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HUMANITARIAN CRISIS AND THE USE OF FORCE IN SYRIA

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ABSTRACT

This thesis conducts research on the humanitarian crisis in Syria to inspect if there are any grounds to conduct an intervention and utilise force with necessary legality and legitimacy. The focus lies particularly on justifications derived from Resolution 1973 concerning the Libya intervention and Resolution 688 regarding the no-fly zone in Iraq and relies on application of Resolution 2118. Syria has been a subject of largest humanitarian catastrophe in modern times, and the Security Council has by large failed to address it properly. For this reason it is important to study whether the conditions provided in the Chapter VII of the UN Chapter or Article VIII of Convention to Prevent Genocide have been fulfilled to give legality to potential infringement of sovereignty of Syria with humanitarian intervention.

Kosovo report recognises that there exist both legal and legitimate reasons to intervene, and for this reason this thesis studies also whether this potential action has legitimacy and if it can give legal basis for the use of force. Research is conducted with document analysis and direct observation of important legislation and cases concerning humanitarian intervention and the broader just war tradition. It is found that despite human right abuse committed by Syria's regime, the requirement of legitimacy has not been fulfilled as the conditions set by R2P doctrine have not been met. However, due to Syria's violations of international agreements, especially concerning the *Framework for Elimination of Syrian Chemical Weapons*, legal authority can be derived from Resolution 2118 to allow the use of force. The extent of this action and whether it can be used as basis for a full-scale humanitarian intervention cannot be determined in a thesis of this size and it is thus left as a topic of future research.

Keywords: *Syria, Just war theory, Humanitarian intervention, International law, Human Rights*

INTRODUCTION

This thesis aims to study whether there exist an enforcable authority to exercise the use of force to intervene in Syria and end the humanitarian crisis, relying mostly on Resolution 2118 and drawing from Resolution 1973 concerning Libya intervention and Resolution 688 regarding the no-fly zone in Iraq. Arab Spring resulted in eruption of violence against the ruling Assad family and regime, which in turn resorted in repressing the rebellion with its army and security forces. While the Security Council has orchestrated successful humanitarian access to Syria with Resolution 2449, it is inadequate approach to address the root cause of violations, which raises question whether definite solution can be achieved only with humanitarian intervention. Considering the scale of humanitarian crisis and the numerous failed resolutions drafted to address it, it is important to research whether there are any grounds according the existing legislation to enforce the implementation of international law and human rights with the use of force, if necessary.

Subject of the use of force and intervention have traditionally been hotly debated topics, partly because they mean infringement of sovereignty of the state. Legality for it is drawn from the Chapter VII of the UN Charter to protect international peace and security and Article VIII of Convention to Prevent Genocide, both requiring the authorisation from the Security Council. Sovereignty of the state in turn is protected by the Article 2(1) of the UN Charter and is further reinforced by the Corfu Channel and Nicaragua cases. However, there are scholars arguing that the human rights have evolved to be a legal basis for humanitarian intervention. This was used as argument during unilateral Kosovo intervention by NATO, and subsequent Kosovo report found that there was a gap between “legitimacy and legality”. It will be explored whether this gap has been closed.

This thesis argues that the legality cannot be achieved without the authorisation and the legitimacy is more of a descriptive factor which can be determined with just war theory. This, in turn, provides required groundwork for intervention on humanitarian grounds. For this reason, it is necessary to examine this tradition to understand present doctrines such as Responsibility to Protect. Along with this, this thesis examines whether the arguments by UK and US used when establishing the no-fly zone over Iraq can be applied similarly in Syria as both scenarios share many characteristics. For this reason, past interventions, especially in Iraq, will be examined.

The Syrian regime has previously been a subject of failed resolutions and thus offers ample data for analysis of the matter for a thesis of this scope because of its large-scale and well-documented human rights violations. Additionally, it is still a present problem with international coverage. My contribution is to combine arguments from existing legislation, articles, and justifications for past interventions to find out whether this action has any legal merit. This thesis employs the qualitive methodology, and in this case utilises direct observation and document analysis. As the proper protocol requires, this thesis starts with this identification of methodology, then moving onto data collection, ethical concerns, and following that up with analysis. The aim is to conduct a well-composed qualitative study enhancing the comprehensibility of a social phenomenon.[1] This thesis is drawing from primary websites of the United Nations – the UN Charter, resolutions, case law of the ICJ - and secondary sources – Human Rights Watch and Syrian Observatory for Human Rights - and turns to background material and legal arguments made by scholars when otherwise lacking. It also occasionally utilises interviews given by legal experts on the field.

[1] Lisa Webley 2012. *Qualitative Approaches to Empirical Legal Research*. Retrieved from https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199542475.001.0001/oxfordhb-9780199542475-e-39 20 March 2020.

1. Legal basis

To understand on what legal grounds this thesis stands on, it will proceed forward by first exploring the important institutions, legislation and necessary background information.

