The Responsibility to Protect: Emerging Norm or Failed Doctrine?

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Introduction

The Responsibility to Protect, or RtoP, is a principle that, since its birth in 2001, has caused much debate internationally for what it has meant in the past, what it entails in the present, and what it has the potential to become in the future. In its thirteen years of existence, the ‘responsibility to protect’ doctrine has grown tremendously, transforming from a “gleam in a commission’s eye to what now may be described as a broadly accepted international norm.”  

Renowned professionals in the field of humanitarian assistance and protection such as Gareth Evans and Siobhan Wills have opted for calling RtoP a norm, without expanding on whether the principle is “mature and developed enough to have undergone the transition into a norm.” In fact, RtoP has a history of being described by its supporters as a “broadly accepted international norm with the potential to evolve into a full-fledged rule of customary international law.” However, RtoP still has a long trajectory ahead due to the evident hesitation by several states who continue to oppose it. While some of the concepts of RtoP correlate harmoniously with pre-existing international human rights laws, others pose a drastic challenge to extant principles and theories under the global structure such as the deeply rooted ideologies of state sovereignty and non-intervention.

From its introduction by the International Commission on Intervention and State Sovereignty, to its endorsement in the Secretary General’s High Level Panel Report on Threats, Challenges and Change in 2004, then again in the World Summit Outcome Document of 2005, and more recently in the roundtable talks led by the Global Centre for the Responsibility to Protect, it is undeniable that RtoP has come a long way in the norm life cycle. However, the misapplication of the principle in the 2011 humanitarian crises in Libya, and subsequently in Syria has caused significant and possibly irreparable damage in its path towards becoming a universally accepted principle of international law.

Contradicting Principles: State Sovereignty versus The Responsibility to Protect

3. Ibid.
The Responsibility to Protect is a newly emerging concept that, as defined by the 2005 World Summit Outcome Document, grants “each individual State the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity.” When states fail to do so, the international community has the “responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations” from such violations. One of the focal problems with RtoP is its intrinsic contradiction with the principle of state sovereignty that is so deeply embedded in existing international law. In fact, state sovereignty is essentially the dominant foundation of international law. Traditionally, as established by Chapter 1, Article 2(7) of the universally accepted foundational Charter of the United Nations, state sovereignty “has meant that the state is subject to no other state, and has full and exclusive powers within its jurisdiction.” Since its foundations in the Treaty of Westphalia of 1948, the way that a nation acted “towards its own citizens in its own territory was a matter of domestic jurisdiction...and therefore not any business for international law.” In modern times, however, a world complexly interconnected by the increasing forces of globalization implies the opposite: that it is both lawful and obligatory for “states or non-state actors to be concerned about the treatment of the inhabitants of another state.” While RtoP urges the international community to intervene in foreign internal catastrophes on humanitarian grounds, the language of the UN charter provides a contradictory statement of non-interference stating that, “[n]othing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state.”

Throughout history, the non-intervention international law principle has enjoyed much adherence and support, especially from developing countries, due to the fact that after decolonization, the new—and therefore weaker—states, saw

10 Ibid.
11 Evans, “From Humanitarian Intervention to the Responsibility to Protect”, 705.
it as their only defense against more powerful international actors that they felt threatened by.\textsuperscript{13} Although reasonable, the strong sentiment toward national sovereignty was “extremely inhibiting to the development of any sense of obligation to respond in an effective way to situations of catastrophic internal human rights violations.”\textsuperscript{14} This global notion persisted even after the Universal Declaration of Human Rights was issued, and seemingly, most of the world continued to lean towards non-intervention.

Prior to the tragic humanitarian catastrophes of the 1990s in Kosovo and Rwanda, most states accepted the general international law principle “that force could not be used inside the territory of a sovereign state unless the state at issue consented, the Security Council had authorized the use of force under Chapter VII of the UN Charter, or the use of force was in self-defense following an armed attack as delineated by Article 51 of the UN Charter.”\textsuperscript{15} However, in the last two decades, the world has made a radical shift away from traditional ideas about national sovereignty,\textsuperscript{16} a shift that arose from a nearly universal belief that human rights atrocities should not hide under the cloak of state sovereignty.\textsuperscript{17} This change was rooted in the RtoP-endorsed idea that by claiming sovereignty, states take on a responsibility to protect their citizens from suffering and that when “the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.”\textsuperscript{18} Discussions and debates revolving around RtoP have had a relevant impact on international policies, causing British historian Sir Martin Gilbert to describe it as the most relevant change to the principle of state sovereignty in almost 400 years.\textsuperscript{19}

