspects, smart sanctions are still the most risk-free, preferred and feasible measures under the R2P framework against atrocity crimes. Galtung explains the reason for this as follows: when the operation is impossible for some reason and doing nothing is not equivalent to accomplicity, even if a state to whom the economic sanctions are imposed on does not comply with the expectations there is still some value to do

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[303] Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes,* p. 114.
[304] Daniel W. Drezner, "Sanctions Sometimes Smart: Targeted Sanctions in Theory and Practice", *International Studies Review*, 13(1), (2011), pp. 96-108.
[305] Clara Portela, *European Union Sanctions and Foreign Policy: When and Why Do They Work?,* London: Routledge, (2010), pp. 55-101.
[306] Robin Geiss, "Humanitarian Safeguards in Economic Sanctions Regimes: A Call for Automatic Suspension Clauses, Periodic Monitoring, and Follow- Up Assessment of Long-Term Effects", *Harvard Human Rights Journal*, 18, (2005), pp. 167-199.
[307] Dominic Tierney, "Irrelevant or Malevolent? UN Arms Embargoes in Civil Wars", *Review of International Studies*, 31(4), (2005), p. 658.

something to prevent these crimes at least for the imposing states. Thus, if the sanctions do not serve instrumental purposes, they can at least have expressive functions.[308] In a similar vein, some argue that Western governments use sanctions as a less costly alternative to military intervention to demonstrate that they have saved the lives of the local people, not because they expect to influence the behavior of the target state.[309] Moreover, fundamentally, smart sanctions target directly the individuals or groups who commit the crimes and are considered as a crucial development that could prevent perpetrators from continuing their crimes by blocking their commercial ways (whether the actor who committed the crime is a state or a non-state actor). In this respect, it is thought that these smart sanctions, which are directed towards the perpetrators themselves, can economically erode them, cut their support and prevent the escalation of the conflict by deterring the responsible figures. In the long term, it is thought that these economic pressures may prepare a basis for a political change.

In addition, the mentioned asymmetric effect and the impact of the economic sanctions on the prosperity of individuals living within the borders of the concerned state are seen as considerable consequences when they are compared to the ongoing crimes and deaths. Also, smart sanctions, as a measure that focuses directly on the perpetrator as its target and are not illegally enforced by governments but also can be adopted without a UN authorization, can be regarded as important measures in terms of fulfilling the responsibility of the international community.

3.3.2. Referral to the ICC

Apart from economic sanctions, some claim that the referral of cases to the ICC may be a good alternative as a non-military legal measure.[310] This still relatively young institution has the power to prosecute those who are the persecutors of atrocity crimes with the referral of the case and this jurisdiction includes even the citizens of states which are not a party to the statute of the Court. This method, which aims to deter the perpetrators from

[308] Johan Galtung, "On the Effects of International Economic Sanctions: With Examples from the Case of Rhodesia", *World Politics*, 19(3), (1967), p. 411.
[309] Clifton T. Morgan, and Valerie L. Schwebach, "Fools Suffer Gladly: The Use of Economic Sanctions in International Crises", *International Studies Quarterly*, 41(1), (1997), pp. 27-50.
[310] Fiott and Koops, *The Responsibility to Protect and the Third Pillar,* p. 180.

committing crimes, to weaken their local powers and to force them to negotiate,[311] can also be of great significance in the implementation of R2P through non-military measures.[312]

The ICC as the first permanent international judicial body established to investigate and prosecute criminals who have committed serious crimes like genocide, war crimes, and crimes against humanity, only has jurisdiction over individuals including the heads of state or other state officials. The Office of the Prosecutor, which is the organ that initiates an investigation against alleged offenders can initiate an investigation under three conditions: if a state party to the Rome Statute refers the case in which another state party is involved; if the Prosecutor opens an investigation regarding a state party to the Rome Statute with the permission of the Court's judges; or if the UN Security Council refers a case to the Prosecutor regardless of whether the concerned state is a party to the Rome Statute or not.

If R2P and ICC are considered together, the way R2P operates within the scope of the first and second pillars is not different from that of the ICC, because the Rome Statute states that the primary responsibility for investigation and prosecution of the concerned crimes belongs to the states. Accordingly, the Court accepts jurisdiction only when the mentioned state fails or does not want to prosecute the atrocity crimes.[313] Therefore, both ICC and R2P have similarities in encouraging states to fulfill their responsibilities and when the states cannot fulfill these responsibilities both accept the involvement of a third party as legitimate.

On the other hand, the ICC and the R2P complement each other on the prevention of crimes against humanity, war crimes and genocide. Although ethnic cleansing from the four atrocity crimes emphasized by R2P cannot find itself a place within the framework of the Rome Statute, as Ban Ki-moon reminds, ethnic cleansing occurs as a result of the other three crimes.[314]

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[311] Payam Akhavan, "Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?" *The American Journal of International Law*, 95(1), (2001), pp. 7-31.
[312] ICISS, The Responsbility to Protect, p. 24.
[313] United Nations General Assembly, *Rome Statute of the International Criminal Court,* Article 7.
[314] Bellamy and Ruben, "The Responsibility to Protect and International Law", p. 90.

As suggested by the ICISS, the use of judicial methods through national systems or the ICC is one of the "reaction mechanisms" within the R2P understanding.[315] This view is further emphasized in the report of the Secretary-General, wherein it is noted that encouraging all states to be a party to the Rome Statute would be a vital step in fulfilling the state's responsibility to protect under the first pillar. Ban also stressed the ICC's deterrent effect in the timely and decisive response and stated that reminding perpetrators that their actions are "subject to prosecution by the ICC" may deter them from their illegal behavior, thereby underlined the contribution of ICC to the third pillar.[316]

Nevertheless, there are also different opinions about the contribution of this method to ensure justice. Some argue that those who commit these crimes are not concerned with the legal consequences of their actions and therefore they would not renounce committing these crimes.[317] Besides, due to the fact that the international criminal justice is "highly selective" and almost all cases are focused on Africa, there are neo-colonialism charges regarding this judicial body.[318] Moreover, for the perpetrators who have already committed a crime and are still in power, prosecution may provide an incentive to defend themselves with all available means and there are also others those who claim that criminal prosecutions during the conflict can escalate the clashes.[319] In addition, the Security Council's ability to refer the situations of states that are not party to the ICC raises questions regarding the nature of the international legal commitments and it should be underlined that the long jurisdiction processes also create another question mark regarding the effectiveness of the ICC in terms of the timely and decisive implementation of R2P. Despite all these criticisms, this method, which is legally binding and will not cause any discussion in this respect, stands out as an important one since it is a measure

[315] ICISS, *The Responsibility to Protect*, p. 66.
[316] International Coalition fort he Responsibility to Protect, The International Criminal Court and the Responsibility to Protect (RtoP), accessed on May 1, 2020, http://www.responsibilitytoprotect.org/index.php/about-rtop/related-themes/2416-icc-and-rtop.
[317] Mark Drumbl, *Atrocity, Punishment, and International Law*, Cambridge: Cambridge University Press, (2007).
[318] Kurt Mills, '"Bashir is Dividing Us: Africa and the International Criminal Court", 34, (2012), Human Rights Quarterly, p. 404.
[319] Michael P. Scharf, "Justice Versus Peace", *The United States and the International Criminal Court: National security and International Law* in Sarah B. Sewall and Carl Kaysen (eds.), Lanham: Rowman & Littlefield, (2000), pp. 213-236; Jack Snyder and Leslie Vinjamuri, "Trials and Errors. Principle and Pragmatism in Strategies of International Justice", *International Security*, 28(3), (2003/2004), pp. 5-44.

in which only the perpetrators are punished and the people living in the region are not put under immediate harm.

3.3.3. The UN Peacekeeping Forces

The UN peacekeeping forces that were established specifically for each case in question in order to produce an *ad hoc* solution, especially if the case was not resolved through sanctioning mechanisms. In the recent years the peacekeeping forces have been empowered with peace-building and peace-enforcement missions.[320] A peacekeeping force, which is formed to fulfill its initial mission, is authorized not only to ensure the compliance of the parties to a dispute with the ceasefire and the specified border (if there is a certain limitation) but also to inspect weapons in the region. The peacekeeping forces, which are charged with building peace, carry out an active action to monitor the cessation of conflicts and provide a peaceful solution if possible. On the other hand, peace-enforcement involves armed involvement and resort to the use of force under Chapter VII based on the authorization of the Security Council.[321] Normally, the Security Council has the authority to establish a peacekeeping force for a specific case, but there are examples of cases where the UN General Assembly has taken over this task and adopted a decision wherein the Security Council failed to adopt a resolution establishing a peacekeeping force.[322]

Regardless of who decides for the establishment of these forces, the ability of them to work in a certain country depends on the consent of the government of that country.[323] The peacekeeping forces normally do not have the authority to use force against one of the parties by itself. However, if it is attacked, it can use force due to its right to self-defense. The only example of the use of force by the peacekeepers except for a self-defense situation was through the General Assembly resolution S/4741 of 21 February 1961 which granted peacekeepers the permission to use force in order to prevent the civil war in the DRC.[324]

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[320] Pazarcı, *Uluslararası Hukuk*, p. 448.
[321] Ibid.
[322] For instance, the 1956 Suez Canal Crisis.
[323] Erik Suy, *United Nations Peacekeeping System*, Encyclopedia, IV, p. 261.
[324] Keskin, *Uluslararası Hukukta Kuvvet Kullanma,* p. 176.

Since peacekeeping operations are a post-UN Charter development, there have been some questions regarding their legality and on which article of the UN Charter these operations were carried out. As the resolutions of the General Assembly and the Security Council, which established peacekeeping forces, were making a general reference to the terms and principles of the Charter, without relying on a specific article, the lack of an explicit substance has led to different opinions on this matter. One view is that the jurisdiction of the Security Council is based on Article 40 since it gives the Council the power to take temporary measures to prevent the situation from getting worse if one of the conditions in Chapter VII exists. Another view defends that peacekeeping is one of the methods to resolve international disputes peacefully and therefore, it should be evaluated under Chapter VI. Moreover, some argue that Article 36 forms the basis for the peacekeeping operations, because this Article gives the Security Council the power to make recommendations at any stage of a dispute for the implementation of appropriate methods. Although these explanations do not disclose the authority of the General Assembly in this respect, it has been argued that the "Uniting for Peace" Resolution also provides the General Assembly with the authority it needs to establish peacekeeping forces.[325] However, this decision is specific to situations in which the Security Council cannot make a decision due to the vetoes of any of the P5, thus, it cannot be the general basis for the authority to establish a peacekeeping force. Nevertheless, Article 22 states that the General Assembly can establish the bodies it deems necessary to perform its duties. This is in line with the powers of the General Assembly to discuss any matter related to the protection of peace and security pursuant to Article 11 and to make recommendations as required by Article 12. Therefore, based on these powers, the General Assembly can also establish a peacekeeping force.

An important criticism directed to peacekeeping forces is that they do not resolve conflicts, they can only freeze the process. However, this defusing sometimes can be sufficient for the parties to handle the problem among themselves. On the other hand, mostly, the problem persists for many years, and the peacekeeping forces can become a tool to sustain it. Therefore, it is necessary to make further efforts to resolve the problem. As a result, peacekeeping operations have performed an important function in limiting

[325] Permanent mission of France, A strategic United Nations - African Union Cooperation, accessed on May 1, 2020, https://onu.delegfrance.org/A-strategic-United-Nations-African-Union-cooperation.

conflicts and reducing tension in an environment where the common security system is not working. Since there is no method regulated in the Charter, most of the rules currently applied by the peacekeeping forces have been developed from the lessons learned, and although the lack of rules set out by the Charter has been an opportunity in ensuring the fulfillment of the needs in the best way, this deprivation has sometimes made it difficult for the peacekeepers to work. However, the idea that they abide by the basic principles of the international law is voiced commonly.

The relationship between R2P and peacekeeping forces extends to failed peacekeeping operations in the 1990s. In fact, the problem in the case of Bosnia-Herzegovina, in which the "United Nations Protection Force" (UNPROFOR) took part, was outside the mandate of the peacekeeping forces. However, according to UNHCR's first Special Envoy in former Yugoslavia, José Maria Mendiluce, the UN's presence in the region caused the expectation that the civilians in the region would be protected by preventing the atrocity crimes in the region.[326] Ultimately, the UN peacekeeping forces, which were unable to protect civilians in the "safe zone" of Srebrenica in 1995 and failed to prevent genocide in Rwanda in 1994, encouraged the international community to a normative change, thus, the concept of R2P became the most remarkable expression of this change as of 2005.[327]

If we come to the question that how the Peacekeeping forces can be used within the framework of R2P in operational sense, first of all, it is assumed that one of the main duties of the UN peacekeeping officers is "to protect civilians under the threat of physical violence".[328] It would not be correct to see this Protection of Civilians (PoC) concept as an alternative to R2P. PoC is a framework for the protection of civilians during an armed conflict and it is not restricted to atrocity crimes, whereas R2P is larger in the sense that it refers to the protection of populations.[329] Nevertheless, despite their discrepancies the two concepts are intertwined.

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[326] José-Maria Mendiluce, "The Limits of Humanitarian Action: The Case of Former Yugoslavia', IPA Conference on Conflict and Humanitarian Action", (October 1993), p. 11.
[327] Paul D. Williams, "The R2P, Protection of Civilians, and UN Peacekeeping Operations" in *The Oxford Handbook of the Responsibility to Protect,* Alex J. Bellamy and Tim Dunne (eds.), Oxford University Press, (2016), pp. 1-2.
[328] Ibid., p. 7.
[329] Ibid., p. 4.