1.1. International law

Foundation of international law is the *Lotus principle*, which elevates international law above sovereignty of the state. Additionally there are what we know as human rights, the basic rights and freedoms that belong to every person in the world, from birth until death. They are the result of WW2 and Nuremberg trials, where they were articulated properly for the first time: this produced the Charter of Nuremberg Tribunal in 1945, which defined crimes against humanity. They've been further articulated and supplemented with resolutions, conventions, and case law in following years, such as the Geneva Convention Prevention of Genocide of 1948, the Rome Statute of the International Criminal Court of 1998 – which established four major human right crimes - and the Universal Declaration of Human Rights. This time also saw the establishment of the United Nations as a replacement for the League of Nations.[2] Its most important foundational document is the UN Charter, which establishes legal basis for principles of sovereignty, human rights and noteworthily for this thesis, military intervention.

Unlike its predecessor, which was largely defunct and helpless in the face of breakout of World War, the UN was given authority through the Security Council to launch interventions and other peacekeeping operations to ensure its effectiveness and restore international peace and security. [3][4] Additional supplement legislations were agreed upon to ensure certain human rights for the war, soldiers, and parties involved. These were called four Geneva Conventions of 1949 and the

[2] Cassese, Antonio 2004, *International Law.* Oxford. Oxford University Press, 317-319.
[3] Bass, Gary J. (2008). *Freedoms Battle: The Origins of Humanitarian Intervention*, New York, Alfred A. Knopf, 75.
[4] Charter of the United Nations.

Additional Protocols of 1977 relating to the protection of victims of armed conflict[5] and the Hague Conventions of 1899 and 1907 (which regulated the conduct of war, war crimes, weaponry and the selection of targets).[6] Also, case law and resolutions have also supplemented various principles and rules that function as customary international law, which can be exemplified in the principle of sovereignty and non-intervention with the cases of Nicaragua[7] and Democratic Republic of Congo v. Uganda[8]. For the rule of customary international law to be legitimate, it requires State practice and opinion juris, belief that state is legally obliged to do a particular act. [9]

When it comes to enforcement, most of the time it is left up to states themselves to supervise that human rights aren't violated inside of their borders. There are various independent organisations and organs of the UN that observe the conduct of individual states and produce reports of their progress or lack of it. However, if it is deemed that the state is unwilling or unable to prosecute its criminals, the Security Council can establish Tribunal, a legal entity to judge the human rights violations. These are under jurisdictions of ICJ, International Criminal Court, which similarly has a mandate to prosecute those who have infringed on jus cogens, the peremptory norms, which includes most basic human rights[10]. In cooperation with the state, the Security Council can also launch peacekeeping operations to prevent further abuse and supervise the respect of the human rights[11], but as the example of Darfur has demonstrated, these are very complex matters and subject to a lack of success and failure.[12] As for individual states, there's a prohibition against the use of force, which has developed into a customary rule of international law, making it apply even to parties not part to the UN Charter.[13]

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[5] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), (1977).
[6] Gary D. Solis 2010. *The Law of Armed Conflict - International Humanitarian Law in War.* Cambridge University Press, 3-4.
[7] International Court of Justice. 1986 I.C.J. 14. Niracagua vs. the United States of America.
[8] International Court of Justice. 2005 I.C.J. 19. Democratic Republic of the Congo v. Uganda.
[9] Supra nota 2, 156.
[10] Crawford, Emily Alison Pert 2015. *International Humanitarian Law*. Cambridge. Cambridge University Press, 22
[11] Supra nota 4. Chapter VII.
[12] Mikael Nabati 2004. *The U.N. Responds to the Crisis in Darfur: Security Council Resolution 1556*. The American Society of International Law. Vol. 8 (18). Retrieved from https://www.asil.org/insights/volume/8/issue/18/un-responds-crisis-darfur-security-council-resolution-1556 20 March 2020.
[13] Supra nota, 2, 56.

1.2. Humanitarian intervention

This concept of what is usually called the humanitarian intervention – usage of military means to ensure peace – is traditionally an interesting and highly controversial topic, in part because of its inherently paradoxical nature. It encompasses a tension between two competing principles of the UN previously mentioned, the sovereignty of the state, enshrined in Article 2.1 of the UN Charter, and the human rights, found in the Convention on the Prevention and Punishment of the Crime of Genocide of 1948 and the Rome Statute of the International Criminal Court of 1998. Fulfilment of the humanitarian intervention means that the sovereignty of that specific state must be infringed upon in order to protect human rights of its population. It is defined by Robertson as "*A doctrine under which one or more states may take military action inside the territory of another state in order to protect those who are experiencing serious human rights persecution, up to and including attempts at genocide."*[14] This definition will be utilized for this thesis.