**RtoP’s Journey Through the Norm Life Cycle**

The Responsibility to Protect started as an idea from Secretary General Kofi Annan that questionably has shifted toward becoming a norm and has the potential to become international law in the future. As human rights academic Kathryn Sikkink explains, “early norm adoption is the result of domestic political struggle and norm entrepreneurs, but later adoption is the result of a combination

\begin{itemize}
\item \textsuperscript{13} Evans, “From Humanitarian Intervention to the Responsibility to Protect”, 705.
\item \textsuperscript{14} Ibid.
\item \textsuperscript{16} Ibid., 32.
\item \textsuperscript{17} Hassler, “R2P and the protection obligations of peacekeepers,” 206
\item \textsuperscript{18} Brooks, “Be careful what you wish for: Changing doctrines, changing technologies, and the lower cost of war”, 32.
\item \textsuperscript{19} Gareth Evans and Ramesh Thakur, Humanitarian intervention and the responsibility to protect, *International Security* 37, no. 4 (Spring 2013), 202.
\end{itemize}
of internal demands and external diffusion." Norm diffusion comes in two forms: bottom-up or top-down vertical diffusion. Bottom-up vertical diffusion happens when an idea travels from one specific country to an international organization, such as the International Campaign to Ban Landmines Treaty, which originated from Jody Williams’ initiative to ban anti-personnel landmines and then took flight to spread to several international non-governmental organizations. On the contrary, RtoP is a case of top-down vertical diffusion, which “occurs when practices...move from international actors to national ones, for example, when international or regional tribunals encourage states that have not yet adopted a doctrine.” In this case, the doctrine was championed by the leader of the United Nations, who originally urged states to consider its adoption.

International relations scholars Martha Finnemore and Sikkink have formulated a norm life cycle theory that is relevant in the analysis of the development of the RtoP doctrine. The cycle has three stages: norm emergence, norm cascade and norm internalization. The first stage involves a norm entrepreneur leading the effort to introduce and develop a new norm and attempting to persuade other countries to endorse it. A successful example of a norm entrepreneur is Jody Williams in the aforementioned ICBL treaty example, which was born from her idea and now has more than 160 signatories. The norm entrepreneur in the case of RtoP was Secretary General Kofi Annan, who challenged the international community to “develop a way of reconciling the twin principles of sovereignty and protection of self-determination and fundamental human rights.” The second stage happens when several states adopt the norm. At this point, the cycle reaches a “tipping point”, after which the cascade starts and the norm spreads to the remaining countries. Since a significant number of governments have expressed support for RtoP, it should have reached the tipping point by now. However, it remains controversial especially in light of modern day implementation cases like Libya and Syria and therefore has not quite reached the norm cascade stage. At the last and third stage, a norm becomes internalized, meaning it is no longer contested, and compliance is almost a given. It is important to note that Sikkink and Finnemore assert that “the completion of the

21 Ibid., 249-250.
23 Alex J. Bellamy, Realizing the responsibility to protect, *International Studies Perspectives* 10, no. 2 (2009), 111.
24 Ibid., 175.
25 Ibid., 175.
26 Ibid., 182.
27 Ibid., 175.
norm life cycle is not a given, and not every evolving norm reaches the stage at which it becomes widely accepted.”

RtoP’s completion of the cycle is still tentative due to the fact that it is still undergoing development.

Because complex norms can create confusion and allow for ambiguous interpretations, “simple and straightforward norms are more likely to develop into strong and effective norms and are more likely to generate compliance.” Consequently, the Responsibility to Protect doctrine is having trouble achieving full compliance since multiple aspects of it remain unclear and leave room for susceptibility to manipulation and abuse. In order for a norm to properly evolve, it should provide clear and non-derogable terms that allow for predictability as well as consistency across all kinds of cases. One of the root problems of RtoP is that it does not yet have that level of clarity and specificity, given that each humanitarian crisis arises from different reasons and is analyzed on a case-by-case basis. Additionally, to progress, a norm must be a logical fit amongst other existing norms. As aforementioned, the ‘responsibility to protect’ principle is fundamentally incongruent with the non-intervention UN policy that exists in the current realm of international law. The clash against the “higher principle” that is the UN Charter—accepted universally and recognized as international law—severely affects the development of the doctrine. Moreover, RtoP introduces “a vertical relationship between the intervening organization or state and the protected population, that does not in fact exist in law” yet. Another point that may invalidate RtoP as law is that it contains a “discretionary mandate.” Because in its structure, the United Nations “systematically differentiates between its subjects in the application and enforcement of laws,” doubts arise about whether said discretion could ever be used wrongly and subsequently nullifies it as a legal system.

In contrast, RtoP also reflects “widely accepted norms and principles of international human rights law and the core principles of international humanitarian law pertaining to the protection of civilians caught in the midst of conflict,” in combination with the ideas established by several extant international treaties. This is a positive characteristic of the Responsibility to Protect:

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28 Ibid., 176.
29 Ibid.
30 Ibid 177.
31 Ibid.
32 Ibid.,178.
33 Ibid.,179.
34 Hassler, “R2P and the protection obligations of peacekeepers,” 201.
36 Ibid., 30.
Protect because ideas linked to higher principles are more likely to gain more support.\textsuperscript{38} For example, RtoP is designed to trigger international action to protect people from genocide, war crimes, crimes against humanity and ethnic cleansing. These four specific crimes draw relevant parallels with widely recognized treaties such as the Genocide Convention, the Geneva Conventions, and the International Covenant on Civil and Political Rights, which enjoy a notable high degree of global acceptance. Furthermore, the core RtoP pillar that states should function for their people dates back to the teachings of the father of international law, Hugo Grotius, whose interpretation of law was based on the belief that the rules governing the actions of states should exist primarily for the benefit of the people.\textsuperscript{39} It similarly corresponds with the thoughts of contract theorist John Locke, who saw the relationship between the state and its citizens in terms of trust.\textsuperscript{40}