First of all, both concepts were introduced in order to protect individuals and civil populations from being harmed, therefore they share the common moral heritage and are based on the same international legal conventions and concepts (such as the UN Charter, International Humanitarian Law, Refugee Law).[330] Another common point is that both PoC and R2P refer to the responsibility of states towards their populations if civilians are harmed or face with the risk of being harmed and the UN Security Council is the principal source of authority for both.[331] In addition, both concepts make use of non-coercive measures among other, and peacekeeping operations play an important role in the operationalization of both because mass atrocities usually take place in the conflict environments where peacekeeping forces are deployed and R2P may require peacekeepers to participate in operations to protect the people in the region from atrocity crimes.

Therefore, peacekeeping forces can be another important element in the R2P toolbox in many ways. It can support states which have failed to protect their own populations and increase the capacity of these states under the second pillar. Moreover, the Department of Peacekeeping Operations of the UN is insistent that peacekeeping is a second pillar activity, which was also highlighted the 2012 report of the Secretary-General.[332]

Peacekeeping forces should also be specified as a reaction method under the third pillar because, as the Secretary-General stated, the boundaries between different pillars are not clear-cut.[333] For instance, the UN mission in the Republic of South Sudan was operating under two pillars of R2P as it both promoted the state to fulfill its responsibility and supported it in protecting populations during the conflict. Therefore, since atrocity crimes appear during an ongoing armed conflict, international assistance for the establishment of peace in the region will be a direct action to prevent atrocity crimes. A timely and decisive military force deployment can also be performed under R2P's third pillar to support peaceful protection and to evade conflicts. Secretary-General also stressed the importance of the peacekeeping forces in his 2019 report and according to him, in cases where the peaceful resolution methods such as negotiation fall short, efforts

[330] Williams, "The R2P, Protection of Civilians", p. 3.
[331] Ibid., p. 4.
[332] Bellamy, "The First Response", p. 21.
[333] Bellamy, "Three Pillars", pp. 50-51.

that directly focus on the protection of vulnerable populations is needed and in such a situation, armed peacekeepers plays an important role.[334]

In addition, the newly ended armed conflicts often risk reignition because there is no immediate return to the pre-conflict period and the instability environment mostly continues. At this point, peacekeeping forces are important in order to prevent the re-emergence of conflicts as well as the prevention of these crimes in the process until peace and stability environment is provided.[335]

3.4. Conclusion

Due to the misconception that R2P's coercive measures are limited to the use of force, the effectiveness and legitimacy of other coercive methods and sanctions as means of responding to atrocity crimes have generally been ignored in the discussion on R2P. The coercive measures which are applied under Chapter VII of the UN Charter, basically refer to retorsion, reprisal and intervention. However, of these methods, the ones involving the use of force breach the sovereign rights of the concerned state, and thus constitute a violation of the UN Charter 2(4). This puts legality of the coercive methods in a controversial position. Even though the decision of the application of these methods is taken in a legal way, the implementation phase raises controversies. As the Secretary-General expressed in his 2012 report, experiences have proved that the more coercive the adopted tools are, the less it is preferred to use to protect populations.[336] Therefore, other measures such as smart sanctions, referral of cases to the ICC and deploying the UN peacekeeping forces can be important measures to prevent atrocity crimes under the R2P framework. Because these three methods are not associated with the controversial notion of the use of force, and the UN Security Council authority is not a prerequisite for the implementation of these methods, they are capable of positively contributing to the implementation of R2P in a timely and effective manner. In addition, if the use of force would be used as a last resort to end the mass atrocities, implementing this by gaining the

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[334] UN General Assembly, Report of the Secretary-General, *Responsibility to Protect: Lessons Learned for Prevention*, p. 8.
[335] ICRtoP, "The Responsibility to Protect in Peacekeeping Operations", accessed on April 25, 2020, http://www.responsibilitytoprotect.org/RtoP%20in%20PKO.pdf
[336] UN General Assembly, Report of the Secretary-General, Responsibility to Protect: Timely and Decisive Response, A/66/874–S/2012/578, 25 July, para. 21.

consent of the concerned state can be the most indisputable method in terms of the legality. In this respect, together with the other appropriate measures, intervention by invitation may ensure a less controversial R2P implementation. Ultimately, since it is not possible to understand which coercive method is functional or dysfunctional in the implementation phase to date without examination of them in practice, the next chapter will focus on R2P in practice to examine the strengths and weaknesses of the mentioned methods more deeply.

CHAPTER 4

R2P IN PRACTICE: PEACEFUL VS. COERCIVE MEASURES UNDER R2P

Since R2P is included within the UN framework in 2005, the success trend of the concept has been inconsistent. While some implementations consolidated the belief that R2P is an equivalent of humanitarian military intervention, the efforts for improving R2P's implementation R2P continued under the General Assembly, and as a result, states and scholarly works started to emphasize the preventive aspects of the norm more. Although Kenya and Guinea cases—where prevention within the scope of R2P was effectively managed with peaceful methods—were rather overlooked, Libya and Ivory Coast cases—which were on the agenda in the following period—were presented as proof of the norm's openness to abuse. In this vein, with reference to actual cases of implementation, this chapter will highlight the importance of operationalizing peaceful measures in the toolbox of R2P. In order to understand how peaceful methods including various actors can be more effective than a military operation, firstly, Kenya and Guinea cases will be analyzed. Then, the highly criticized cases of Libya and the Ivory Coast will be addressed.

4.1. Peaceful Methods in Action

4.1.1. Kenya: The First Successful Implementation of Prevention under R2P

Since there is a global consensus on the functionality of the preventive and peaceful methods under R2P, Kenya case in which mainly mediation was used is regarded as the first successful R2P implementation.[337] This case which started with the clashes between groups after the 2007 elections, ended with an agreement between the parties. Successful mediation efforts were crucial as they demonstrated the potential of R2P as expressed by Mark Schneider, who was the Senior Vice President of the International Crisis Group.[338] The process was carried out by the common efforts of AU, certain Member States of the

[337] Global Centre for the Responsibility to Protect, Kenya, accessed May 20, 2020, https://www.globalr2p.org/countries/kenya/

[338] Mark Schneider, "Implementing the Responsibility to Protect in Kenya and Beyond", accessed May 20, 2020, http://www.responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs -topics/2730-international-crisis-group-implementing-the-responsibility-to-protect-in -kenya-and-beyond.

UN and the then Secretary-General Kofi Annan. In Kenya not only, Chapter VI measures were implemented successfully, but also measures of Chapter VIII were utilized with the active participation of regional organizations.

4.1.1.1. Background

In the 30 December 2007 elections, Party of National Unity (PNU) led by Mwai Kibaki won against Raila Odinga's Orange Democratic Movement (ODM) by taking 47% of the votes and Kibaki did not respond to the calls of opposition for recounting the votes.[339] With the rapid spread of the perception across the people that Kibaki manipulated the votes to his favor, ODM voters protested the election results and these protests evolved into conflicts leading to crimes such as ethnic-based killing, looting and rape. The main target of these conflicts was the Kikuyu ethnic group which Kibaki is a member of.[340] At the same time, although ODM juristically objected to the alleged unlawful elections, the Supreme Court rejected this application.[341]

In the following days, the violent acts in the country became even more serious and with the fire incident in Kiaambaa Church of Eldoret, 39 people who were from Kikuyu ethnic descent were burnt to death by ODM voters.[342] The acts of violence increased after this incident, the majority of people, with high ODM voter density, were displaced and murdered and as a response to these killings Kikuyus retaliated and organized revenge attacks in Nairobi, Naivasha and Nakuru.[343] Since the political coalition between the 42 ethnic groups in this region was already fragile due to land disputes rooted in the colonization period, the risk for the clashes between ethnic groups (such as Kibaki supporter Kikuyu and Odinga supporter Luo, Luhya and Kalenjin) to turn into a civil war significantly increased.[344] In less than two months, 1,133 people lost their lives, 900 people became the victims of sexual violence and more than 600,000 people were

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[339] The Guardian, "Kenyans riot as Kibaki declared poll winner", accessed May, 19, 2020, https://www.theguardian.com/world/2007/dec/31/kenya.topstories3
[340] Noële Crossley, "A Model Case of R2P Prevention? Mediation in the Aftermath of Kenya‟s 2007 Presidential Elections", *Global Responsibility to Protect*, 5, (2013), p. 200.
[341] Ibid.
[342] New York Times, "Mob Sets Kenya Church on Fire, Killing Dozens", accessed May 18, 2020, https://www.nytimes.com/2008/01/02/world/africa/02kenya.html.
[343] Crossley, "A Model Case of R2P Prevention?", pp. 200-201.
[344] Ibid., p. 199.

forcefully displaced.[345] As Muga put it, the numbers signaled that this ethnic-based conflict in Kenya was "on the downward spiral to civil war". [346]

The people who committed these crimes included individuals as well as police forces and militias. The Government, on the other hand, could not face the underlying reasons of the conflict in order to manage this process well. Moreover, the state's ability to take protective measures has gradually decreased as violence started to increase the already existing institutional weaknesses within the country. Therefore, the situation in Kenya became an issue in which the government failed to fulfil its Pillar 1 responsibility to protect its populations.

4.1.1.2. The Response

The ethnic character of the crimes that were witnessed in the region and the potential to turn into a civil war steered an early reaction from the international community through R2P. Immediately after the conflict began, on 31 December 2007, Secretary-General Ban Ki-moon and UN High Commissioner for Human Rights Louise Arbour, urged Kenyan security forces for equanimity.[347] Again on 2 January 2008, the Secretary-General invited the Kenyan state to fulfil its responsibility arising from the first pillar.[348]

The most important initiative in the following period came from South African Archbishop Desmond Tutu and mediation efforts were initiated.[349] Tutu's initiative was supported by presidents of various African countries including the former president of Tanzania Benjamin Mikapa as well as the president of the AU John Kufuor.[350] Kufuor suggested Kofi Annan as the mediator in this process, and even the procedure started with a week delay as Annan is expected to be involved in.[351] Minister of Foreign Affairs of

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[345] Global Cetre for the Responsibility to Protect, Kenya, accessed May 20, 2020, https://www.globalr2p.org/countries/kenya/
[346] Noële Crossley, *Evaluating the Responsibility to Protect Mass Atrocity Prevention as a Consolidating Norm in International Society*, Routledge, (2016), p. 152.
[347] Abdullahi Boru Halakhe, "'R2P in Practice': Ethnic Violence, Elections and Atrocity Prevention in Kenya", Occasional Paper Series No. 4, The Global Centre for the Responsibility to Protect, (2013), p. 5
[348] UN Press, "Secretary-General Troubled by Escalating Kenyan Tensions, Violence" (New York: United Nations, 2 January 2008), accessed May 22, 2020, https://www.un.org/press/en/2008/sgsm11356.doc.htm
[349] Junk, "Bringing the Non-coercive Dimensions of R2P", p. 56.
[350] Ibid.
[351] Crossley, *Evaluating the Responsibility to Protect,* p. 159.

France, Bernard Kouchner also supported the mediation efforts led by the AU, the UN and Kofi Annan, and emphasized the secondary responsibility of the international community arising from R2P.[352] Also, these diplomatic efforts were supported by a number of civil society organizations in various fields. More than 35 NGOs and civil society organizations were gathered under the "Kenyans for Peace with Truth and Justice" (KPTJ) umbrella and contributed to the mediation activities.[353] As a result, Annan expressed that the mediation process would be sustained from a single branch and all these supporting efforts were gathered under a single roof. Although the AU, in general terms, has seen this process as "an African solution to an African problem",[354] the pressure and donations of the Western states had a significant effect on the success of the mediation process. According to Wycliffe Muga, the AU was needed as the official face of the negotiations for peace, but in fact, it only had a symbolic importance, because the main actor behind the success was Annan, who was over-identified with the UN.[355]

While the individual states who were involved in the process with these foreign aids were the US, Japan and the UK, organizations such as the World Bank and European Commission took an active role in the process with their donations.[356] In addition to these financial aids, the US imposed sanctions such as travel bans to the senior members of both parties and examined the visa status of several Kenyan politicians and businessmen who thought they had an impact on the country's turmoil. Thereafter, the US expressed that some other penal precautions might be taken if the peace negotiations fail.[357] On the other hand, the EU also implemented certain sanctions such as travel bans on the suspicious individuals.[358] Similarly, the UK supported the mediation efforts led by the AU and applied pressure on the Kenyan actors who were responsible for the incidents.[359]

The mediation method in this conciliation process was based on firstly building trust between the parties by starting with the less controversial issues and moving towards

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[352] Susan Allen Nan and Zachariah Cherian Mampilly, *Peacemaking: From Practice to Theory,* (London: Praeger), (2011), p. 426.
[353] See Kenyans for Peace with Truth and Justice, https://kptj.africog.org/.
[354] Crossley, *Evaluating the Responsibility to Protect,* pp. 159-160.
[355] Crossley, "A Model Case of R2P Prevention?", p. 205.
[356] Ibid., p. 207.
[357] Ibid.
[358] Preston-McGhie and Serena Sharma, "Kenya", in Jared Genser, Irwin Cotler, Desmond Tutu and Vaclav Havel (eds.), *The Responsibility to Protect*, Oxford: Oxford Scholarship Online, (2011), p. 10.
[359] Junk, "Bringing the Non-coercive Dimensions of R2P", p. 60.

more challenging ones.[360] Accordingly, first ending the violence and consolidating the basic human rights were addressed, then national reconciliation and ongoing political crisis negotiations were aimed, and lastly, long-term strategy determination for a permanent peace was targeted.