On the practical matters, military intervention cannot be authorised without agreement of the whole Security Council, which has led to messy and inconsistent practical implementation. This kind of collective intervention itself gains authorisation from the Chapter VII of the UN Charter and the Genocide Convention previously mentioned. However, noteworthily the UN Charter doesn't mention "human rights" as a legitimate reason, only allowing the intervention to restore "international peace and security". Wording of Article 42 is as follows: "*Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations."*[15]and is reinforced with Article 43.1. which continues; "*All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed*

[14] David Robertson 2004. *A Dictionary of Human Rights*. Routledge 2d edition, 119.
[15] Supra nota 4. Chapter VII.

forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security."[16] Further instructions are given from Article 43.2. to Article 51. Genocide Convention also gives addition to this doctrine with Article VIII, which in contrast to the UN Charter directly refers to the protection of human rights by stating that *"Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any other acts enumerated in article III."*[17] These Articles construct the hard law underpinning the military intervention: however, because the gridlock in the Security Council, the humanitarian intervention has come to be associated among some circles with actions done to protect the human rights without the authorisation. This was the case with NATO's intervention in Kosovo, which was considered legitimate, but not "legal".[18]

While legitimacy of the doctrine is unquestionable, there is a debate between factions of those arguing in favor of the the intervention on the basis of "human rights" and those arguing against it. The main thesis of those making a case for its application is that the customary international law and the many conventions designed to protect human rights indicate that the status of human rights has evolved to override sovereignty. For example, the Security Council Resolution 688 - which condemned Iraq's repression of the Kurds and other groups as a threat to international peace and security - was used as a justification for the subsequent no-fly zone[19], though not with the blessing of the Security Council. On the flip side, the other side points out that the UN Charter only recognises the threat to international security and peace, making authorisation illegitimate if only argued from humanitarian point of view, though the protection of human rights can be used as a supplementary factor. Justin Conlon acknowledges that there exist some legal grounds to launch the intervention on humanitarian basis, but argues that it is used mostly for imperialist

[16] *Ibid.*
[17] Supra nota 4.
[18] The Independent International Commission on Kosovo 2000. *The Kosovo Report*. Oxford University Press, 8.
[19] Francis Kofi Abiew 2010. *Humanitarian Intervention and the Responsibility to Protect: Redefining a Role for "Kind-Hearted Gunmen"*. Routledge, Criminal Justice Ethics Vol. 29 (2), 93-100.

purposes with a net-negative long-term humanitarian results, and ultimately it is the principle of sovereignty that is more effective to guarantee the protection of human rights.[20]

1.3. History

This part examines the evolution of doctrine to its present form to achieve better understanding of present circumstances and challenges with its application.

1.3.1. Background

The application of humanitarian intervention dates all way back to Middle Ages, when Christian scholars tried to use philosophical and theological arguments to justify warfare and the associated sinful acts. Holy Wars and Crusades could be argued to be one expression of this, where the fighting was seen as protection of Christians against Muslims and thus legitimate. Catholic scholar Thomas Aquines rejected this part of doctrine and developed it to its current form with his take on just war theory and developing the principles for just war, establishing a tradition which is held by Catholic Church to the day. Just war -arguments were used in various ways in colonization of Africa and by Spanish authorities when forcibly converting indigenous native population of America – expressing that the traditions practiced by them were against the natural law – but what we know as "humanitarian intervention" was expressed for the first time in the nineteenth century.[21]

The End of the 30-year wars in Europe led to Westphalian Peace Treaty of 1648, which defined the sovereignty and replaced the theological arguments for Just war with naturalist ones[22]. Thomas Hobbes famously proclaimed that the sovereignty could not be held accountable, and indeed, for

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[20] Justin Conlon 2004. *Sovereignty vs. human rights or sovereignty and human rights?* SAGE Publications, New Delhi, Thousands Oaks, London, 96-97.
[21] Bass, Gary J.2008. *Freedoms Battle: The Origins of Humanitarian Intervention*, New York, Alfred A. Knopf, 2008, 16-17.
[22] Hehir, Aidan 2013. *Humanitarian Intervention an Introduction*, Merkourios - Utrecht Journal of International and European Law. Basingstoke, Palgrave Macmillan, 50-51.

a long period of time there were no principles or rules against intervention by other foreign states. It was widely accepted belief that war couldn't be justified, but many scholars kept trying, and there were various interventions done in the name of humanitarian concerns, such as intervention against the Ottoman Empire by Britain and Russia or US intervention during the Cuban war with Spain in year 1899. [23] However, many of these were done under the guise of protection of human rights, which can be exemplified when Adolf Hitler invaded Czechoslovakia to "protect Germanic peoples." This history was probably reason for exclusion of the humanitarian intervention from the UN Charter and why as a concept it is held under heavy scepticism by many of international community.

1.3.2. Modern times

The concept of "humanitarian intervention" became once again relevant during the Gulf war with Iraq invading Kuwait in 1991, prompting an international response which lead to establishment of no-fly zone and intervention by US. However, as previously demonstrated, the problem with sovereignty and scepticism concerning sincerity of Western interventions explains the reluctance of other states to give their approval, which is a reason why even in this situation the intervention was done only after it caused problems for the sovereignty of neighbouring nations. This was seen in the arguments for the Security Council Resolution 688, where the infringement of state's sovereignty was justified by the refugee-flows to Turkey and Iran instead of justifying it with Saddam's massacres against Iraq's Kurd and Shia populations. However, it was the first time where a significant number of governments denied a state's right to the sovereign exercise of its power against its population by condemning Saddam's actions and demanding access for humanitarian organisations. [24] It was also later utilised as one of the justification for no-fly zone established by the UK and US. This shows that the principle of non-intervention cannot protect populations against blatant genocidal acts prohibited under the international law. Another intervention was conducted in Somalia, where the problem of state sovereignty didn't exist as there was not any structure which could be considered "sovereign". UN launched UNOSOM II in March 1993 to