The United Nations Charter, recognized as legal doctrine as early as 1947, the International Court of Justice (ICJ) and the International Law Commission (ILC), globally recognized law-making bodies, all include rules about the concept of \textit{erga omnes} (towards all) obligations\textsuperscript{41} preceding the RtoP idea that state sovereignty entails duties on the international stage.\textsuperscript{42} The idea that states have the responsibility to protect their citizens is also present in the peacekeeping operations of the 1990s, dating back to former Secretary General’s Boutros Boutros Ghali’s \textit{Agenda for Peace} which identified peacemaking as preventive diplomacy and post-conflict peacebuilding.\textsuperscript{43} This ideal greatly correlates with the three specific responsibilities of RtoP: the duties to prevent, react, and rebuild.\textsuperscript{44} (ICISS report page XI) Moreover, at least in four of its five criteria, the legitimacy of military intervention as established by the International Commission on Intervention and State Sovereignty (ICISS) and the High Level Panel correlates with \textit{jus bellum iustum}, or just war theory, in upholding that states must resort to it only with “just cause, right intention, as a last resort, and with proportionality of means.”\textsuperscript{45} Evidently, these several examples show that RtoP is rooted in pre-existing legal traditions and it is this connection that allowed the concept to gain some recognition in recent scenarios.\textsuperscript{46} Generally, an emerging doctrine’s

\textsuperscript{38} Ibid., 179.
\textsuperscript{39} Carsten Stahn, “Responsibility to protect: Political rhetoric or emerging legal norm?” \textit{The American Journal of International Law} 101, no. 1 (January 2007), 8.
\textsuperscript{40} Ibid.
\textsuperscript{41} Ibid., 9.
\textsuperscript{42} Ibid., 8.
\textsuperscript{43} Ibid., 9.
\textsuperscript{44} International Commission on Intervention and State Sovereignty (ICISS), “The Responsibility to Protect,” XI.
\textsuperscript{45} Stahn, “Responsibility to protect: Political rhetoric or emerging legal norm?,” 10.
\textsuperscript{46} Ibid.
capacity to garner support and encourage compliance is increased by its link and relationship to other norms that complement it.47

Although it is true that RtoP coincides with the goals and purpose of other pre-established international norms48 it also undoubtedly carries a number of innovative principles. In fact, the ICISS admits that the doctrine demonstrates the progressive development of international law.49 RtoP suggests a collective duty to act in the face of gross human rights violations based on solidarity.50 The extant law of state responsibility also maintains this principle but only applies it to the “particular category of violations designated as serious breaches of a peremptory norm of general international law.”51 Peremptory norms, also known as jus cogens, are principles of law that are so relevant that no nation may be exempted from them.52 Examples of such compelling laws include torture, slavery, genocide and piracy.53 RtoP attempts to take this a step further, asserting that the responsibility to cooperate also extends to states that may not have been affected by the other nations and expanding the scope of peremptory norms of international law to include war crimes, ethnic cleansing and crimes against humanity.54 Analyzing RtoP in the context of the Secretary General’s statements that it is meant to involve “adopting a ‘unifying perspective’ and facilitating ‘system-wide coherence,’ and expanding and refocusing the UN’s ‘early warning and assessment capacities’”55 suggests that RtoP is heading towards norm-status, because it “confers powers ‘of a public or official nature’ and allocates jurisdiction.”56 However, the Responsibility to Protect should “be understood as normative” in the sense that it constitutes a set of “laws that confer powers” but not laws “that impose duties.”57

A History of Evolution: Milestones since RtoP’s Birth

The doctrine of the Responsibility to Protect had a rough start; in fact, it was almost entirely exterminated at its birth by being published in the aftermath

48 Ibid., 192.
49 Stahn, “Responsibility to protect: Political rhetoric or emerging legal norm?,” 10
50 Ibid.
51 Ibid.
53 Ibid.
54 Stahn, “Responsibility to protect: Political rhetoric or emerging legal norm?,” 10.
55 Orford, “Rethinking the significance of the responsibility to protect concept,” 29.
56 Ibid., 30.
57 Ibid.
of the terrorist attacks of September 11. Former UN Secretary General Kofi Annan first proposed it, believing that gross violations of human rights should no longer be considered as solely national matters and that they should not be tolerated. Within two years of the norm’s creation in 2001, international lawyers and scholars began to embrace it as well, making the emerging doctrine more public. RtoP made its first official appearance in the Canadian International Commission on the Intervention and State Sovereignty Report, which was a response to Annan’s “acknowledgement of the international need to develop a new response to massive intra-state human rights violations.” The final report of the ICISS, issued on December 2001, outlined the novel idea of the responsibility to protect in detail.