When R2P actions or inactions of the international community in other developing states were considered, it is striking that they were actively involved in Kenyan case with peaceful and preventive methods. One of the most important reasons behind this was the position of Kenya in the African continent. Western countries generally see Kenya as the center of various institutions in Africa, especially the UN, due to thousands of international workers.[361] Thus, this position of Kenya has made the stability of the country in the region mandatory.

4.1.1.1.3. Results

In the end, the initiative of this AU-led mediation committee, which received technical aid from various institutions of the UN as well as individual states, ensured agreement between the parties on 28 February 2008 in the "Panel of Eminent African Personalities" led by Annan.[362] Therefore, the government was distributed between Kibaki and Odinga with this agreement. While Kibaki became the president, Odinga was appointed as the prime minister,[363] and Kenya had the first 40-member cabinet in its history.[364] Additionally, various inquiry and conciliation commissions were established with this agreement. The duty of the Independent Commission of Inquiry was to provide recommendations for future elections and make observations during the elections. On the other hand, the duty of the commission, which investigated the post-election violence, was to inquire the causes for violence, the role of state's officers in this process and the

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[360] Monica Kathina Juma, "African Mediation of the Kenyan Post-2007 Election Crisis", *Kenya's Uncertain Democracy: The Electoral Crisis of 2008*, Ed: Peter Kagwanja and Roger Southall, Routledge: London, (2010), p. 28.
[361] Crossley, "A Model Case of R2P Prevention?", p. 208.
[362] The UN, Statement attributable to the Spokesperson for the Secretary-General on Kenya, accessed May 18, 2020, https://www.un.org/sg/en/content/sg/statement/2008-02-28/statement-attributable-spokesperson-secretary-general-kenya.
[363] Kenya National Commission on Human Rights, "On the Brink of the Precipice: A Human Rights Account of Kenya's Post-2007 Election Violence", (2008), p. 3.
[364] Elisabeth Lindenmayer and Josie Lianna Kaye, "A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya," New York: International Peace Institute, August 2009.

precautions to be taken to prevent it. In addition, the "Commission of Inquiry on Post-Election Violence" (CIPEV or Waki Commission) was established to investigate the historical injustices in the region.[365]

The report of CIPEV recommended the investigation of the crimes during the post-election regional violence by the courts. However, since the government failed to achieve this, CIPEV lead six alleged criminals including Kenyatta from PNU and Ruto from ODM to the ICC in July 2009.[366] On this account, a prosecutor in the ICC started a *proprio motu* investigation by taking an initiative for the first time and the trial started in 2012. Since Kenyatta was the current president, objections against this case increased in Kenya. As a result of these objections, by showing Libya, the Ivory Coast and the DRC cases as examples it was argued that ICC has an African-bias structure and a discriminatory prosecution process .[367] Furthermore, Kenya argued that the country can investigate by itself the crimes in the post-election period as a result of the new constitutional and legal reforms, and applied to the ICC in 2011 with a claim based on Article 19 of the Rome Statute.[368] Since this deferral demand can be applied in situations where the Security Council determines that there is threat to international peace and security, Kenya had to convince the Council to invoke Article 19. Kenya's request was rejected in 2013 as a result of the campaigns of NGOs.[369] The prosecutor of the ICC was forced to withdraw all the accusations against Bensouda Kenyatta in 2014 due to restrictions evidence collection, the lack of cooperative intentions of the current government and disinterest of the witnesses. Although this incident shows that using the ICC as an effective mechanism is highly dependent on the cooperation of the indictee, this first *proprio motu* decision has a significant importance for indicating referral to the ICC as an option available in the toolbox of R2P.[370]

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[365] Crossley, "A Model Case of R2P Prevention", p. 201.
[366] Ibid.
[367] Al Jazeera, "The ICC's Problem Is Not Overt Racism, It Is Eurocentricism", accessed May 15, 2020, https://www.aljazeera.com/indepth/opinion/icc-problem-simple-racism-eurocentricism-180725111213623.html
[368] Carsten Stahn, Christian De Vos, Sara Kendall, *Contested Justice*, Cambridge, (2015), p.209.
[369] UN News, "Security Council: Bid to Defer International Criminal Court Cases of Kenyan Leaders Fails', 15 November 2013, accessed May 20, 2020, www.un.org/apps/news/story.asp?NewsID=46499#.VF_Hl0vYTyB.
[370] Junk, "Bringing the Non-coercive Dimensions of R2P", p. 63.

Although the criminal justice dimension was relatively unsuccessful, the success of coercive methods short of use of force and peaceful methods such as mediation and commission of inquiry was the result of the suitability of the Kenya case for these methods, which is reflective of the case-by-case approach outlined in Paragraph 139 of the WSOD. Kofi Annan's emphasis and insistence on peaceful methods of R2P have been effective in this success and he also stated that Kenya was a successful R2P implementation example.[371] On the other hand, ODM was more prone to mediation process than PNU. The opposition of PNU supporters had an anti-colonial background.[372] Kenya's close stance to the West, the activity of foreign investors in the region, the need for a stable economy in the country which stems from the economic interdependence and the importance of Kenya in the region as a Western ally for the fight against terrorism due to its proximity to Somalia can be counted as the main reasons behind the support for the mediation effort and its success. As Khadiagala stated, "R2P's success stems from the success of achieving the balance between Kenya-specific conditions, local context and international pressure". [373]

The debates on whether the international efforts in Kenya can be considered under R2P constitutes another dimension of Kenya case. Some believe that the UN Charter already formed the legal basis for the implementation of peaceful methods in Kenya case and the emphasis on R2P in this crisis was limited.[374] Yet, in the post-crisis period, the idea that this was an R2P case gained an indisputable dimension with the speeches and studies. Desmond Tutu, an important figure from the Mediation group, stated that the situation in Kenya is an action under R2P, which he described as a fundamental principle.[375] The opinions put forward by the chief mediator Kofi Annan in this framework do not leave any room for discussion. Annan stated that he saw this case from the prism of R2P and he reminded that the first option that comes to mind when people think about intervention is military intervention, but it is actually considered as a last resort under R2P.[376] Annan also stated that the first response under R2P should include the use of diplomatic and

[371] Crossley, "A Model Case of R2P Prevention", pp. 208-209.
[372] Ibid., p. 208.
[373] Gilbert Muruli Khadiagala, "Regionalism and Conflict Resolution: Lessons from the Kenyan Crisis 'Regionalism and Conflict Resolution'", Journal of Contemporary African Studies, 27(3), (2009), p. 182.
[374] Junk, "Bringing the Non-coercive Dimensions of R2P", p. 58.
[375] Crossley, *Evaluating the Responsibility to Protect,* p. 165.
[376] Ibid., p. 56.

political methods and described Kenya case as a successful R2P implementation example.[377] Similarly, Edward Luck, as Special Adviser to the Secretary-General on R2P in that period, has asserted Kenya as the first case in which the UN used R2P framework against an ongoing crisis.[378] Then Secretary-General Ban Ki-moon referenced Kenya in his 2009 report and stated that timely and decisive action through regional, mutual and global efforts prevented more bloodshed.[379] Ban also expressed that for the first time both regional actors and the UN saw a case from the perspective of R2P.[380]

Consequently, Kenya was distinguished as a successful example which allowed to emphasize R2P's non-coercive instruments in the debates regarding the implementation of the norm. As expressed by Luck, this case enabled the discussion of the prevention aspect and it has been important in order to show how serious R2P is about prevention and keeping violence at the lowest level.[381] In addition to correctly framing the principle, it is believed that Kenya as a successful R2P implementation will have an impact on the normative development of the concept and enable focusing on peaceful instruments more in the future.

Additionally, the UN Security Council, which led to the perception of R2P as a political tool and caused some decisions not to be taken due to veto(es), did not follow an active attitude other than a presidential statement and providing logistical support for Annan's mediation efforts.[382] This is one of the elements which shows that the positive involvement of a variety of actors rather than solely focusing on the Security Council can lead to successful R2P implementation. Also, the success of the mediation in Kenya lead to continuation of promotion efforts for R2P at the international arena and various states reconsidered their views on the concept. R2P-based mediation practice in Kenya has provided an important evidence and rationale for highlighting R2P's non-coercive methods.

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[377] The New York Times, "African Genocide Averted", accessed May 22, 2020, https://www.nytimes.com/2008/03/03/opinion/03cohen.html
[378] Edward C. Luck, "Preface", in Elisabeth Lindenmayer and Josie Lianna Kaye, *A Choice for Peace? The Story of 41 Days of Mediation in Kenya*, New York: International Peace Institute, (2009), p. iii.
[379] UN General Assembly, *Implementing the Responsibility to Protect,* p. 9.
[380] Ibid., p. 23.
[381] Junk, "Bringing the Non-coercive Dimensions of R2P", p. 62.
[382] Ibid., p. 58.

4.1.2. Guinea: Regional Organizations and Diplomatic Success

The turmoil and fear of being unable to return to civil government after the 2008 coup in Guinea affected the entire country negatively where various murder and rape crimes were committed. In order to end these crimes, which were defined as crimes against humanity, the international community responded rapidly against the junta administration with various methods such as condemnation, mediation, commission of inquiry, arms embargoes and sanctions under the R2P framework. As a result of this fast reaction, human rights violations were prevented in a timely and decisive manner and a solution which led to democratic elections was achieved thanks to a number of policies where mediation was at the forefront.

4.1.2.1. Background

On 23 December 2008, President Alpha Condé lost his life after a long-term illness. While the Head of Council Aboubacar Somparé should have temporarily taken his place, a group of soldiers led by Moussa Dadis Camara took over the government. They addressed the nation from state radio and declared that civil constitution has been suspended and syndicate operations have been halted.[383] Later, coup plotter Moussa Dadis Camara formed the National Council for Democracy and Development (CNDD) and declared himself the president. Both regional and international society condemned this coup and the efforts to re-establish constitutional government in Guinea was started by the establishment of the "International Contact Group on Guinea" with the initiatives of the AU and Economic Community of West African States (ECOWAS) and the participation of representatives from the UN, the EU and the Organization of the Islamic Cooperation (OIC). Then, Guinea's membership and its right to attend to the meetings of AU and ECOWAS were suspended on 28 December 2008 and on 10 January 2009 respectively until the re-establishment of the constitutional government.[384]

After the coup, the reaction of the public towards the government grew like a snowball. The allegations that the CNDD planned to participate in the 2010 elections and prevent

[383] The Guardian, "Army steps in after Guinea president Lansana Conté dies", accessed May 25, 2020, https://www.theguardian.com/world/2008/dec/23/guinea-dictator-lansana-conte-dies
[384] Andy W. Knight and Frazer Egerton, *The Routledge Handbook of the Responsibiity to Protect*, p. 224.

transition to the civil government increased these reactions. The peaceful demonstrations by an opposition group on 28 September 2009 in Conakry stadium ended with security forces shooting the protestors, and caused the death of 150 people, injury of at least 1400 people and numerous rapes and sexual attacks.[385] According to the Human Rights Watch report, this incident, which is called as "Bloody Monday", showed that killing, rape and other violations happened systematically and all these crimes were accepted as crimes against humanity.[386] Additionally, an ethnic-based special militia formed by the junta government and Camara's initiative to hire 2,000 people from his ethnic origin to train raised concerns about forthcoming atrocity crimes.[387]

4.1.2.2. The Response

Mediation was firstly used immediately after the coup. The opposition components who merged under the name of *Forces Vives* and CNDD were brought together by a mediation group led by the AU and ECOWAS. The UN actively participated in these negotiations.[388] At the first stage of the mediation process (from January to April 2009), the government was close to a deal with *Forces Vives* on certain topics including returning to the constitutional government, forming a transition council and not to be a candidate in the next elections. However, the claims that Camara was planning to be a candidate for the elections and the slow progress to form a transitional council led to increased demonstrations by *Forces Vives* in April, which finally resulted in the Conakry stadium crimes. Hence, this incident caused the opposition to become more and more severe.

Since there was a risk of instability, violence and mass oppression in Guinea to spread to the neighboring Liberia, Sierra Leone and the Ivory Coast, international community rapidly incorporated this topic into their agenda.[389] On 17 October, ECOWAS expressed

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[385] Human Rights Watch, "Guinea: Stadium Massacre, Rape Likely Crimes Against Humanity", accessed May 25, 2020, https://www.hrw.org/news/2009/12/17/guinea-stadium-massacre-rape-likely-crimes-against-humanity

[386] Ibid.

[387] ICRtoP, "Crisis in Guinea", accessed May 26, 2020, http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-guinea

[388] Charles T. Call, "UN Mediation and the Politics of Transition after Constitutional Crises", New York: International Peace Institute, (February 2012), p. 15.