[23] *Ibid.*, 193-194.
[24] Mona Fixdal, Dan Smith 1998 *Humanitarian Intervention and Just War*. Mershon International Studies Review, Vol. 42 (2), 295–312.

restore international peace and security, but the Battle of Mogadishu and subsequent US withdrawal led to end of the mission with Resolution 954. Somalia remained as a failed state without real sovereign authority. Other operations launched around the same time include Haiti, Sierra Leone, Kosovo, East Timor, Liberia, the Democratic Republic of Congo, Ivory Coast, Darfur, and South Sudan, all which showed similarly mixed results.[25]

The tension between sovereignty and human rights started to manifest and the resulting inability to protect human rights became more clear with the breakdown of Yugoslavia and the subsequent Bosnia crisis. Despite the blatant human rights violations practiced by all sides against civilian population, the Security Council was incapable of acting partly due to Russia's reluctance and the threat of veto resolution. UNSC Resolution 743 was approved to create safe zones and a no-fly zone, but Serbs didn't take these seriously, and in July 1995 committed a massacre in Srebrenica without a response from the peacekeeping forces. Unauthorised intervention was finally launched by NATO after it became clear that the UN and neighbouring European countries couldn't stop the killings, and with bombing campaign forced parties to negotiating table. This inaction hurt the credibility of the UN, and Kosovo report produced in its aftermath acknowledged that the gap between legitimacy and legality should be closed in order to avert another paralysis of the Security Council in face of humanitarian crisis.

At the same time in Rwanda, the Security Council had managed to orchestrate a ceasefire between warring parties of Tutsis' and Hutu's with UNAMIR, which employed 2500 peacekeepers to ensure the agreement was honoured. However, the President of Rwanda died in a place crash on 6 April 1994 which lead to further escalation and beginning of infamous Rwanda genocide. The Security Council was unable to act when Hutu's massacred 1 million Tutsis, about 75% of whole population, and displaced many more. UNAMIR wasn't authorised to intervene, and the international community simply stood by while killings took place. Failure in Somalia was holding back US, and the massacre only came to an end after Tutsi rebels defeated Rwanda's army. This

[25] Conor Foley 2013. *The Evolving Legitimacy of Humanitarian Interventions*. Sur - International Journal on human rights. Retrieved from https://sur.conectas.org/en/evolving-legitimacy-humanitarian-interventions/ 20 March 2020.

inaction was apologised by the Secretariat-General of the UN, and later prompted him to challenge nations to find solution, which in turn resulted into a birth of the Responsibility to Protect (also known as R2P) doctrine in Resolution 60/1.[26] This will be elaborated upon later.

The terrorist attack on 11 September 2001 began the War against the Terror and R2P was utilized in arguments justifying these operations, although this was met by vocal protests from the advocates of the doctrine: Gareth Evans dubbed Blair as a "false friend" for this attempt to re-package the following Iraq invasion as humanitarian intervention.[27] In this atmosphere there was a general lack of will to apply R2P, and while it was referred in 2006 Resolution 1706 during Darfur operation, it proved ineffective and no military intervention was launched, mostly because of China's opposition.[28] However, when Arab Spring erupted and Libya's dictator Gaddafi started massacring the protestors, there was a rare agreement among the Security Council to intervene and establish a no-fly zone with Resolution 1973[29]. This was at the same time the litmus test for R2P as its first pillar was referred in the Resolution.[30] NATO launched in 2011 a bombing campaign to stop Gaddafi's forces, but it became quickly clear that aim was regime-change instead of simply protection of the civilians, leading to victory of rebels and death of Gaddafi. This led many emerging powers – such as India, Russia, Brasilia, China – to view R2P doctrine with scepticism and as another tool of Western imperialism.[31] While many scholars argue this has resulted in the death of R2P, Gareth Evans disagrees by arguing that while acknowledging it was a step back, R2P can still prove to be useful doctrine.[32] As a result of this, when the Arab Spring continued and led to civil war in Syria, the Security Council found itself in a familiar gridlock and unable to pass Resolution to either condemn or intervene.

[26] *Ibid.*
[27] Supra nota 25.
[28] Supra nota 12.
[29] The Security Council Resolution. S/RES/1973 (2011). Retrieved from https://www.un.org/securitycouncil/s/res/1973-%282011%29 20 20 March 2020
[30] Ramesh Thakur 2013. *R2P after Libya and Syria: Engaging Emerging Powers. The Washington Quarterly.* Vol.36 (2), 61-76. Retrieved from https://www.tandfonline.com/doi/full/10.1080/0163660X.2013.791082 20 March 2020.
[31] *Ibid.*
[32] Gareth Evans. *"Responsibility to Protect after Syria".* Alan Philips. Transcript. *The World Today,* Chatham House, October 2012

1.4. Syria

Syria is a country in the Middle East, which has been led since end of colonialism by Assad and Alawite minority. It is a Sunni majority country, but it includes many other population groups. The fact that the Alawites are in the ruling position has caused a great deal of resentment, and it has been due the suffocating surveillance of the population that the Assad family has been able to maintain control of the country. However, even these numerous agencies and a relatively strong army weren't enough to prevent the eruption of protests and the subsequent armed revolt caused by the Arab Spring. Next, this thesis takes look to the current humanitarian situation and actions taken by the UN to address the crisis.