The ICISS made four significant contributions to reduce the gap between the legality and legitimacy of intervention. First, the report established a shift in the language of intervention from ‘the right to intervene’ to ‘the responsibility to protect.’ This change was crucial in reducing the tensions about the debate especially in relation to the hostility on behalf of developing countries that “remain deeply suspicious of the self-serving hidden agenda of geopolitical and commercial interests behind such claims.” Secondly, it established a new way of talking about sovereignty by emphasizing its limits and switching the focus to security and human rights issues. The ICISS accomplished this by outlining that sovereignty is embedded with a primary responsibility of the state to protect its people, and secondary responsibility of the international community. Third, the ICISS made great strides in communicating that RtoP is not solely about military intervention by pointing out the doctrine’s relevant attempts at prevention, reaction, and rebuilding. According to the drafters of the ICISS report, the responsibility to prevent was the most important because it eradicated the problem of intervention before it could even present itself. Lastly, the report provided rules for acceptable military intervention, based on the guidelines of the just war theory of international law. On this point, the ICISS “managed to gather broad support because it avoided taking a final stance on the question of the legality of

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58 Evans, “From Humanitarian Intervention to the Responsibility to Protect,” 712.
60 Evans, “From Humanitarian Intervention to the Responsibility to Protect,” 712.
61 Berman and Michaelsen, “Intervention in Libya: Another nail in the coffin for the responsibility-to-protect?,” 339-340
62 Evans, “From Humanitarian Intervention to the Responsibility to Protect,” 707.
63 Ibid., 708.
64 Evans and Thakur, “Humanitarian intervention and the responsibility to protect,” 202.
65 Evans, “From Humanitarian Intervention to the Responsibility to Protect,” 707.
66 Ibid.
unauthorized interventions.”⁶⁷ As established by the ICISS, the RtoP doctrine was not a legal principle but “merely a policy option” based on existing international foundations to support the argument that a legal norm of intervention in response to massive human rights violations was emerging.⁶⁸ However, it is important to note that RtoP, from its beginnings, contained “the normative and structural building blocks necessary to give it the potential to develop into an independent legal norm in the future.”⁶⁹

The second landmark moment for the RtoP doctrine came three years after the ICISS Report. In the 2004 High-level Panel on Threats, Challenges and Change Report titled A More Secure World: Our Shared Responsibility, the UN High-level Commission utilized RtoP as a benchmark for judging the Sudanese government’s actions in Darfur.⁷⁰ This instance marked the first time that a UN commissioned report had applied the RtoP principle and found that a state had “manifestly failed to protect its citizens.”⁷¹ The High-level Panel document outlined the doctrine in the context of Chapter VII of the UN Charter and emphasized every state’s duty to protect people from suffering from preventable tragedies.⁷² However, the question of which state should assume said responsibility was left unanswered, since ‘every state’ could be interpreted as “a simple reminder of the *erga omnes* nature of the international obligations” or as a “shift from the host state to every other state in cases where the former is unable or unwilling to act.”⁷³ The latter interpretation would greatly expand the pre-existing framework of the law of state responsibility by establishing a multi-dimensional system of responsibility.⁷⁴ The High-level Panel considered RtoP an emerging norm, which is misleading in that it is “over-optimistic and over-pessimistic at the same time” since the doctrine is “so innovative that it may be premature to speak of a crystallizing practice.”⁷⁵

One year later, the 2005 United Nations World Summit was held, where more than 150 heads of state, identified with the RtoP concept and showed their support for a more restricted concept of the ‘responsibility to protect.’⁷⁶ As a response, the World Summit Outcome Document, known as WSOD, offered a

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⁶⁷ Stahn, “Responsibility to protect: Political rhetoric or emerging legal norm?,” 3.
⁶⁸ Berman and Michaelsen, “Intervention in Libya: Another nail in the coffin for the responsibility-to-protect?,” 342.
⁶⁹ Ibid.
⁷⁰ Bellamy, “Realizing the responsibility to protect,” 116.
⁷¹ Ibid.
⁷² Stahn, “Responsibility to protect: Political rhetoric or emerging legal norm?,” 5.
⁷³ Ibid.
⁷⁴ Ibid.
⁷⁵ Ibid., 8.
more constricted version of the ICISS formulation. Some RtoP advocates, such as Evans, felt that in the WSOD, the main values of the ICISS formulation “survived almost unscathed” and even saw these changes as a positive step in the right direction. For them, the World Summit, with its large international audience, represented the tipping point of the norm life cycle. Other experts, such as Carsten Stahn and Edward Luck, believed that the document demonstrated the overall confusion about the meaning of the concept and even dared to nickname it ‘RtoP lite.’ They believed that this watered-down version was actually a shift away from the ICISS document that “affirmed a restrained notion of responsibility largely devoid of normative value.”