[389] Global Centre for the Responsibility to Protect, Open Statement on the Situation in Guinea, accessed May 23, 2020,http://responsibilitytoprotect.org/Open%20Statement%20on%20the%20Situation%20in%20Guinea%204%20November%202010-2.pdf

concerns due to mass human rights violations in the region and condemned the actions against civilians.[390] Additionally, ECOWAS took an arms embargo decision based on "ECOWAS Convention on Small Arms and Light Weapons, their Ammunitions and related Materials" against the CNDD and requested support for the implementation of this embargo from the AU, the EU and the UN.[391] After it was proved that Camara failed to uphold the responsibility arising from the first pillar, and that crimes against humanity were being committed in the region, ECOWAS proposed to take a military intervention decision for the region under the third pillar.[392] In fact, ECOWAS, which previously considered the possibility of a negotiation process, thought that some junta members would reject this option.[393] The President of ECOWAS Mohamed Ibn Chambas drew attention to the increased risk in the region and emphasized the need to send a preventive humanitarian force in a "Committee of Chiefs of Defense Staff" (CCDS) meeting.[394] However, CCDS remarked the fragility of the situation in Kenya and proposed to continue to the mediation process.[395] Subsequently, a delegation led by Blaise Campaore, the President of Burkina Faso, was sent to the region to execute the mediation process between the opposition group and the junta government.[396]

ECOWAS imposed an arms embargo on Guinea on 17 October 2009, and the AU applied travel bans and asset freezing to junta members on 29 October. French Foreign Minister Kouchner and the US Secretary of State Hilary Clinton harshly condemned the incidents in Guinea and called for an international inquiry about these crimes.[397] Ban Ki-moon also condemned the excessive use of force in Guinea and invited the CNDD to follow their commitment of not participating in the elections.[398] Additionally, the EU, the US and the AU applied a series of precautions such as travel bans and asset freezing.[399] France and

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[390] Knight and Egerton, *The Routledge Handbook*, p. 224.
[391] Ibid., p. 225.
[392] Knight and Egerton, *The Routledge Handbook*, p. 225.
[393] US News, "Guinea Pulls Out of Mediation Talks", accessed May 25, 2020, https://www.voanews.com/archive/guinea-pulls-out-mediation-talks
[394] Ibid.
[395] ECOWAS*, Report of the 26th Meeting of the Committee of Chiefs of Defence Staff of ECOWAS*, 9-11 December, pp.5-6.
[396] ICRtoP, Crisis in Guinea, accessed May 20, 2020, http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-guinea
[397] Ibid.
[398] UN News, "Guinea: Ban Condemns 'Excessive Use of Force' Against Protesters, accessed May 25, 2020, https://news.un.org/en/story/2009/09/315232
[399] ICRtoP, Crisis in Guinea, accessed May 20, 2020, http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-guinea

the EU cancelled the military and economic aid, and on 27 October, the EU also started to impose an arms embargo.[400] ECOWAS also demanded the UN Commission on Inquiry to start an investigation in the region and the commission of inquiry formed with the initiative of Ban Ki-moon executed by the Office of the High Commissioner for Human Rights (OHCHR) and supported by the Department of Political Affairs and the Office of Legal Affairs completed their investigation in December 2009. The commission found that various military and security forces committed crimes against humanity as a part of systematic attacks for which the government took responsibility.[401]

The UN Commission on Inquiry also hold the junta leaders including Camara as well as Lieutenant Aboubacar Chérif Diakité and Special Chief of Staff Moussa Thegboro responsible for the attacks, and called the ICC prosecutor to put these individuals on trial. As a result, the ICC started a preliminary investigation on 14 October and the inquiry continued until February 2010.[402] In the end, the commission decided that these individuals committed crimes against humanity, and that the Guinean government or the ICC should put these individuals on trial.

4.1.2.3. Results

In this process, Aboubakar Toumba Diakité who is claimed to be supported by the French government[403] attempted to assassinate Camara in December 2009 in the turmoil which was experienced by the government. Camara was wounded with a shot in the head and went to Burkina Faso after his treatment in Morocco. The increasing international and national pressure paved the way for reconciliation in this leadership change. Defense Minister Sékouba Konaté temporarily took over the government and on January 2010, as a result of Campoaré's success as the mediator, Camara and *Forces Vives* reconciled. Parties gathered in Ouagadougou and signed the "Joint Declaration of Ouagadougou" which guaranteed that Guinea would turn back to civil government in six months, the

[400] Ibid.
[401] Global Centre for the Responsibility to Protect, Guinea, accessed May 25,2020, https://www.globalr2p.org/countries/guinea/
[402] Ibid.
[403] The Guardian, "Guinea Accuses France of Being Complicit in Shooting of Junta Leader", accessed May 27, 2020, https://www.theguardian.com/world/2009/dec/09/guinea-accuses-france-camara-shooting

military would not object to the elections in June and the treatment of Camara would continue at abroad.[404]

On 21 January 2010, military junta elected Jean-Marie Doré as the president of the interim government for six months. Additionally, President Doré called for international community's support on 5 February for the democratic elections that was planned to take place on 27 June 2010.[405] While the UN and International Contact Group on Guinea supported the process, the UN also called the international community to support democratic elections on 26 March and asked for more financial support from the UN Humanitarian Air Services (UHAS) that had provided aid to remote regions of Guinea since 2007.[406]

The presidential elections on 27 June 2010, which the military members were banned from participating, were the first independent elections since the independence of Guinea in 1958,[407] and 3 million people voted in these elections. After the first round of the elections in which 24 candidates competed, the second round was delayed multiple times due to complaints. This delay reignited the incidents and with the cancellation of the second round of the elections that was planned to be on 24 October 2010, a conflict between Peul and Malinke ethnic groups which resulted in a number of casualties occurred and the military applied a ban on assembly and demonstration. Especially the violence in the last two weeks of October raised concerns. According to the International Committee of the Red Cross (ICRC), the number of people who were displaced between 29 and 30 October were 2,800.[408] The competition between Cellou Dalein Diallo, one of the former prime ministers who qualified for the second round, and the long-term opposition leader Alpha Condé ended on 7 November 2010 with the success of Condé, who took 52% of the votes and became the new president of Guinea.[409] Since the election

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[404] ICRtoP, Crisis in Guinea, accessed May 20, 2020, http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-guinea

[405] Ibid.

[406] WFP West Africa Bureau, "2007 West Africa Overview", accessed May 26, 2020, https://reliefweb.int/sites/reliefweb.int/files/resources/8B981FC989F8789C852572AA005C41E6-Full_Report.pdf

[407] The Carter Center, "Observing the 2010 Presidential Elections in Guinea", accessed May 30, 2020, https://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/guinea-2010-FinalReport.pdf

[408] ICRC, Guinea, accessed May 25, 2020, https://www.icrc.org/en/where-we-work/africa/guinea

[409] The Carter Center, "Observing the 2010 Presidential Elections", p. 15.

results led to a new ethnic-based conflict, state of emergency was declared across the country. Mainly Malinke ethnic group and security forces were in conflict with pro-Diallo individuals and as a result, numerous private properties and places of business were destroyed.[410] Eventually Diallo accepted the defeat and President Condé took the office on 21 December 2010 which was a relatively successful return to the constitutional order.

As a result, excessive use of force by the CNDD who took the government in 2008 against the peaceful protests added the incidents in Guinea to the list of the international agenda. The resulting crimes in the following process caused the issue to be addressed under R2P. Since the state authorities failed to undertake their responsibility stemming from Pillar 1 of R2P, the responsibility was transferred to the international community. While the coordinated and smooth mediation efforts of ECOWAS, the AU and the UN prevented the escalation of the incidents, it was an important step towards a democratic election by reconciling the parties. Therefore, the inquiry commission not only supported the uncover of the crimes in the region but also led to indirectly and unintentionally division and weakening of the CNDD. The existence of this commission enabled the announcement of the atrocity crimes in the region officially, condemnation of the current government and contributed to taking the responsibility under R2P. Various actors other than political and military leaders such as Guinean female organizations and other civil society organizations were involved in the negotiation process.[411] This consolidated the trust in the mediation process, and thus prevented these mediation efforts from being perceived as an external intervention. Guinea has been a case wherein the peaceful methods under Chapter VI were applied successfully. It also proved the importance of the roles of organizations to prevent the atrocity crimes as the regional organizations took the responsibility as underlined in Chapter VIII of the UN Charter. Additionally, the case of Guinea is of importance to show the dissuasive effects of targeted and smart sanctions such as asset freezing and travel bans. All in all, Guinea has become an example of successful R2P implementation through preventive methods.

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[410] ICRtoP, "Crisis in Guinea", accessed May 26, 2020, http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-guinea

[411] Call, "UN Mediation and the Politics of Transition", p. 18.

4.2. Coercive Methods in Action

4.2.1. Libya: A Failed Intervention

Although the 2011 intervention in Libya under R2P was organized around the legal norms and implemented pursuant to the authority of the UN Security Council, the policies that led to a regime change at the implementation phase exceeded the limits of the authority provided. The Libya case is significance for R2P not just because it has become an example that prevented Security Council resolutions in the case of Syria and led to comments that R2P was dead, but also because it raised questions about the implementation of the coercive measures under R2P.

4.2.1.1. Background

The riots, which started in Tunisia in December 2010 and spread to many countries in the Middle East region, also activated the opposition in Libya against the oppressive regime of Muammar Gaddafi continuing since 1969. Large masses of people who wanted a change in political and social structures in Libya started protests in Benghazi on 15 February 2011. Soon after, the demonstrations spread across the country.[412] Gaddafi harshly reacted to these incidents; thousands of protestors died and the vast majority of them were forced to withdraw to Benghazi in this process.[413] Gaddafi, who described the protesters as "cockroaches" during the violent clashes as of February 2011, said he would cleanse Libya from these people and called on his supporters to attack the demonstrators.[414] Additionally, Muammar Gaddafi's son Saif al-Islam Gaddafi stated that if the protests did not stop immediately, there would be "rivers of blood" in Libya.[415] The conflicts, which were fueled with these statements, spread to Tripoli, Benghazi, Zetan and Beyida cities in the midst of March.[416] The opposition, which gathered under the

[412] Simon Adams, "Libya and the Responsibility to Protect", Global Centre for Responsibility to Protect, Occasional Paper Series No. 3, (2012), p. 5.
[413] Zifcak, "The Responsibility to Protect After Libya and Syria", p. 2.
[414] BBC, "Libya protests: Defiant Gaddafi Refuses to Quit", accessed May 28, 2020, https://www.bbc.com/news/world-middle-east-12544624
[415] Al Arabiya, "Gaddafi's Son Warns of "Rivers of Blood" in Libya", accessed May 28, 2020, https://www.alarabiya.net/articles/2011/02/21/138515.html.
[416] Al Jazeera, "'Day of Rage' Kicks off in Libya", accessed May 29, 2020, http://www.aljazeera.com/news/africa/2011/02/201121755057219793.html.

name of the National Transition Council (NTC), captured Benghazi, one of the largest cities in the country and according to Human Rights Watch, 173 people died on the fourth day of the protests.[417]

4.2.1.2. The Response

Upon the escalation of the situation, the international community took action since they realized that the violence in the country could not be stopped by the government. On 22 February the UN High Commissioner for Human Rights Navi Pillay called Libyan administrators to stop the human rights breaches and reminded their responsibilities arising from the first pillar of R2P. She also conveyed the importance of the situation to the Security Council.[418] The Arab League and the AU condemned the attacks against civilians and the Arab League suspended the membership of Libya.[419] Pillay also demanded from HRC to form a commission of inquiry to investigate the situation in the country as well as the suspension of Libya's membership to the HRC.[420] On 25 February, the UN Secretary-General expressed his concerns about the region to the Security Council and called for emergency sanctions against Libya. On the 10th day after the start of the protests, the Security Council adopted Resolution 1970 on Libya and responded to the crisis.[421]

The resolution reminded Libyan authorities their responsibility to protect the Libyan population and also invited Gaddafi to stop attacks against civilians, to respect human rights, to permit international aid and to abrogate the restrictions on media.[422] With this resolution, the Council decided to apply an arms embargo on Libya, freeze international assets of Gaddafi as well as some officials and pro-regime individuals, as well to refer the

[417] Angelique Chrisafis, "Libya Protests" *The Guardian*, accessed May 28, 2020, http://www.guardian.co.uk/world/2011/feb/21/libyaprotests-blood-fears-gone.
[418] UN News Centre, "Libya: Security Council, UN Officials Urge End to Use of Force Against Protesters", accessed May 29, 2020, http://www.un.org/apps/news/story.asp?NewsID=37583#.WOQSGDvyjIU.
[419] Reuters, "Arab League deeply concerned by Libya violence", May 28, 2020, http://www.reuters.com/article/libya-arabs-moussa-idUSLDE71K1W520110221
[420] Alex J. Bellamy, Paul D. Williams and Stuart Griffin, *Understanding Peacekeeping*, Cambridge: Polity Press, (2012), p. 276.
[421] UN Security Council, Security Council resolution 1970 (2011) [on establishment of a Security Council Committee to monitor implementation of the arms embargo against the Libyan Arab Jamahiriya], 26 February 2011, S/RES/1970.
[422] Ibid.

situation to the ICC.[423] After this resolution, countries such as Switzerland, the US, Canada, Australia and organizations such as the EU started to implement the sanctions decided by the UN while some countries applied sanctions such as asset freezing based on their own initiatives. For instance, the US applied a 30-billion-dolars asset freezing the day before the UN decided to implement sanctions.[424] However, the Qaddafi regime was indifferent to these calls and sanctions, and this increased the calls of the rebels to the international community to support them.