1.4.1. Humanitarian crisis

The conflict in Syria has been carried out between a diverse range of factions, with many competing rebel groups simultaneously fighting against each other and the regime. Notably in June 2014, one of these rebels group became known as "ISIS" and expanded the civil war to Iraq's territory, drawing an international response. Around the same time, Kurds formed their own factions, fighting against the rebel groups, ISIS, and occasitionally the regime. Furthermore, recognised terrorist-groups Hezbollah and Iranian Revolutionary Guard sided with Syria's regime and activately participate in the combat even today. Many states have intervented through proxies, with Qatar originally funding the extremist Islamist groups (one of which reportadly became ISIS) while US has supported various other competing moderate rebel groups, such as now defunct Free Syrian Army. The other major player is Turkey, which currently funds and protects the rebel group National Liberation Front which, in turn, has ties to terrorist groups such as Hayer Tahrir al-Sham and Hurras al-Din. Syria's regime is also drawing support from Russia, which has carried out bombing campaigns against the rebels and vetoed the resolutions against it in the Security Council.[33] This seven years long civil war has finally narrowed down to fight between two parties, rebel coalition in Idlib and the Syrian regime, though Kurds and several other parties are still

[33] Kim Huan Tan, Alirupendi Perudin 2019. *The "Geopolitical" Factor in the Syrian Civil War: A Corpus-Based Thematic Analysis.* Retrieved from https://journals.sagepub.com/doi/full/10.1177/2158244019856729 20 March 2020.

holding some independent territories. The Security Council has passed Resolution 2336 to make it possible for humanitarian organisations to continue their work inside of Syria, and Resolution 2401 to orchestrate ceasefire between regime and rebel groups, but these were undermined due the infringements of Syrian Arab Army for its attack to East Ghouta.[34]

Overall, it has been estimated that the conflict in Syria has resulted in more than 586,100 death and millions displaced.[35] The infrastructure of country has been demolished and there have been countless human right violations committed by every participating party in the conflict. The Security Council has tried to pass many resolutions to condemn or in some other way remedy situation, but these have been stopped by combination of Russia and China.[36] However, in 21 August 2013 it was reported of destructive chemical attack on the rebel positions in Ghouta resulted in 281 to 1729 victims, and Syria's regime was deemed to be responsible.[37] While it never officially acknowledged to be in possession of chemical weapons, it was commonly accepted fact among the international community and investigation pointed to its direction. This was the red line placed by the US, and it was moving to use the force against Syria, but it managed to achieve a compromise with Russia. In the "*Framework for Elimination of Syrian Chemical Weapons*", Syria agreed to join the Chemical Weapons Convention and to give up its chemical weapons to Russia, which in turn was to destroy them.[38] This resulted in the Resolution 2118 of the Security Council.

1.4.2. Resolution 2118

The Security Council recalled previous Resolution 1540, 2042 and 2043 and then followed by reaffirming the strong committent to the sovereignty, independence, and territorial integrity of the Syrian Arab Republic. It further reaffirmed that the proliferation of chemical weapons, as well as their means of delivery, constituted a threat to international peace and security, and bound Syria to

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[34] Moumtzis Panos 2018. *Statement by Panos Moumtzis, Regional Humanitarian Coordinator for the Syria Crisis, on East Ghouta Amman, 19 February 2018.*
[35] Syrian Observatory for Human Rights 2020. *Syrian Revolution NINE years on: 586,100 persons killed and millions of Syrians displaced and injured.* Retrieved from http://www.syriahr.com/en/?p=157193 20 March 2020
[36] Supra nota 33.
[37] United Nations 2013. *Report on the Alleged Use of Chemical Weapons in the Ghouta Area of Damascus on 21 August 2013.* Retrieved from https://undocs.org/A/67/997 20 March 2020.
[38] Closure of OPCW-UN Joint Mission. Retrieved https://opcw.unmissions.org/background 20 March 2020.

the deadline of 30 June 2014 to complete the destruction of chemical weapons. This included the requirement to allow complete access to UN and OPCW chemical weapons inspectors. It also called for a transitional governing body to be formed on the basis of mutual consent and for the Syrian people to determine the future of the country. However, it was highlighted that this transition should be peaceful. If Syrian would not abide, Resolution left the door open to military response; "*The Security Council decides, in the event of non-compliance with this resolution, including unauthorized transfer of chemical weapons, or any use of chemical weapons by anyone in the Syrian Arab Republic, to impose measures under Chapter VII of the United Nations Charter*."[39] It is noteworthy that this doesn't straight up give legality for the use of force, but obligates the Security Council to act in the event of infringement.

Syrian regime disclosed its sites and the OPCW and UN inspectors accessed them. In 4 January 2015, it was stated that the destruction of the chemical weapons had succesfully mostly been completed, though this has been disputed at later points.[40] This will be discussed in more detail in analysis.