The many differing interpretations of RtoP were exposed at the World Summit. Several states saw it as too vague and vulnerable to manipulation while others saw it as “incompatible with the Charter, noting that there is no shared responsibility in international law outside the responsibility of a state to protect its own citizens.” Moreover, the US unilaterally refused to accept that either the United Nations as a whole, or the Security Council, or individual states, have an obligation to intervene under international law and instead proposed to frame the doctrine of RtoP as a “moral responsibility.” The Outcome Document was produced as an attempt to balance all the interpretations without downgrading the doctrine to a merely moral concept but also assuming “a more reserved stance vis-à-vis responsibility to take collective action through the Security Council under Chapter VII.” For example, the language used in paragraphs 138 and 139 alluded to a voluntary, rather than a mandatory, intervention. It is relevant to note that the WSOD included a section that asked the General Assembly to bear in mind the principles of the Charter and international law. This fact proposes that even those who drafted the Outcome Document had some doubts whether their own proposal was consistent with international law and the Charter.

On April 2006, the Security Council made its very first explicit reference to RtoP in its language through the unanimous adoption of Resolution 1674. Through this Resolution concerning the Protection of Civilians in Armed Conflict, the Council confirmed the provisions of paragraphs 138 and 139 of the

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77 Evans and Thakur, “Humanitarian intervention and the responsibility to protect,” 201.
78 Hassler, “R2P and the protection obligations of peacekeepers,” 207.
80 Hassler, “R2P and the protection obligations of peacekeepers,” 207.
81 Berman and Michaelson, “Intervention in Libya: Another nail in the coffin for the responsibility-to-protect?,” 345.
82 Stahn, “Responsibility to protect: Political rhetoric or emerging legal norm?,” 6.
83 Ibid.
84 Ibid., 7.
85 Ibid., 6.
86 Ibid.
2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity\(^7\) and expressed its willingness to take the necessary steps.\(^8\) In the same month, paragraphs 138 and 139 of the WSOD were also referred to in Resolution 1706 concerning the endorsement by high-ranking representatives of almost all countries in the international community which increased the doctrine’s legitimacy.\(^9\) As Evans put it, getting such language endorsed unanimously by many international actors was a significant achievement.\(^0\) Additionally, the specific references to the doctrine in the UN resolutions mentioned above further increased its legitimacy, especially in the case of Resolution 1674, which “endorse[d] RtoP as well as the Hague and Geneva Conventions, key instruments of international humanitarian law, in calling for a broad range of protections for civilians”\(^1\) and “emphasise[d] its breadth and non-coercive aspects and [made] it compatible with other norms.”\(^2\) A more recent attempt to advance the norm is portrayed in the Roundtable Talks led by the Global Centre for the Responsibility to Protect (GCR2P), as part of the Responsibility to Protect-Engaging Civil Society (R2PCS) project in 2008.\(^3\) The project consisted of roundtable talks held in several countries aimed at “bring[ing] together NGOs from all regions of the world to strengthen normative consensus for RtoP, further the understanding of the norm, push for strengthened capacities to prevent and halt genocide, war crimes, ethnic cleansing and crimes against humanity and mobilise NGOs to push for action to save lives in RtoP country-specific situations.”\(^4\)

It is relevant to consider, however, that neither mention actually elaborated on the norm, or further interpreted RtoP or applied it to specific cases.\(^5\) Therefore, although these mentions are significant, they are not of tangible value to the legal advancement of the RtoP doctrine.\(^6\)

**RtoP in Libya**

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\(^8\) Ibid., 5.

\(^9\) Shawki, “Responsibility to Protect: The Evolution of an International Norm,” 188.

\(^0\) Evans, “From Humanitarian Intervention to the Responsibility to Protect,” 715.

\(^1\) Shawki, “Responsibility to Protect: The Evolution of an International Norm,” 188.

\(^2\) Ibid., 189.

\(^3\) Ibid., 182.

\(^4\) Ibid., 183.

\(^5\) Ibid., 188.

\(^6\) Ibid.
The humanitarian crises that took place in Libya and Syria in 2011 represent two instances in which the ‘responsibility to protect’ should have been proven to be “a force for good.”97 Unfortunately, the opposite happened, posing a serious hindrance to the evolution of the emerging doctrine. Consequently, it is relevant to analyze the Libyan and Syrian crises as evaluations that show that RtoP is still in its early stages.”98 For instance, ICISS co-chair Gareth Evans regarded the Libyan intervention as “a textbook case of the RtoP norm working exactly as it was supposed to, with nothing else in issue but stopping continuing and imminent mass atrocity crimes.”99 In 2011, the Security Council referenced RtoP in Resolution 1973, which authorized the use of force to protect civilians in Libya. Initially, the Resolution restated the responsibility of the Libyan authorities to protect the Libyan population and authorized the use of force to protect civilians under threat of attack in the Libyan Arab Jamahiriya” while explicitly rejecting “foreign occupation force of any form on any part of Libyan territory.”100 President Barack Obama expressed that the intervening parties would not “use force to go beyond a well-defined goal – specifically, the protection of civilians in Libya.”101 The situation became more complex when, a few days later, he contradicted himself by stating that while the military goal was to save lives, the world would “continue to pursue the broader goal of a Libya that belongs not to a dictator, but to its people.”102 For this fact alone, it is not surprising that many RtoP scholars are unsure if the NATO-led operation in Libya remained a “textbook RtoP case for its duration.”103 In essence, Resolution 1973 in Libya was supposed to prove that RtoP was a useful instrument in the regulation of humanitarian intervention. Unfortunately, the doctrine lost much of its hard-earned credibility from the international community and suffered adversely when the principle was used to justify NATO deployment.104