As the violent acts continued, on 12 March, the Arab League called for the UN Security Council to declare a no-fly zone on the area.[425] On 17 March 2011, just a month after Resolution 1970, the UN Security Council adopted Resolution 1973.[426] France and the US and temporary members Bosnia-Herzegovina, Colombia, Lebanon, Nigeria, Portugal and South Africa voted in favor of this resolution, while China, Russia, Brazil, Germany and India abstained.[427] With this resolution the Security Council expanded the framework of the sanctions that were imposed by Resolution 1970, and decided for the application of a no-fly zone. It also called the parties to a ceasefire and to end the violence in Libya. However, most importantly, the Council authorized Member States to "take necessary action to protect civilians". Thus, for the first time, in a situation which was characterized as an R2P case, the UN Security Council decided on a military operation against a country which had effective control over its territory without its consent.[428]

Two days after the decision, a coalition was formed under the umbrella of NATO by the US and the UK. Furthermore, France started an operation called "Operation Odyssey Dawn" in the region. In fact, while the negotiations on the implementation of no-fly zone were going on in Paris, French warplanes started bombardment in Libya.[429] After the

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[423] Ibid.
[424] Enrico Carisch, Loraine Rickard Martin and Shawna R. Meister, *The Evolution of UN Sanctions: From a Tool of Warfare to a Tool of Peace, Security and Human Rights*, Springer, (2017), p. 436.
[425] Marlise Simons and Neil MacFarquhar, "Hague court seeks warrants for Libyan officials", *New York Times*, accessed May 29, 2020, http://www.nytimes.com/2011/05/05/world/africa/05nations.html?_r=2&ref=world.
[426] UN Security Council, Resolution 1973, S/RES/1973, 17 March 2011.
[427] UN Security Council, mtg 6498, UN Doc S/PV.6498.
[428] Sarah Brockmeier, Oliver Stuenkel and Marcos Tourinho, "The Impact of the Libya Intervention Debates on Norms of Protection", *Global Society*, 30(1), (2016), p. 113.
[429] BBC News, "Libya unrest: West moves to enforce no-fly zone", accessed May 26, 2020, http://www.bbc/news/world-africa-12783347.

approval of Turkey on 22 March, the operations were taken over by NATO,[430] and continued with the participation of Belgium, Canada, Denmark, Italy, Norway and Qatar.[431] The main target of the operation was determined as controlling the arms embargo, implementing the no-fly zone and protecting civilians from the attacks.[432] Additionally, the coalition declared that they would not invade Libya and also, there would be no military occupation in any region of the country.[433]

4.2.1.3. Results and Reactions

While the operations are continuing, critical reactions about implementation started to be expressed. Especially the BRICS countries expressed their concerns that the operations wandered from the "protection" target and went forward.[434] Especially after Gaddafi's son and three grandchildren died in a bombardment in May,[435] the controversies that these attacks exceeded their purpose has increased even more.[436] In addition, as well as those who believe that leading the country to a regime change by supporting the opposition would damage the reputation of the Security Council,[437] there were also others who drew attention to violations of the no-fly zone and the bombings that caused civilian casualties.[438]

Immediately after Gaddafi was captured and lynched by the riots on 20 October when he was about to escape from the country, NATO expressed that they have completed their mission in the region although the new government in Libya demanded them to provide

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[430] The Telegraph, "Libya: Ceasefire declared in the wake of UN Resolution", accessed May 29, 2020, http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8390550/Libya-ceasefire-declared-in-wake-of-UN-resolution.html.

[431] NATO, "NATO and Libya", accessed May 29, 2020, http://www.nato.int/nato_static/assets/pdf/pdf_2011_04/20110402_110402-oup-update.pdf.

[432] Ibid.

[433] UN Security Council, Resolution 1973, Preamble para. 12.

[434] See Oliver Stuenkel, "The BRICS and Future of R2P: Was Syria or Libya the Exception?", *Global Responsibility to Protect*, 6, (2014), pp. 3-28.

[435] Tim Hill, "Muammar Gaddafi Son Killed by NATO Air Strike — Libyan Government", *The Guardian*, accessed May 29, 2020, http://www.guardian.co.uk/world/2011/may/01/libya-muammar-gaddafi-son-nato.

[436] Julian Borger, Ian Traynor and Ewen MacAskill, "Gaddafi Family Deaths Reinforce Doubts about Nato's UN Mandate", *The Guardian*, accessed May 26, 2020, https://www.theguardian.com/world/2011/may/01/gaddadi-family-deaths-reinforce-doubts.

[437] UN Security Council, Report, S/PV/6595, 28 July 2011, p. 5.

[438] Ibid. p. 3.

security for a while.[439] Instead, the UN Support Mission in Libya (UNSMIL) was established to support the rebuilding phase in the region.[440] Completion of the operations right after the death of Gaddafi caused strong criticisms that their target was to change the regime in substance.[441] Additionally, the news that the UK, France and Qatar forces were deployed in Libya and supported opposition groups surfaced out.[442] The critics, including BRICS states, commonly expressed that the operations in the region aimed to change the regime rather than to protect the people in the region from atrocity crimes[443] and NATO breached the arms embargo by providing weapons to the rebels.[444] Also, the news that the efforts of the AU to ensure ceasefire between Gaddafi and opposition groups were disregarded during the intervention period[445] supported such argument.

While there was no question regarding the legality of the measures to be adopted as they were sanctioned by Security Council Resolution 1973, which is simply the "right authority" from an R2P point of view, the main controversy arose from the way of implementation. At the time of the operation, the Security Council remained marginalized due to the politicization of the case. The military intervention was carried out by NATO, which bypassed the negotiation process with the government and continued to support the NTC.[446] Therefore, according to the general view, NATO lost its impartiality and exceeded its authority in terms of the proportion and intensity of the use of force, which in result damaged the legal grounds of the military operation.[447]

As a response to these criticisms, while the operations were continuing, David Cameron, Barack Obama and Nicolas Sarkozy through their joint declaration stated that the main

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[439] NATO, "NATO and Libya", accessed May 26, 2020, http://www.nato.int/cps/en/natohq/topics_71652.htm.
[440] United Nations Security Council, Resolution 2009, S/RES/2009, 16 September 2011.
[441] United Nations Secuirty Council, Report, S/PV.6620, 16 September 2011.
[442] Eric Schmitt and Steven Lee Myers, "Surveillance and Coordination with NATO aided Rebels", *New York Times*, accessed May 20, 2020, http://www.nytimes.com/2011/08/22/world/africa/22nato.html.
[443] Morris, "Libya and Syria", pp. 1265-1283.
[444] Gareth Evans, Ramesh Thakur and Robert A. Pape, "Correspondence: Humanitarian Intervention and the Responsibility to Protect", *International Security*, 37(4), (2013), pp. 199-214.
[445] Patrick Cockburn, , "African Union's Ceasefire Talks Rejected While Dictator Remains", *Independent*, accessed June 8, 2020, http://www.independent.co.uk/news/world/africa/african-unions-ceasefire-talks-rejected-while-dictator-remains-2266461.html.
[446] Matthias Dembinski and Theresa Reinold, *Libya and the Future of the Responsibility to Protect - African and European Perspectives*, PRIF-Report No. 107, Frankfurt: Peace Research Institute Frankfurt, (2011), p. 25.
[447] Kelleci and Bodur Ün, "TWAIL ve Yeni Bir Hâkimiyet", p. 100.

purpose of the operations was to protect the civilians but they also expressed that they could not think of a future for Libya with Gaddafi.[448] This declaration provided the basis for the arguments questioning the main target of the operations and fueled negative perceptions towards R2P which saw the norm as a "smokescreen" to impose regime change.[449] Arab League Secretary-General Amr Moussa who supported the decision of intervention under R2P at the first stage, expressed that during the operations the no-fly zone on Libya operated differently than intended and stated that they supported this decision in order not to bomb the remaining civilians but to protect them.[450] The Arab League, Nigeria and South Africa who supported the intervention at the first place strongly opposed the scope of the bombings.[451] In addition, Cuban President Fidel Castro, Bolivian President Evo Morales and Nicaraguan President Daniel Ortega condemned this intervention which they believed was against the Libyan sovereignty.[452] Moreover, public opinion also began to question the reason of the military intervention and questioned the ignoring the peaceful methods. Failing to cooperate with Gaddafi for the diplomatic initiatives can be explained with Western perspective that sees the sovereignty of the third-world countries abradable.[453] Accordingly, Western states defined Gaddafi as a dictator who used violence against his people and described it as "authoritarian" as in the resolution 1973 and thus, they imposed the idea that the operation was carried out not against the state of Libya, but against a dictator to install freedom, democracy and human rights.[454] In this way they tried to provide a legitimate ground for NATO intervention.

As Libya is known to have a variety of natural resources, including large oil reserves, many of those who critically approached the intervention claimed that the geopolitical position of Libya played an important role in the intervention decision as well. Compared to its low population, the country has a large financial capital and considerable gold

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[448] BBC News, "Libya letter by Obama, Cameron and Sarkozy: Full text", accessed June 2, 2020 http://www.bbc.com/news/world-africa-13090646, 15 April 2011.
[449] Andrew Garwood-Gowers, "The Responsibility to Protect and the Arab Spring: Libya as the Exception, Syria as the Norm?", *UNSW Law Journal*, 36(2), (2013), p. 609.
[450] Flag Post, "Libya and the United Nations Security Council Resolution (UNSCR) 1973", accessed May 29, 2020, http://parliamentflagpost.blogspot.com/2011/03/libya-and-united-nations-security.html
[451] All Africa, "Libya: Reflections, Zeleza", accessed May 20, 2020, https://allafrica.com/stories/201109201529.html
[452] Mahdavi, "A Postcolonial Critique of Responsibility to Protect", p. 20.
[453] Kelleci and Bodur Ün, "TWAIL ve Yeni Bir Hâkimiyet", p. 98.
[454] Ibid.

reserves under the Libyan National Bank.[455] Thus, interventionist states had a chance to participate in the political and economic reconstruction process of the new regime that would come after Gaddafi. It is believed that the most important factor for France to be actively involved in the process was due to a secret oil agreement with the NTC which guaranteed France to take 35% of the Libyan oil in the post-Gaddafi period.[456] There are also allegations that also the US and the UK agreed with the NTC to get a share from the oil.[457] On the other hand, the more assets were destroyed, the more the next government would be dependent on the outside, is another claim regarding the background of the Libyan intervention.[458] It is also claimed that the main aim behind the support from the regional organization was to draw the image of a group of countries that promote human rights by providing aid to Libya.[459]

On the other hand, the debate gained an entirely new dimension in 2012, when the Security Council representative of Russia, Vitaly Churkin, claimed that many civilians died during the interventions to protect the civilians and he also stated that NATO had to compensate this.[460] The US and France rejected these claims,[461] and then NATO announced the number of civilians who lost their lives during the airstrikes as 60.[462] Although the exact number is unknown, criticisms about the unintended consequences of the intervention have increased with these civilian casualties and whether the intervention was the last resort or not became another debated topic.

As mentioned in the previous Chapter, although negotiation is accepted as the first step to be taken in every conflict, it is seen that neither negotiations nor any other diplomatic steps have been taken in Libya. The Security Council, which has to call on the parties to resolve their disputes through diplomatic means, has made a no-fly zone decision very quickly and therefore, Gaddafi and the NTC completely lost their chances to voice their

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[455] Christopher M. Davidson, "Why Was Muammar Qadhafi Really Removed?", *Middle East Policy*, 24(4), (2017), pp. 91-116.
[456] The Guardian, "The Race Is on for Libya's Oil, with Britain and France Both Staking a Claim", accessed May 29, 2020, https://www.theguardian.com/world/2011/sep/01/libya-oil
[457] Ibid.
[458] Mahmood Mamdani, "Libya: Politics of Humanitarian Intervention", *The Guardian*, accessed June 1, 2020, https://www.aljazeera.com/indepth/opinion/2011/03/201133111277476962.html
[459] Bellamy and Williams, *Understanding Peacekeeping*, p. 842.
[460] United Nations Security Council, Report, S/PV.6731, 7 March 2012, p. 8.
[461] United Nations Security Council, Report, S/PV.6734, 12 March 2012, p. 5.
[462] United Nations Human Rights Council, A/HRC/19/68, p. 16.

mutual demands.[463] Additionally, there are allegations regarding the issue that the NTC rejected the peace offer of the AU which was accepted by Gaddafi, as this offer did not involve overthrowing the regime.[464] Additionally, there were only a few states that volunteered for a mediation process and made a call for this option. China, Russia, Turkey and Libya regime itself called for negotiations and mediation.[465] Therefore, it is possible to say that the international community overlooked the application of diplomatic measures in Libya during the conflicts, and lead to the lynch of Gaddafi with which negotiation and mediation became impossible.

In addition, the civil war in Libya led to the displacement of a significant number of people and their mass movements. According to the data of International Organization for Migration (IOM), as of November 2011, almost 800,000 people had fled from the country and the majority of these people took refuge in neighboring countries.[466] These migrations do not only cover Libya-originated immigrants, they also include secondary movements of those who aimed to go to Europe (especially Italy and Malta), as the region is on the suitable sea route to migrate to Europe.[467] However, Italy's agreement to prevent irregular migration,[468] European Border and Coast Guard Agency (FRONTEX) operations to keep the migration under control and the EU's failure to take steps towards burden sharing[469] have also led to the idea that the protection of refugees was bypassed before the Libyan intervention as a peaceful measure to be implemented by the international community under the third pillar.