[39] The Security Council Resolution. S/RES/2118 (2013), 4. Retrieved from http://unscr.com/en/resolutions/2118 20 March 2020.
[40] OPCW 2014. *Ninety-Six Percent of Syria's Declared Chemical Weapons Destroyed – UN-OPCW Mission Chief*. Retrieved from https://opcw.unmissions.org/ninety-six-percent-syria%E2%80%99s-declared-chemical-weapons-destroyed-%E2%80%93-un-opcw-mission-chief 20 March 2020.

2. Legal theories

First, before moving onto the research question itself, key concepts, rights and principles underpinning the discussion have to be defined. The main problem with humanitarian intervention is that Member States have differing definitions of the concept of "sovereignty" and military intervention forces this discussion by making protection of human rights more paramount. This thesis starts by defining what are differing views on the "sovereignty" and then move to "just war theory" and development to "Responsibility to Protect" doctrine.

2.1. Principle of Sovereignty

The gridlock in the Security Council is usually attributed to political calculation and powerplay. In part this is right, as the intervention may be used to advance the interests of individual states, which results in sometimes warranted scepticism among the members as demostrated by Justin Conlon and made worse by the fact that action requires mutual agreement in the Council. [41] However, political part is merely a first layer of the problem which has deeply rooted philosophical and semantic differences about the concept of sovereignty, human rights and what it means to different actors.[42]

Article 2(1) of the UN Charter states: "*The Organization [UN] is based on the principle of the sovereign equality of all its Members*".[43] This sovereignty is considered grundnorm of international society on which rest stands on. It has its roots in Westphalia Treaties' in 1648 previously mentioned, which established that the states are not legally allowed to intervene in the domestic affairs of each other.[44] This was importantly reaffirmed by the United Nations in 1965: "*No state has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external*

[41] Supra nota 20.
[42] Mona Fixdal, Dan Smith 1998. *Humanitarian Intervention and Just War*. Mershon International Studies Review, Vol. 42 (2), 293.
[43] Supra nota 4. Article 2(1).
[44] Supra nota 10, 24-25.

affairs of any other state. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic, or cultural elements are condemned."[45] Thus, most would agree that the sovereignty is found in the State, whose characteristics are defined in the Article 1 of the 1933 Montevideo Convention on the Rights and Duties of States followingly; "*a person of international law should possess the following qualifications: (a) a permanent population, (b) a defined territory, (c) government and (d) capacity to enter into relations with the other states*."[46] Its protection and sovereignty is further reinforced in the Article 2(3) of the UN Charter; *"All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.*"[47] It outlines three different ways in which states are prohibited from the use of force. Force cannot be used *1) against the territorial integrity of a state; 2) against the political independence of a state; or 3) in any other manner inconsistent with the purposes of the UN."* Finally, it finishes by stating; *"Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state."*[48]

On the matter of conflict between sovereignty and human rights, this thesis utilizes three models proposed by Jack Donnelly to define and better understand the conflicting perspectives held by different parties. *Statism* sees the human rights as the responsibility of that specific sovereign state and its rights take precedence – ultimately, it is about practical power between competing states and military intervention is one expression of this. The second model is *internationalism,* in which the sovereignty of state is acknowledged, but stresses mutual recognition and social practices between states. For them, intervention is legitimate if it gains authorisation from other states. Third is *cosmopolitanism*, where "*international system is seen as consisting of individuals rather than states. States have rights only if they promote the rights and welfare of their citizens*."[49] With this worldview, the intervention is justified by deposing illegitimate regime that by abusing its own population also simultaneously commits a crime against the international order.

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[45] General Assembly Resolution 2131 (XX) 1965. *Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty.*
[46] Montevideo Convention on Rights and Duties of States1933.
[47] Supra nota 4, Article 2(1)–(5).
[48] *Ibid.*
[49] Supra nota 42, 294.

It is a opinion expressed by this thesis that the countries with questionable human rights record tend to embrace view of statism on the sovereignty, while other states have little by little started to adopt internationalism or cosmopolitanism - and with this more human rights-oriented approach. Statism can be exemplified in cases of Russia and China, which regularly veto UN Resolutions or threaten to do it if they observe the Security Council overstepping established boundaries. Similar conceptualisation has been a standard apparatus for international community during the Cold war and much of 1990s[50]. It embodies the fear that foreign countries can justify intervention by elevating the human rights above sovereignty and jeopardise the international order by doing so.[51] In contrast to these, the states in Western sphere of influence follow more progressive cosmopolitan or internationalist approach. Overall, there has been a gradual evolution among the global community on the matter. This can be seen in the stark contrast the present France offers compared to the France of 1979, where it criticised Vietnam's military intervention in Cambodia to halt genocide committed by the Khmer Rouge as harmful, but has since participated in campaigns to stop human rights abuse by regimes of Serbia and Libya without the Security Council condemning this as an attack against the state sovereignty.[52]