When the Syrian crisis began soon after, it was assumed that, since the concept of the responsibility to protect had been used to authorize intervention in Libya a short time prior, intervention on humanitarian grounds would also be authorized in this instance. The assumption was erroneous since, the misuse of

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98 Ibid., 49.
99 Berman and Michaelsen, “Intervention in Libya: Another nail in the coffin for the responsibility-to-protect?,” 350.
101 Berman and Michaelsen, “Intervention in Libya: Another nail in the coffin for the responsibility-to-protect?,” 354.
102 Ibid.
103 Evans and Thakur, “Humanitarian intervention and the responsibility to protect,” 206.
104 Berman and Michaelsen, “Intervention in Libya: Another nail in the coffin for the responsibility-to-protect?,” 354.
RtoP in Libya negatively influenced Russian and Chinese perspectives on it, being countries that strongly oppose international intervention.\textsuperscript{105} By ousting Muammar Qaddafi and overstepping the mandate, NATO broke down the trust of two Security Council members who, in turn, exercised their veto and created a blockade for action in Syria. Former Russian President Dmitry Medvedev, immediately affirmed that Russia would “block any similarly-worded Security Council resolution on Syria” compelled by his firm belief “that a good resolution has been turned into a piece of paper” and then used to justify a meaningless military operation.\textsuperscript{106} South African officials were also alarmed that the resolution was “part of a hidden agenda aimed at once again instituting regime change.”\textsuperscript{107} After analyzing the blatant abuse of the doctrine in Libya, it becomes less difficult to understand why many governments around the world continue to see RtoP as a “Trojan horse that provides a humanitarian alibi for powerful…western states…to pursue their national policy and [advance] their economic and strategic interests.”\textsuperscript{108} It is impossible to quantitatively assess the costs that the abusive intervention in Libya has imposed on the doctrine’s progress towards norm status. However, the international community’s paralysis in face of the Syrian crisis shows that RtoP consensus has been severely “damaged by gaps in expectation, communication, and accountability between those who mandated the [Libyan] operation and those who executed it.”\textsuperscript{109}

**Criticisms and Weaknesses**

Even prior to the Libyan crisis it had been widely suggested that the RtoP doctrine is a “double edged-sword, susceptible to abuse.”\textsuperscript{110} Looking outside of the Libyan context, many opposing nations fear that it gives way to potential abuse by states who might use RtoP arguments to justify unilateral self-interest actions.\textsuperscript{111} For example, the representative of Egypt to the United Nations stated his nation’s, “concerns about the possible abuse of RtoP by expanding its application to situations that fall beyond the four areas defined in the 2005 World

\textsuperscript{105} McGee, "The Responsibility to Protect in the Context of the Syrian Civil War," 50.
\textsuperscript{106} Berman and Michaelsen, “Intervention in Libya: Another nail in the coffin for the responsibility-to-protect?,” 354.
\textsuperscript{107} Ibid.
\textsuperscript{109} Evans and Thakur, “Humanitarian intervention and the responsibility to protect,” 206.
\textsuperscript{110} Bellamy, “Realizing the responsibility to protect,” 125.
\textsuperscript{111} Ibid., 113.
Summit Outcome, and by misusing it to legitimize unilateral coercive measures or intervention in the internal affairs of States.”

To complicate matters, some of the countries that condemn RtoP for being misapplied also abuse it themselves. For example, Russia has claimed on several occasions to believe RtoP’s interventionist “practices to be illegitimate and dangerous and apt to lead to a realignment of the entire United Nations system” and the “council’s application…of enforcement measures under Chapter VII of the United Nations Charter [to be] unjustified and excessive.” In this context, it is interesting to note that despite its open opposition, Russia referred to RtoP principles in its justification of unilateral armed intervention in the 2008 Georgia events. By distorting it in this way, Russia is weakening the ‘responsibility to protect’ concept and further pointing out that it will require more than a few adjustments to ever transform into a legal principle.