After the intervention, different groups emerged in the country and clashed with each other to seize power, thus these actions turned into a long-standing internal conflict.[470] The inclusion of women in the process and their involvement in the Security Council discussions precisely correspond to this post-intervention period. The Security Council

[463] De Groof, "First Things First", p. 40.
[464] Ibid., p. 41.
[465] Sid Rashid, "Preventive Diplomacy, Mediation and the Responsibility to Protect in Libya: A Missed Opportunity for Canada", *Canadian Foreign Policy Journal,* 19(1), (2013), pp. 45-46.
[466] IOM, "Migration in Egypt, Morocco and Tunisia", (2014), p. 19.
[467] Luiza Bialasiewicz, "Off-shoring and Out-ourcing the Borders of Europe: Libya and EU border Work in the Mediterranean ", *Geopolitics*, 17(4), (2012), pp. 853.
[468] Ibid., p. 859.
[469] Ibid., p. 845.
[470] Laura Smith-Spark and Angela Dewan, "Libya: Why the EU is Looking to Russia", CNN, accessed May 29, 2020, http://edition.cnn.com/2017/02/10/africa/libya-russia-eu-haftar/index.html

through the Resolution 2009, which formed the UNSMIL, condemned sexual violence in the region and demanded holding the responsible of such human rights accountable.[471] Afterwards, the Security Council condemned all types of sexual violence with the Resolution 2040 once again and in accordance with Article 1325, it encouraged UNSMIL to strengthen women's political participation, [472] underlined the need to protect human rights for women and children.[473] Therefore, as it can be seen from this resolution, the "woman, peace and security" agenda was not considered during the implementation of the Security Council's use of force decision, women were the subject of concern only in the peace-building phase in the post-intervention process and therefore, women were only seen as a victims.[474] Although the Security Council put emphasis on female participation in the decision-making in the country, gender inequalities in the decision-making process of the Security Council itself also drew attention.[475] Consequently, in return to the 2011 Libyan crisis, an intervention decision was made without considering the effect of use of force on women or gender structure of the country. This led to the idea of Feminist scholars that the Security Council, which is seen as a mechanism formed by a group of elite men, is a crime partner in weakening women's security in Libya during the conflict.[476]

4.2.2. Ivory Coast: A Misuse of R2P?

The Ivory Coast (also known as Côte d'Ivoire), which had been a French colony from the 1800s to 1960s, has struggled with political turmoil, internal conflicts and civil wars caused by external powers for long years. These conflicts became even more tangled with the 2010 elections. As a result of the authority given to the UN Operation in Côte d'Ivoire (UNOCI), an operation started in the country with the coordination of the French forces. Since it was claimed that this operation targeted pro-Gbagbo groups, who was allegedly

[471] UN Security Council, Resolution 2009, on The Establishment of the UN Support Mission in Libya (UNSMIL), 16 September 2011, S/RES/2009.
[472] Gina Heathcote, "Feminist Perspectives on the Law on the Use of Force", in *The Oxford Handbook of the Use of Force in International Law*, (ed.) Marc Weller, (2016), p. 119.
[473] Ibid.
[474] Ibid.
[475] Ibid., p. 120.
[476] Ibid., p. 121.

the winner of the controversial election, the idea that the R2P framework provided unequal protection and ultimately caused regime change was asserted widely.

4.2.2.1. Background

President of the Ivory Coast was Félix Houphouet-Boigny from independence in 1960 to 1993, and the decade that started with his death was dominated by an unstable and contentious environment prevailed over who would legitimately obtain the government. Henri Konan Bédié, who came to power after Houphouet-Boigny, continued to rule until a coup led by Robert Guéï in 1999. The junta administration lost the election of 2000 to Laurent Gbagbo. The period of prime minister Gbagbo brought ethnic tensions along. Disagreements over the land further fueled this identity-based conflict and led to a tense political atmosphere. The political tensions were reflected in the upcoming elections. The adoption of a draft law stating that those whose parents are not of Ivorian origin could not become candidates in the elections made the nomination of Alassane Ouattara, a former Prime Minister and popular candidate impossible, and this pushed the country into a long-term conflict.[477] Additionally, this draft law marginalized Ouattara-supporter, poor Muslim farmers who had Burkinabe and Sahelian roots, and deepened the ethnical division within the country.[478]

As of September 2002, the increasing dissatisfaction within the armed forces reached its peak and transformed into a revolt which resulted in a de facto division of the country between "*Forces Armée Nationales de Côte d'Ivoire*" (FANCI) in the south under the control of Gbagbo and "Patriotic Movement of Côte d'Ivoire" (MPCI) (later *Forces Nouvelles* (FN)) in the north under Guillaume Soro.[479] As the conflicts turned into a civil war, French forces in the region was deployed to create a buffer zone between the two regions due to the post-independence agreement and they were supported by ECOWAS.[480]

[477] Washington Post, "Ivory Coast conflict: Who are Gbagbo and Ouattara?", accessed on June 30, 2020, https://www.washingtonpost.com/blogs/blogpost/post/ivory-coast-conflict-who-are-gbagbo-and-ouattara/2011/04/01/AFpbqvJC_blog.html
[478] Charles T. Hunt, "Côte d'Ivoire", In *the Oxford Handbook of the Responsibility to Protect*, (ed.) Alex Bellamy and Tim Dunne, Oxford: Oxford University Press, (2016), p. 3.
[479] Ibid.
[480] Ibid.

In 2004, the UN Security Council formed UNOCI with Resolution 1528 and assigned it to implement 2003 Linas-Marcoussis Agreement[481] and create a buffer zone.[482] UNOCI had the obligation to observe the presidential elections and it could use all necessary means to protect civilians under the Chapter VII of the UN Charter. Likewise, this Resolution gave French forces (*la force Licorne)* the authority to use all the necessary means to support UNOCI.[483] Additionally, the Security Council applied sanctions such as arms embargo, travel ban and asset freezing,[484] and together with the embargo on rough diamonds trade in 2005, these sanctions continued until the 2010 elections.[485]

Conflicts continued this way until 2010, albeit less intensely. UNOCI's attempts to disarm and bring parties together have failed. In the meantime, Gbagbo declared that French economically exploited the country for years and accused France with neo-colonialism. His policies to nationalize country's resources and steps to bring China and Russia into the country market as an alternative to France made Gbagbo a target in the eyes of the West.[486] In the end, dialogues with Guillaume Soro started with the pressure from the media in 2007 and Soro was assigned as the prime minister to the "Transitional Government of National Unity" formed with Ouagadougou Peace Accord.[487] Also, a new timeline was determined for the presidential elections between Laurent Gbagbo and Alassane Outtara which was originally held in 2005 but postponed.[488]

The first-round of the elections on 31 October 2010 was relatively calm and there were definitive results. The second round, which took place on 28 November 2010 was supposedly free and fair with the assistance of international observers, despite some voting irregularities and mutual accusations. On 2 December, the Independent Electoral Commission (CEI) announced the presidency of Ouattara, who received 54,1% of the

[481] With this agreement, the Government of National Reconciliation was established, and it was obliged to organize reliable and transparent elections as well as disarmament of the conflicted parties.
[482] United Nations Security Council, Resolution 1528, 27 February 2004, S/RES/1528.
[483] Ibid., p. 3.
[484] United Nations Security Council, Resolution 1572, UN Doc S/RES/1572, pp. 7-12.
[485] United Nations Security Council, Resolution 1643, UN Doc S/RES/1643, p. 6.
[486] Douglas Brommesson and Ann-Marie Ekengren, *The Mediatization of Foreign Policy, Political Decision-Making and Humanitarian Intervention*, London: The Palgrave Macmillan, (2017), pp. 101-102.
[487] Voa News, "Ouattara Offers Ivory Coast Unity Government If Gbagbo Steps Down", accessed June 6, 2020, https://www.voanews.com/africa/ouattara-offers-ivory-coast-unity-government-if-gbagbo-steps-down
[488] Ibid.

votes.[489] On the next day, the President of the Constitutional Council stated that CEI's announcement was technically against the constitution and they cancelled Gbagbo's presidency by declaring null and void the rigged voting results in some of the northern regions.[490] As the dose of violence increased after this announcement, Ouattara was protected by the UNOCI in the Golf Hotel in Abidjan.[491] Each candidate that continued to object the results took an oath, declared their presidency and formed their government. The conflicts in the region turned into a civil war where crimes against humanity were committed and which resulted in the death of approximately 3,000 people, thousands of injured and 1,000,000 displaced people.[492]

4.2.2.2. The Response

On 20 December, the Security Council recognized Ouatorra as the winner of the election with Resolution 1962 and called on the parties to respect the result.[493] ECOWAS and regional organizations recognized Ouattara as the winner of the election as well,[494] and decided to adopt economic sanctions against Gbagbo's supporters as well as suspending the access of these people to the government's banking system. Additionally, Ouattara implemented a one-month ban on cocoa and coffee trade, and thus, he aimed to reduce the support for Gbagbo by bringing him to the point where he could not pay salaries to civil servants and soldiers as a result of the economic instability.[495] However, as Gbagbo did not give up, ethnic conflicts including sexual and gender-based violence continued in the region.

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[489] Reuters, "Ivory Coast Poll Winner Named, Army Seals Borders", accessed June 11, 2020, https://af.reuters.com/article/worldNews/idAFTRE6B13FN20101202

[490] BBC, "Ivory Coast: Alassane Ouattara Sworn in as President", accessed June 6, 2020, https://www.bbc.com/news/world-africa-13306858

[491] International Crisis Group, "Cote d'Ivoire: Defusing Tensions", accessed June 6, 2020, http://www.crisisgroup.org/en/regions/africa/west-africa/cote-divoire/193-cote-divoire-defusing-tensions.aspx.

[492] BBC, "ICC to Investigate Ivory Coast Post-Election Violence", accessed June 10, 2020, https://www.bbc.com/news/world-africa-15148801

[493] UN Security Council, Security Council resolution 1962, on Renewal of the Mandate of the UN Operation in Côte d'Ivoire (UNOCI) and of the French Forces Which Support It, 20 December 2010, S/RES/1962, para. 1.

[494] Alex J. Bellamy and Paul D. Williams, "The New Politics of Protection? Cote d'Ivoire, Libya and Responsibility to Protect", *International Affairs*, 82(7), (2011), pp. 832-833.

[495] Hunt, "Côte d'Ivoire", p. 6.

In this context, diplomatic resolution efforts have also been made. ECOWAS suspended the membership of the Ivory Coast in early December 2010 and decided to make a call to the Security Council to use force if it deems necessary. The UN and French forces who were tasked to protect civilians, supported the Ouattara government and even if Gbagbo wanted all international powers to leave the country, the UN extended the mandate period of UNOCI for six months, by saying that it did not recognize Gbagbo's authority. Moreover, the Council not only used R2P language to justify its decision, but also acted against the will of the facto government, by the decision on the mandate duration of the peacekeeping mission.[496]

In December, respectively, "the Special Advisers to the Secretary-General on the Prevention of Genocide and the Responsibility to Protect", Francis Deng and Edward Luck expressed their serious concerns about the region in a joint statement and reminded the principle of R2P to all parties by stating that the concept includes the prevention of the incitement of atrocity crimes as well as the perpetration of mass atrocities.[497] However, the provocative discourse and violence continued in the entire country especially in Abidjan, and Gbagbo demanded the recounting of the votes in order to solve the deadlock.[498] In this process, negotiation attempts became unsuccessful. For example, on 21 December 2010, the chief prosecutor of the ICC, Luis Moreno-Ocampo's stated that the leaders who committed violent acts would end in the Hague. Such statement is argued to have undermined the negotiation process.[499] As McGovern argues, this discourse provoked the parties and caused Gbagbo to reject any diplomatic solution.[500]

On 19 January, an important development took place for the role of R2P in shaping the response of the international community. The Special Advisers published a second joint statement highlighting the possibility of "genocide, crimes against humanity, war crimes

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[496] Ibid.
[497] UN Press Release, "Secretary-General's Special Advisers on the Prevention of Genocide and the Responsibility to Protect on the Situation in Côte d'Ivoire", accessed June 2, 2020, https://www.un.org/en/preventgenocide/adviser/pdf/Special%20Advisers'%20Statement%20on%20Cote%20d'Ivoire,%2029%20.12.2010.pdf.
[498] BBC, "Ivory Coast Poll Overturned: Gbagbo Declared Winner", accessed June 9, 2020, https://www.bbc.com/news/world-africa-11913832
[499] Statement by ICC prosecutor Luis Moreno-Ocampo on the situation in Côte d'Ivoire, accessed June 8, 2020, http://www.icc-cpi.int/NR/exeres/EB76851B-C125-4E70-8271-D781C54E2A65.htm.
[500] Michael McGovern, "The Ivoirian Endgame", *Foreign Affairs*, accessed June 8, 2020, http://www.foreignaffairs.com/articles/67728/mike-mcgovern/the-ivorian-endgame.

and ethnic cleansing" in the region and reminded all parties of their responsibility to protect.[501] Additionally, Resolution 1967, which reinforced UNOCI with a 2,000-strong troop and air assets, was also adopted by the Security Council.[502] This Resolution also reiterated the Secretary-General's Special Representative's mandate to use all the necessary tools while carrying out UNOCI's duties. However, despite international condemnation, mediation, targeted sanctions, and repeated warnings, the parties could not be discouraged from committing these crimes. On 18 March, the Security Council issued a statement claiming that the bombing of some civilian regions was recognized as crimes against humanity. The next day, the Council held a meeting on the situation in the Ivory Coast and the UN permanent representative of the Ouattara government attended this meeting by making an intense reference to R2P, and he expressed the danger of ethnic cleansing, genocide and crimes against humanity in the region.[503] On the same day, the HRC formed an independent commission of inquiry.