Humanitarian interventions breaches another important principle established strongly in the customary international law, the principle of non-intervention, which accommodates the traditional Westphallain principle of sovereignty. This is found in the UN Charter Article 2(7): "*Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state.*" During the Nicaragua case, the United States was accused of infringing on the territorial sovereignty of the Nicaragua by arming the rebels and taking sides against sovereign regime. ICJ judged that principle of non-intervention "*forbids all States or groups of States to intervene directly or indirectly in the internal or external affairs of other States*"[53]. Similarly, when Uganda participated in the civil war in Congo, ICJ affirmed this principle by judging that "*Uganda had violated the sovereignty and also the territorial integrity of the DRC. Uganda's actions equally constituted interference in the internal affairs of the DRC and in the civil war raging there.*"[54]

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[50] Supra nota, 42, 291.
[51] *Ibid.*
[52] Walling, Carrie Booth 2015. *Human Rights Norms, State Sovereignty and Humanitarian* Intervention. US, Johns Hopkins University Press - Human Rights Quarterly, Vol. 37 (2), 388.
[53] Supra nota 7.
[54] Supra nota 8.

2.2. Just war theory

International community has accepted that in certain circumstances the war is a possible option. This concept is called "*Jus ad Bellum*", meaning resort to war and associated with "*droit d'ingérence*", right to intervene, famous call to action by Bernard Kouchner written to Los Angeles Times in 1999[55]. It is partnered with principle of *Jus in bello*, which regulates the conduct of parties during the war, seeking to minimize the suffering and protecting victims – regardless under which banner victim falls upon.[56] These principles exist on the top of old traditions dating to 400s. During medieval times, both Saint Augustine and Thomas Aquinas explored the conditions under which so-called "just war" could be enacted. Aquinas concluded that it should only be declared by the state with good and just purpose deprived of self-interest, with the peace as goal even during the violence. Similarly, Jus in bello has it roots on the old chivalric codes practiced by medieval knights. [57]

These concepts serve as an establishment to Western tradition and have their roots in theological discussion of Catholic Church. Liberalism has resulted them being adapted to more secular times, forming a basis for the present humanitarian intervention. This is one of reason that there has been a rise of criticism against it, some stating that what we nowadays see as barbarism is simply result of applying Western perceptions instead of respecting local cultures and traditions independently of these.[58] Whether true or not, it is worthwhile to explore the Just war -tradition to better understand current state and reasoning behind present legislation as it is undisputed fact that these rules and principles still influence heavily on background when forming decisions. For example, these legal concepts were heavily utilized when constructing the doctrine of Responsibility to Protect.

First of these is *right authority*, which for Aquinas was prince who derived it from God. Nowadays the liberal society has moved to more secular version of that sentiment, with authority argued to

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[55] Bernard Kouchner 1999. *Establish a Right to Intervene Against War, Oppression*. Los Angeles Times.
[56] The International Committee of the Red Cross, International Humanitarian law: Answers to Your Questions. Retrieved from https://www.icrc.org/eng/assets/files/other/icrc0020703.pdf 29 March 2020.
[57] Marcus Hedahl 2017. *The Changing Nature of the Just War Tradition: How Our Changing Environment Ought to Change the Foundations of Just War Theory*, 429-443. Retrieved from https://www.tandfonline.com/doi/full/10.1080/10999922.2017.1278667?journalCode=mpin20 29 March 2020.
[58] Gustavo Gozzi 2017. *The "Discourse" of International Law and Humanitarian Intervention*. Ratio Juris - An International Journal of Jurisprudence and Philosophy of Law. Retrieved from https://onlinelibrary.wiley.com/doi/full/10.1111/raju.12159 29 March 2020.

be coming from collective will of community or conduct of the states.[59] This topic of sovereignty was addressed more thoroughly previously. Second one is *just cause,* which was defined during medieval times as "*self-defense, defense of allies, taking back (or helping allies to take back) what was lost in a previous war, or punishing a transgression*."[60] Christians saw this concept embodied in the defence of innocent - which even superseded the right to self-defense – and in the helping of the neighbour. In modern times, this can be seen in the debate whether it is right or duty to intervene. Famous legal theorist Michael Walzer argues people should strive toward freedom, and that humanitarian intervention can be justified if the moral conviction of ordinary people is infringed by the state. It is duty of the fellow men to guarantee this self-determination. [61] Other view is that it is simply the act of genocide itself alongside of similar atrocious human right abuse that is wrong, giving the intervention its legitimacy.

Now, like previously stated, Aquinas gave a great importance to the *right intention* in the just war. For a Christian it was important that the motivation behind the actions was also just, as God was all-knowing and thus saw behind the facade. Augistine, in turn, argued that it was natural for man to seek peace, stating followingly: *"It comes to this, then: a man who has learned to prefer right to wrong and the rightly ordered to the perverted sees that the peace of the unjust, compared to the peace of the just, is not worthy even of the name of peace"* [62]. While secular version discards the idea of all-seeing God, the concept is reformulated by pointing out that the states condemn actions committed under false pretence and ulterior motives, as seen with France's intervention in Rwanda in 1994 conducted under guise of humanitarian concerns, generating a considerable amount of criticism for its platant political calculations. These hidden motives can be identified by observing the differences between rhetoric and actions.[63]