Another strong critic of the responsibility to protect is China. Although open to discuss application of RtoP, China asserts that “RtoP cannot be used to place pressure on states because it remains merely a concept and lacks the force of international law.” Since human rights are of lesser importance than sovereignty to Chinese officials who feel that, “external interference weakens the independent sovereignty and further deteriorates the human rights situation,” it is unlikely that the Chinese government will ever completely fully embrace RtoP practices. However, by signing on to the High-level Panel on Threats, Challenges and Change, supporting the Outcome Document at the World Summit in 2005, and not using its veto power on interventionist measures in Libya, it is evident that China’s attitude towards humanitarian intervention has shifted from absolute non-intervention to conditional interference intervention. On this note, it is relevant that China showed support for the WSOD but not the original formulation of RtoP in the ICISS report, which attempted to bypass the Security Council authorization. Clearly, China desires its veto power to remain intact, further emphasizing its conditional support. China’s minor, yet significant, change of attitude towards greater support for human rights protection and intervention under the UN framework gives hope that perhaps, over time, other states could also make such a

112 Berman and Michaelsen, “Intervention in Libya: Another nail in the coffin for the responsibility-to-protect?,” 347.
113 Carter and Weiner, International Law, 1012.
114 Berman and Michaelsen, “Intervention in Libya: Another nail in the coffin for the responsibility-to-protect?,” 346.
115 Tiewa, “China and responsibility to protect: Maintenance and change of its policy for intervention,” 160.
116 Ibid., 159.
117 Ibid., 161.
shift, advancing the development of the RtoP concept.\textsuperscript{118} However, in the current global stage, such a sentiment is not enough to propel RtoP forward.\textsuperscript{119}

In addition to the suspicion of RtoP being "neo-imperial in motive,"\textsuperscript{120} the doctrine’s tolerance of unilateral intervention undermines several principles of the UN Charter, "particularly those related to the use of force, sovereignty, territorial integrity and non interference in the internal affairs of states."	extsuperscript{121} As previously stated, this conflict with pre-existing widely accepted international law is one of RtoP’s major weaknesses. Another of its flaws is its close, albeit erroneous, association with humanitarian intervention, which leads "some prominent figures to misrepresent R2P as a way of ‘legalizing’ humanitarian intervention."\textsuperscript{122} The overwhelming focus that has been placed on the military intervention aspect of RtoP as opposed to its other core concepts of prevention and rebuilding has hindered consensus and compliance to this evolving norm.\textsuperscript{123} In his 2009 Report on Implementing the Responsibility to Protect, the Secretary General “removed the [RtoP] concept from the section about use of force and moved [it] to a section that dealt with the freedom to live in dignity.”\textsuperscript{124} Despite his attempts to disassociate the doctrine from armed intervention, he did not manage to make intervention on humanitarian grounds more appealing.\textsuperscript{125} Finally, RtoP’s last and possibly most notable weakness is that it is subject to Security Council authorization. The Security Council can “expressly reject a proposal for intervention where humanitarian or human rights issues are significantly at stake,”\textsuperscript{126} making it difficult to argue that the norm has the power to evolve on its own, without full P5 support. Due to this, RtoP can be considered “hostage to the political and moral corruption of the permanent members of the UNSC.”\textsuperscript{127}

**Moving Forward: Proposals for Progress**

In order for the ‘responsibility to protect’ doctrine to have any chance at prospering in the future, it is important to recognize its flaws and past mistakes

\begin{itemize}
\item \textsuperscript{118} Ibid., 170.
\item \textsuperscript{119} Ibid.
\item \textsuperscript{121} Piiparinen, “Responsibility to protect: The coming of age of sovereignty-building,” 397.
\item \textsuperscript{122} Bellamy, “Realizing the responsibility to protect,” 116.
\item \textsuperscript{123} Shawki, “Responsibility to Protect: The Evolution of an International Norm,” 181.
\item \textsuperscript{124} Stahn, “Responsibility to protect: Political rhetoric or emerging legal norm?,” 6.
\item \textsuperscript{125} Hassler, “R2P and the protection obligations of peacekeepers,” 207.
\item \textsuperscript{126} Tiewa, “China and responsibility to protect: Maintenance and change of its policy for intervention,” 155.
\item \textsuperscript{127} McGee, "The Responsibility to Protect in the Context of the Syrian Civil War," 151.
\end{itemize}
and attempt to make positive adjustments to it. One current, post-Libya proposal to consider for the improvement of RtoP is the idea of ‘Responsibility While Protecting’, or RWP. Brazil, one of the most outspoken critics of the abuse of the doctrine in Libya, has proposed RWP as a supplement, not a substitute, of RtoP. RWP calls on the Security Council to “embrace, formally or informally, an agreed set of criteria or guidelines to help it reach consensus in any debate before an RtoP military intervention is authorized” as well as for the Council to set up some sort of enforcement mechanism to ensure that RtoP–based missions remain focused on the protection of citizens from start to finish. Once again, RWP “draws attention to the propensity of coercive RtoP interventions to generate regime change in their target states.”

A different proposal that has not received much support is the idea of enacting the “Responsibility Not To Veto”, or RN2V. This idea proposes that the permanent five members of the UN Security Council could come to an agreement to refrain from using their veto power to block action in response to genocide and mass atrocities which would otherwise could pass by a majority vote. The main problem with this proposal is that the P5 (especially Russia and China) are not likely to want to give up the power of their veto. Although improbable, a restriction on veto power is needed in order to prevent that “the interests of very few dictate the fates of many.”