After months of clashes, the Ouattara forces launched a nationwide attack on 28 March. Forces were loyal to Ouattara were in control of the country's major roads, including strategic locations such as the capital city Yamoussoukro and the port of San Pédro in the west. These forces came to Abidjan to overthrow Gbagbo. Even though both parties committed crimes in the meantime, the most striking incident was that in Duékoué hundreds of civilians were killed by the pro-Ouattara forces.[504] In the meantime, UNOCI claimed that Gbagbo forces used heavy weapons such as machine guns and grenades against civilians and targeted the UN personnel as well.[505]

Consequently, the Security Council adopted Resolution 1975 on 30 March 2011, and in the introduction of the resolution stated that the events in the Ivory Coast is threatening the international peace and security.[506] The resolution also reminded that the parties should be respectful to the victory of Ouatorra, and expressed concern about the growing

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[501] Hunt, "Côte d'Ivoire", p. 7.
[502] UN Security Council, Resolution 1967, on authorization of the deployment of additional military personnel and capacities to the UN Operation in Côte d'Ivoire (UNOCI) until 30 June 2011], 19 January 2011, S/RES/1967.
[503] Ibid.
[504] The Guardian, "800 dead in Ivory Coast violence around Duekoue city, says Red Cross", accessed June 6, 2020, https://www.theguardian.com/world/2011/apr/02/800-dead-ivory-coast-duekoue.
[505] Hunt, "Côte d'Ivoire", p. 7.
[506] UN Security Council, Resolution 1975, UN Doc S/RES/1975.

violence against the civilian population, especially for children, women and displaced persons. Additionally, with this Resolution the crimes in the region were labelled as crimes against humanity,[507] and the parties were warned to follow political resolution methods as well as to comply with international humanitarian law.[508] The most important provision of the decision was that UNOCI could take all necessary measures to protect civilians in an impartial manner, based on Chapter VII, and this could include the authority to prevent the use of heavy weapons against the civilian population.[509] Thus, a "heavy weapon" statement was used in a PoC mission for the first time and this decision expanded the variety of military measures which are possible to apply while protecting civilians.[510] Additionally, parties were called to provide full support to UNOCI and the French forces during the operations and to contribute to re-establishing freedom and safety in the country.[511]

Different reactions were given to the unanimously adopted Resolution 1975. While the UK stated that UNOCI can take all necessary measures to protect civilians, countries such as China and India stated that peacekeeping operations should strictly comply with the principle of impartiality and underlined that UNOCI should not have been a side in the conflicts and should have solved the crisis with peaceful methods.[512] A negotiation-based policy of the AU, which sent a mediator to solve the political dilemma in December and January, unlike ECOWAS, resulted with the withdrawal of the AU due to Gbagbo's reluctance to the mediation process. Moreover, according to Bellamy and Williams, the support of permanent members such as Russia and China to Resolution 1975 who doubted to use force without the consent of the home country, was achieved with the approval of these regional organizations.[513]

On 31 March, the Licorne and Ouattara forces opened fire on Gbagbo supporters with the help of the UNOCI forces in order to ensure the security of Abidjan. In April, UNOCI evacuated civilian personnel with the support of the French forces, in accordance with

[507] Ibid., para. 1.
[508] Ibid., para. 4.
[509] Ibid., para. 6.
[510] Hunt, "Côte d'Ivoire", p. 9.
[511] UN Security Council, Resolution 1975, para. 7.
[512] Thabo Mbeki, "What the World Got Wrong in Côte d'Ivoire", *Foreign Policy*, accessed June 2, 2020, http://www.foreign policy.com/articles/2011/04/29/.
[513] Bellamy and Williams, "The New Politics of Protection?", p. 837.

Paragraph 17 of Security Council Resolution 1962. The Secretary-General stated that UNOCI was not a party to the conflict and the operation was based on the right of self-defense.[514] Based on this justification, an attack against Gbagbo's military camps and stockpiles was organized, heavy weapons and weapon warehouses were destroyed. In response, on 10 April 2011, Gbabgo attacked UN positions and the Golf Hotel, where Ouattara was protected by the UNOCI forces.[515] Thereupon, the French Licorne and UNOCI forces shifted the balance of military forces towards the forces of Ouattara and carried out missile attacks on pro-Gbagbo military facilities and attacked around Abidjan with heavy weapons. On 11 April, Gbagbo was seized in his home by Ouattara supporters and he was removed from the presidency.[516]

4.2.2.3. Results and Reactions

Serious criticisms were raised against the UN and French forces for setting aside their neutrality in the Ivory Coast case by using force against Gbagbo supporters and abusing the UN peacekeeping forces. As in the case of Libya, this military intervention caused questions as to the relationship between R2P and regime change. These criticisms were voiced at the Security Council meetings in May. In particular, Russia and Brazil stated that peacekeeping forces could only be responsible for protecting civilians and that it was unacceptable for peacekeeping forces to be a side of the conflict.[517] They also expressed that France's relationship with the UN forces was carried out without special authorization.[518] Former South African President Thabo Mbeki stated that the UN overruled the Constitutional Council's authority, Ban Ki-moon exceeded his authority by declaring Ouattara as the winner of elections, and UNOCI was ineffective in prevention, providing the ceasefire and the protection of civilians in Duékoué.[519] He attributed the

[514] Antonios Tzanakopoulos, "The UN/French Use of Force in Abidjan: Uncertainties Regarding the Scope of UN Authorizations", EJIL, accessed June 3, 2020, https://www.ejiltalk.org/the-un-use-of-force-in-abidjan/
[515] UNOCI, "United Nations Operation in Côte d'Ivoire", accessed June 6, 2020, https://peacekeeping.un.org/en/mission/past/unoci/elections.shtml
[516] The Guardian, "Ivory Coast's Laurent Gbagbo Arrested – Four Months on", accessed June 6, 2020, https://www.theguardian.com/world/2011/apr/11/ivory-coast-former-leader-arrested.
[517] Ibid., pp. 835-836.
[518] Bellamy and Williams, "The New Politics of Protection?", p. 837.
[519] Mbeki, "What the World Got Wrong in Côte d'Ivoire".

source of these failures to the non-neutrality of the UN and the unwarranted influence of France in the events.[520]

Ban Ki-moon said that UNOCI exercised its legitimate right to self-defense and acted within the framework of civil protection as a response to these criticisms. He based his argument on the attack of the Gbagbo forces against the UN headquarters in Abidjan on 31 March 2011 and on the injury of three peacekeepers as a result of this attack.[521] On the other hand, the UN Security Council's argument was that Gbagbo was not recognized as an authority who could give consent to these forces since they accepted Ouattara as the winner of the elections. This argument also raised questions over whether the UN Security Council has the authority to determine who is ruling the country.

Although UNOCI and French forces insisted that they were not involved in the removal of Gbagbo from the presidency, it does not seem possible for the Ouattara-backed forces to cross the country and overthrow Gbagbo in such a short period. In addition, Ouattara-backed forces are held responsible for cease-fire violations, including widespread and systematic attacks on civilians. However, the UN avoided using force against these forces.[522] Therefore, although Human Rights Watch revealed the atrocity crimes and sexual violence of pro-Ouattara groups,[523] UNOCI and French forces did little to prevent the crimes committed by Ouattara and his supporters.[524] While this situation led to the accusation of the UN with inconsistency and selectivity, the presence and partiality of France in its former colony's internal turmoil brought another dimension to the debates about the intervention.

France was undoubtedly the most debated actor that was actively involved in the Ivory Coast case. The presence of the French, which has existed in the country since the colonial period, continued with 600 French companies and 13,000 French businessmen before the crisis; in addition, a large proportion of France's Gross National Product (GNP), like 9%,

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[520] Ibid.
[521] BBC, "Ivory Coast: UN Forces Fire on Pro-Gbagbo Camp", accessed June 7, 2020, http://www.bbc.co.uk/news/world-africa13019333.
[522] Hunt, "Côte d'Ivoire", p. 11.
[523] Human Rights Watch, "Côte d'Ivoire: Ouattara Forces Kill, Rape Civilians During Offensive", accessed June 7, 2020, https://www.hrw.org/news/2011/04/09/cote-divoire-ouattara-forces-kill-rape-civilians-during-offensive.
[524] Bellamy and Williams, "The New Politics of Protection?", p. 836.

was also obtained from the Ivory Coast.[525] Therefore, it was crucial for France to establish friendly relations with the government to sustain this system. While France's tendency to intervene in its former colony and its support for Ouattara led to the claim that France was trying to colonize the region for the second time, it also caused Gbagbo to be portrayed as the leader of the movement against second colonization.[526]

After the intervention and change of government, upon the invitation of President Ouattara, the ICC judges authorized the Chief Prosecutor to investigate Gbagbo on crimes including crimes against humanity, rape and sexual violence since 28 November 2010. On 29 November 2011, Gbagbo was arrested for these crimes.[527] Therefore, in the post-intervention period, the dominant idea was that human rights violations that Ouattara and his supporters were responsible for were ignored, and during the inquiry, bilateral and selective actions were taken. In substance, women who stayed in the region have been the main target of systematic rape and sexual violence by both parties. [528] This was reflected in the rates, in which women constituted 52% of the displaced persons during the conflicts. In particular, women were descendants of Ivorian ethnicity were raped as an attack against this ethnicity whereas women of the Burkinabe ethnic group were mainly targeted by the rebel groups.[529] Since there is no domestic legal system and international movement to protect women from these crimes, while the Acquired Immune Deficiency Syndrome (AIDS) rate was 6.4% for women in 2005, it was only 2.9% for men in the country. Accordingly, it was observed that the conflict regions were mainly affected from this increased ratio.[530]

Furthermore, women were not adequately represented in decision-making either, despite the fact that they were the most affected by the crimes committed. According to the

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[525] Mazlumder, "Fransa'nın Fildişi Sahillerine Müdahalesi ve Uluslararası Hukuk", accessed June 9, 2020, https://istanbul.mazlumder.org/tr/main/yayinlar/makaleler/8/fransanin-fildisi-sahillerine-mudahalesi-ve-u/451

[526] Hunt, "Côte d'Ivoire", p. 13.

[527] BBC, "Ivory Coast's Laurent Gbagbo arrives in The Hague", accessed June 8, 2020, https://www.bbc.com/news/world-15946481

[528] Heidi Hudson, "Peacebuilding Through a Gender Lens and the Challenges of Implementation in Rwanda and Côte d'Ivoire", *Security Studies*, 18(2), (2009), p. 310.

[529] Megan Bastick, Karen Grimm and Rahel Kunz, *Sexual Violence in Armed Conflict – Global Overview and Implications for the Security Sector*, Geneva Centre for the Democratic Control of Armed Forces Report, (2007), p. 39.

[530] Amnesty International, *C^ote d'Ivoire*: *Targeting Women: The Forgotten Victims of the Conflict,* Washington DC: Amnesty International, (2007), p. 30.

Secretary-General of the West Africa Network for Peacebuilding (WANEP) Suzanne Annita Traoré, in the Ivory Coast case women were insufficiently represented in the decision-making mechanisms and excluded from the negotiations for the peace period.[531] Regarding the place of women during the conflicts in the Ivory Coast, since the conflicting parties and international organizations did not recognize the role of women in the conflict, a plan to meet the special needs of women could not be applied by the international community. In peace negotiations, women's voice was not heard by domestic politicians and the international community. Moreover, a gender-sensitive language was not used by them.[532] These injustices, which were combined with the deficiencies in the rebuilding process, formed the elements that would push the country into a conflict again. Although the UN condemned violence against women, demanded to eliminate the barriers for women to participate in public life, and emphasized special needs through its decisions such as Resolution 1328 formed ONUCI,[533] it is possible to argue that no work was done to provide a role for women in the post-conflict process.

4.3. Conclusion

Combination of diplomatic methods such as mediation, inquiry, conciliation and negotiation have been used in the cases of Kenya and Guinea, which are referred to as successful R2P implementations at an early stage. In both cases, the mediation processes led by eminent people who gained regional recognition, and this caused the R2P framework not to be perceived as an external interference. In addition, regional organizations such as ECOWAS, regional states and non-governmental organizations played an active role in the process, without a high reliance on the politicized Security Council. For instance, in the case of Guinea, female organizations as well were involved in the negotiation process. Also, the use of coercive methods such as sanctions and travel bans, which target not the state as a whole but the perpetrators, also positively affected the parties in the way of continuing the diplomatic process. Thus, the escalation of the

[531] Government of Canada, "Women at the Table: Peace and Security in Côte d'Ivoire", accessed June 8, 2020, https://www.international.gc.ca/world-monde/stories-histoires/2019/cotedivoire-peace-paix.aspx?lang=eng

[532] Hudson, "Peacebuilding Through a Gender Lens", p. 290.

[533] United Nations Security Council, Resolution 1826, "on Security Council Extends Mandate of United National Operation in Côte d'Ivoire until 31 January, Allowing Mission to Support November Elections", SC/9409 (2008).

incidents was prevented and in the former, the government was distributed equitably between the parties, while in the second, democratic elections were held. The success of these two cases and their nature, which highlights the peaceful elements, provided a solid justification for R2P's international credibility and increased state support for the norm.