Another way to boost the development of the ‘responsibility to protect’ further is to place greater emphasis on the responsibility to prevent. In this way, military intervention, the deepest root of disagreement in RtoP debates, will be presented less often. Since its creation, the ICISS outlined the responsibility to prevent as the most important quality of RtoP, and yet this aspect of the doctrine remains obscure. As Evans claims, prevention is a crucial constituent of the RtoP doctrine. In fact, the ICISS report contains an entire chapter that deals with the ‘responsibility to prevent’ in which it sets out a three-step framework for the prevention of conflict: 1) early warning systems 2) preventive toolbox 3) political will. Some NGOs have played a crucial part in promoting this aspect of the doctrine, “particularly in the context of early warning efforts and helping to galvanize domestic and foreign public opinion in support of prevention.

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128 Evans and Thakur, “Humanitarian intervention and the responsibility to protect,” 207.
129 Ibid.
132 Ibid.
134 Ibid.
135 Bellamy, “Realizing the responsibility to protect,” 125.
136 Ibid.
measures.” Prevention is also emphasized in the WSOD of 2005, along with the need to prioritize peaceful reactions to mass violence. Efforts to shift the focus from intervention to prevention have been a priority of the UN and the international community for many years. This correlation between RtoP’s purpose and the historic attempts to prevent rather than react gives a hopeful glimpse of potential for progress.

One last improvement that could positively impact RtoP’s journey towards norm status would be to increase the specificity of the doctrine. There are currently a lot of misunderstandings as to how the norm should be used and “divergent expectations about when and under what circumstances the norm should be invoked.” Even in instances when the international community agrees on the pressing need for humanitarian action, the doctrine of RtoP does not automatically specify who the responsibility should fall on. Stipulating the ‘who, when, and how’ of the doctrine more clearly has the potential of preventing the abuse of those who implement the doctrine to “support their views” in convenient instances, or to justify “politically motivated interventions” in others.

Conclusion

After analyzing the path of the ‘responsibility to protect’ doctrine from its creation in 2001 to its present cases of implementation in 2011, it is clear that RtoP has reached a crossroads in its goal of staying pertinent and valuable. Despite the remarkably fast-paced rise of the concept, none of RtoP’s four milestone moments (the ICISS 2001 report, the 2004 High-level Panel on Threats, Challenges and Change report the 2005 World Summit Outcome Document, or the 2008 GCR2P roundtable talks) can be interpreted as forming binding international law under the classic sources of international law. As suggested by the Panel, an emerging norm like RtoP is only “valuable if individual Member States, whether or not they are members of the Security Council, subscribe to them” and unfortunately, this is not yet the case. For example, the UN representative of Pakistan noted that there is pre-existing humanitarian law

137 Ibid.
138 Ibid.
140 Ibid., 184.
141 Ibid.
142 Ibid., 185.
144 Stahn, “Responsibility to protect: Political rhetoric or emerging legal norm?,” 2.
145 Ibid., 5.
addressing this issue and asserted that it was “not the absence of an interventionist doctrine” that led to the humanitarian catastrophes of the 1990s. Similarly, the Russian envoy has boldly stated that “the establishment of an international norm presupposes that there is wide support within the international community for such a norm. However, that is not the case here.” As Sikkink explains, “norms have power in, and because of, what people do.” Therefore, without widespread acceptance and practice of the responsibility to protect, the GA-endorsed concept could fade away due to its “lack of structural characteristics necessary to facilitate its development into a normative principle of international law.” Ultimately, the success of RtoP depends on the desires of major world powers and on the more morally grounded humanitarian-based implementation for the protection of citizens rather than political self-interest. Consequently, “any claim that [it] is an emergent customary rule runs up against the fact that several major states have fundamentally contested [its] legality.”

It is true that RtoP has the potential to “gradually replace humanitarian intervention in the course of the twenty-first century.” However, further adjustments, compromises, a narrower interpretation, clearer definitions, expectations, and greater support by international actors will be necessary for it to advance into an organizing principle of international society. In the meantime, it lacks sufficient backing to become enforceable international law and subsequently, thirteen years after its birth, remains “in many ways still a political catchword rather than a legal norm.”

146 Berman and Michaelsen, “Intervention in Libya: Another nail in the coffin for the responsibility-to-protect?,” 343.
147 Ibid.
148 Margaret E. Keck and Kathryn Sikkink, Activists beyond borders: advocacy networks in international politics, 35.
149 Berman and Michaelsen, “Intervention in Libya: Another nail in the coffin for the responsibility-to-protect?,” 343.
151 Nicholas J. Wheeler, Humanitarian intervention after kosovo: Emergent norm, moral duty or the coming anarchy?, International Affairs (Royal Institute of International Affairs 1944) 77, no. 1 (January 2001), 118.
152 Stahn, “Responsibility to protect: Political rhetoric or emerging legal norm?,” 13.
153 Ibid.
154 Ibid.
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