Concerning the lessons of the intervention in Libya regarding R2P, several points that both contributed to and prevented the normative development of the norm stand out. First of all, R2P was utilized by Western states as a tool to legitimize the use of force in third world countries. Thus, this led to the allegations that R2P was a disguise for the former notion of the right to intervene. Additionally, the use of force was implemented without questioning the applicability of other peaceful solutions to the Libyan case, and as a result, despite the fact that a legally appropriate decision-making process was achieved through the Security Council resolution, a more peaceful and long-term resolution route as in Kenya or Guinea cases could not be reached. With the support of NATO members to anti-government groups, and the abrupt overthrow of the Libyan regime coupled with conflict amongst the opposition that drew the country to further instability, and the exceeded limits of the Security Council's authorization, Libya became an example of a bad implementation. This also reiterated the assertion that a military intervention should truly be the last resort under R2P.

In the immediate aftermath of the military operation in Libya, the intervention in the Ivory Coast led to further controversy as well as discussions over the partiality of the Security Council. The subsequent process damaged the reputation of the Council and surfaced the failure at the prevention phase. Although the Security Council implemented tools such as mediation, economic sanctions and commission of inquiry before resorting to the use of force to respond to mass atrocity crimes, the implementation process of these measures was insufficient to play a decisive role as a result of the failure of regional organizations. Also, women were called victims and they were included neither in the decision-making process of the intervention nor in the rebuilding phase after the conflict. Thus, the parties ignored the possible role of women in lasting peace.[534]

[534] Ibid.

The intervention decision received a lot of negative reactions, especially from the Security Council members, and as UNOCI could not take action without the current government's consent, different comments were raised on the mandate of this organization. In addition, the authorization of UNOCI to use a joint force with the French forces was interpreted as an over-authorization by ignoring the decision of the Constitutional Council on the election results.[535] The fact that France was so involved in the process brought along neo-colonialism discussions and a new dimension to the controversies regarding this case. France was explicitly authorized by the UN Security Council and the Council also prepared the legal grounds for this neo-colonialist intervention. Thus, as Wyss observes, the French role in the crisis overshadowed the neutrality of the UN.[536] Eventually, the legal basis of France's ability to interfere with its former colony through R2P and the overlaps of the protection objectives and French national interests led to implications that R2P was a tool of Western liberal interventionism.[537] The use of the UN as the power to protect France's interests in the Ivory Coast was also a clear violation of international law from the TWAIL perspective. Although there are scholars who claim that the losses in the region were minimized with the help of UNOCI,[538] the case of the Ivory Coast is frequently considered to be a controversial implementation in the literature due to the stated criticisms.

Therefore, while implementation of legally undisputed peaceful methods in Kenya and Guinea brought the legitimacy of R2P in the eyes of the international community and public opinion, the controversies regarding the way of implementation of the interventions in Libya and the Ivory Coast damaged the reputation and normative evolution of the principle. This is a clear indication of the need to highlight the peaceful elements within R2P and to enrich them further.

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[535] Bellamy and Williams, "The New Politics of Protection?", p. 837.
[536] Marco Wyss, "Primus inter pares? France and Multi-Actor Peacekeeping in Côte d'Ivoire", in Thierry Tardy and Marco Wyss (eds.), *Peacekeeping in Africa,* Abingdon: Routledge, (2014), p. 144.
[537] Bellamy and Williams, "The New Politics of Protection?", p. 839.
[538] Ibid., p. 847.

CONCLUSION

Although the distinctive feature of the R2P principle from the doctrine of humanitarian intervention is the peaceful elements under its three pillars, it has generally been equated with the right to intervene. This misperception is rooted in the inclusion of the use of force under Pillar 3 of R2P and controversies regarding this association have been at the top of the agenda since its inception. Especially after the cases of Libya and the Ivory Coast, the argument that R2P is a new form of interventionism which paves the way for abuses has found even wider support. Thus, the reports of the Secretary-General, the UN formal debates and scholars have frequently addressed the issue of overcoming the perception that associates R2P with the use of force. Therefore, emphasizing the peaceful methods within the framework of the principle came into prominence. In this respect, this thesis aimed to discuss the legality of the elements within the three-pillar structure of R2P in contrast to the understanding that focuses solely on the coercive methods, and mainly the use of force under Pillar 3. Accordingly, it argues that enriching and deepening the peaceful elements in the toolbox of R2P with the participation of a variety of actors would help an undisputed implementation of the norm, and contribute to the removal of the obstacles before R2P's normative development.

As noted previously, Chapter VI of the UN Charter, to which R2P refers under Paragraph 139, concerns the peaceful measures to be applied in the resolution of disputes and provides a list of peaceful methods in this regard. As well as negotiation, inquiry, conciliation, mediation, arbitration and judicial settlements, this Chapter gives a place to the regional agencies in the resolution of disputes. By referring to the Chapter VIII of the UN Charter under the same paragraph, R2P again emphasizes the role of regional organizations in the resolution of disputes and invites them to increase their early warning capacity and share information in order to prevent atrocity crimes. Moreover, the UN Charter does not limit peaceful methods with this list and leaves room for the application of other appropriate measures according to the choices of the parties. In this sense, this thesis proposes the promotion of the involvement of non-governmental organizations and human rights mechanisms, as well as the protection of IDPs and refugees as possible peaceful methods.

In addition to this broad framework and large scale of measures, the implementation of peaceful methods depends on the individual preferences of states and the initiative of regional and/or international organizations. Therefore, not being dependent on the authorization of the Security Council in order to take action will help to avoid possible veto-led deadlocks. Thus, it is possible to respond at an earlier stage without being bound by the decision or indecision of a highly politicized body.

On the other hand, again pursuant to Paragraph 139, if peaceful methods are proved to be inadequate, it is possible to take action within the framework of Chapter VII of the UN Charter. These methods, which are considered as legal when they are authorized by the UN Security Council, consists of methods that do not include the use of force as well as measures involving the use of military force if it is deemed necessary and as a last resort. These measures were examined under the three categories of retorsion, reprisal and (military) intervention. Even tough coercive actions involving the use of force can be considered as lawful if consented by the legitimate government of that country or implemented under the authority of the UN Security Council, still the way of implementation may cause controversies as the cases studied in Chapter 4 of the thesis have revealed. At this point, it becomes necessary to examine other coercive methods that can be more functional and less disputed for R2P. In this sense, smart economic sanctions which target only those who have committed the atrocity crimes, referral of the perpetrators to the ICC, and converging the peacekeeping forces and R2P by increasing the role of these forces in the protection of populations from mass atrocities are suggested as other coercive measures with greater potential for success.

In order to evaluate the functionality of peaceful and coercive methods within the framework of R2P, the cases of Kenya and Guinea—which are commonly accepted as successful R2P implementations in the IR literature—as well as the cases of Libya and the Ivory Coast—which are referred to as controversial military interventions—were discussed in the Chapter 4. The 2011 Libya and Ivory Coast cases, whose internal conflicts were responded by military operations, caused a controversy that would undermine a possible consensus on reacting to future humanitarian crises under R2P. In these cases, after the resolutions authorizing action, different opinions were raised on how to interpret the duties of the Council. The fact that the Council had no control over the

implementation of the use of force is also frequently mentioned in the debates on R2P. Additionally, when the main threat to civilians comes from the regime, the line between stopping the conflict and causing a regime change through an intervention is blurred. In this regard, it is inevitable for the intervenors to face with this dilemma.

On the other hand, it is noteworthy that the national interests of the states are an important factor in the decision-making process of an intervention. Hence, states' willingness to establish a moral legitimacy ground for the interventions by attributing them on R2P supports this argument. As it can be seen in Libya and the Ivory Coast cases, the debate on whether actors such as France and the US intended to save lives or to change the regimes not only led to inaction under R2P in cases like Syria but also had a negative effect on R2P's reputation and the objective position of the Security Council. In addition to the political dilemmas mentioned above, military intervention is thought as a method that obstructs peaceful solutions and endangers the lives of civilians as an unintended consequence. Another point regarding the negative impact of a military intervention is that while it ignores the specific conditions of women during an intervention, women have not been involved in any of the processes concerning an intervention. In this respect, it is possible to say that the reliability of R2P relies on primary attention to prevention in the first place.

All these discussions led to a concentration on the measures in the toolbox of R2P which are aimed towards the prevention of atrocity crimes directly. At the first phase, it would be an appropriate option to use diplomacy to peacefully end the conflict, especially with the initiatives of regional organizations, without an active involvement of Western powers, as seen in the cases of Kenya and Guinea. Supporting these diplomatic methods with coercive yet less debated methods such as smart economic sanctions, providing evidence through the commission of inquiry and/or legal solutions such as referral to ICC have a significant importance in this respect as it was unfolded in the first two cases. Thus, based on the idea that legality brings legitimacy, it is thought that the legitimacy of R2P can be achieved by bringing the peaceful elements within the scope of principle to the forefront, which are legally not prone to be contested.

Kenya and Guinea cases are also important for emphasizing the importance of cooperation among various actors like regional organizations, the UN and the Secretary-General as well as individual states, as well as to achieve a timely reaction to an unfolding crisis. In the light of these cases, it can be argued that the focus should be placed on developing mechanisms to improve the implementation of diplomatic and other peaceful methods within the toolbox of R2P in order to achieve prevention and/or timely and effective reaction.

The implementation of coercive methods provides only a short-term peace environment in the conflict zone and the conflict persists for a long time in the post-op phase. On the contrary, it is seen that preventive and peaceful measures taken at an early stage (without requiring authorization) directly provide protection of the population from the effects of conflict and crimes to be committed. In this respect, as seen in Kenya and Guinea cases, when the combination of peaceful methods is supported by smart sanctions and/or any other less disputed coercive mechanism, they not only prevent the intensification of the conflict but also provide a long-lasting peace and reconciliation atmosphere.

Today, it is clearly seen that preventive and peaceful mechanisms will draw a more indisputable and more appropriate framework for the normative development of R2P, which celebrates the 15th year of its adoption under the UN framework. Thus, as envisaged, by prioritizing and functionalizing the peaceful methods it will be possible to carry the protection, the main target of R2P, to the heart of the response. At this juncture, the contribution of future studies aiming to expand and clarify the toolbox of the measures under R2P and analyze them in depth will be incontestable for the normative development of and effective implementation of R2P.

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APPENDIX 1

ETHICS BOARD WAIVER FORM

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Thesis Title: Legal Aspects of Protection Provided under Responsibility to Protect

My thesis work related to the title above:

1. Does not perform experimentation on animals or people.
2. Does not necessitate the use of biological material (blood, urine, biological fluids and samples, etc.).
3. Does not involve any interference of the body's integrity.
4. Is not based on observational and descriptive research (survey, interview, measures/scales, data scanning, system-model development).

I declare, I have carefully read Hacettepe University's Ethics Regulations and the Commission's Guidelines, and in order to proceed with my thesis according to these regulations I do not have to get permission from the Ethics Board/Commission for anything; in any infringement of the regulations I accept all legal responsibility and I declare that all the information I have provided is true.

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ADVISER COMMENTS AND APPROVAL

The studies conducted in this thesis do not require the Ethics Commission's permission.

Assoc. Prof. Dr. Mine Pınar GÖZEN ERCAN

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ULUSLARARASI İLİŞKİLER ANABİLİM DALI BAŞKANLIĞI'NA

Tarih: 09/09/2020

Tez Başlığı: Koruma Sorumluluğu Altında Sağlanan Korumanın Hukuki Yönleri

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2. Biyolojik materyal (kan, idrar vb. biyolojik sıvılar ve numuneler) kullanılmasını gerektirmemektedir.
3. Beden bütünlüğüne müdahale içermemektedir.
4. Gözlemsel ve betimsel araştırma (anket, mülakat, ölçek/skala çalışmaları, dosya taramaları, veri kaynakları taraması, sistem-model geliştirme çalışmaları) niteliğinde değildir.

Hacettepe Üniversitesi Etik Kurullar ve Komisyonlarının Yönergelerini inceledim ve bunlara göre tez çalışmamın yürütülebilmesi için herhangi bir Etik Kurul/Komisyon'dan izin alınmasına gerek olmadığını; aksi durumda doğabilecek her türlü hukuki sorumluluğu kabul ettiğimi ve yukarıda vermiş olduğum bilgilerin doğru olduğunu beyan ederim.

Gereğini saygılarımla arz ederim.

09.09.2020
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Öğrenci No: N17130421
Anabilim Dalı: Uluslararası İlişkiler
Programı: Uluslararası İlişkiler
Statüsü: ☒ Yüksek Lisans ☐ Doktora ☐ Bütünleşik Doktora

DANIŞMAN GÖRÜŞÜ VE ONAYI

Bu tezde yürütülen çalışmalar için Etik Kurul izni alınması gerektirecek bir durum yoktur.

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APPENDIX 2

ORIGINALITY REPORT

HACETTEPE UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
MASTER'S THESIS ORIGINALITY REPORT

HACETTEPE UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
INTERNATIONAL RELATIONS DEPARTMENT

Date: 09/09/2020

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SOSYAL BİLİMLER ENSTİTÜSÜ
YÜKSEK LİSANS TEZ ÇALIŞMASI ORİJİNALLİK RAPORU

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Tarih: 09/09/2020

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