Finally, war should be the *last resort*, carried out with principles of *proportionality* and *reasonable hope*. These don't have their roots in medieval traditions, being more modern concepts. Tradition is trying to set moral limits on warfare, making it obligatory to prefer nonviolent methods, if they're achievable - though it is criticised that late action enables human rights abuse to continue

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[59] Supra nota 42, 295.
[60] *Ibid.*
[61] Terry Nardin 2013. *From Right to Intervene to Duty to Protect: Michael Walzer on Humanitarian Intervention.* UK, Oxford University Press - European Journal of International Law, Vol. 24 (1), 67–82.
[62] Supra nota 42, 301.
[63] Gustavo Gozzi 2017. *The "Discourse" of International Law and Humanitarian Intervention*. Ratio Juris - An International Journal of Jurisprudence and Philosophy of Law. Retrieved from 29 March 2020 https://onlinelibrary.wiley.com/doi/full/10.1111/raju.12159.

for needlessly longer.[64] Proportionality and reasonable hope in turn state that the methods employed should cause more good than harm and that this cause can actually be achieved. These are rooted in consequentialist philosophical theories, which in similar fashion state that intervention is justified as long as the end aim causes more good than harm. [65]

2.3. Responsibility to Protect -doctrine

Kosovo report produced by Commission suggests *"the need to close the gap between legality and legitimacy"* and believes that *"the time is now ripe for the presentation of a principled framework for humanitarian intervention which could be used to guide future responses to imminent humanitarian catastrophes and which could be used to assess claims for humanitarian intervention."*[66] It proposed Threshold Principles and Contextual Principles as conditions, which were heavily influenced by previously explored just war tradition. This, in turn, was the background on which the doctrine of Responsibility to Protect was build on.

For now, with this established, it is important to flesh out the doctrine of Responsibility to Protect, which is, according to many prominent lawyers, "*an emerging international norm that might, in due course, become accepted as customary international law*."[67] R2P is newest addition to this legal tradition, though it is important to note that while it includes the military response as a possibility, it isn't limited to it, unlike classical view on humanitarian intervention. Similarly, its legal status is up-to-debate, many arguing that it doesn't add anything new to table, as the responsibilities it argues for already exist in present legal texts. It also has not been *"codified in to an international treaty and lacks the state practice and sufficient opinio juris to give rise to customary international law; and it does not qualify as a general principal of law*."[68] However, R2P doctrine was referred in Resolutions 1973 and 1975, reinforcing its status.

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[64] Gardam, J. 2004. *Necessity, proportionality and the Use of Force by States*. Cambridge, Cambridge University Press, 62.
[65] Supra nota 42, 311-312.
[66]The Independent International Commission on Kosovo 2000. *The Kosovo Report*. Oxford University Press, 10.
[67]Gareth Evans 2008. *From Humanitarian Intervention to R2P*. Wisconsin International Law Journal, Vol. 24 (3), 713.
[68] Jared Genser, Irwin Cotler 2011. *The Responsibility to Protect: The Promise of Stopping Mass Atrocities in Our Time*. Oxford University Press, 34.

In aftermath of Rwanda genocide in 1999 and failure of Kosovo at the same year, then present Secretariat-General of UN Kofi Annan gave to an international community a challenge to find a way to prevent similar catastrophes in future by asking following question; "*If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica—to gross and systematic violations of human rights*?"[69] This task fell to International Commission on Intervention and State Sovereignty (ICISS), which was composed of experts on the field to to construct a framework which would not infringe state sovereignty and allow protection of human rights within boundaries of existing legislation.[70] End of product of ICISS was R2P, which according to one of its architects, Gareth Evans, made four following major contributions for the international community.

First, it redefined the debate to being about responsibility. This allowed the discussion to flow better without previous provocative implications associated with word "*right*"[71]. Secondly, a new way of talking about sovereignty was adopted, placing the emphasis on the *responsibility* instead of *control,* slightly enlarging the traditional boundaries of Westphalian definition. This was done by making sovereign to be responsible to one's own citizens and to the wider international community.[72] The ICISS identified different situations when other states are responsible to act: *"When a particular state is clearly either unwilling or unable to fulfill its responsibility to protect", "When a particular state… is itself the actual perpetrator of crimes or atrocities"* and *"Where people living outside a particular state are directly threatened by actions taking place there."*[73] Third, commission included many other means than military intervention in its doctrine. These were *responsibility to prevent* (address the root causes), *responsibility to react* (through sanctions or prosecution) and *responsibility to rebuild* (address cause of harm and advocates for rebuilding, particularly after military intervention). Finally, the commission aimed to answer problem posed by Kosovo report – how the action can be legitimate without having legality - by giving guidelines for when military action is appropriate. These were highly inspired by previously established just war tradition and it is opinion of this thesis that they're closes as the present international law has

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[69] Kofi A. Annan 2000. *We the Peoples – The Role of the United Nations in 21th Century (The Millenium Report of Secretariat-General)*, 48. Retrieved from https://www.un.org/en/events/pastevents/pdfs/We_The_Peoples.pdf 20 March 2020.
[70]Supra nota 67, 707.
[71] ICISS 2001. *Report of International Commission on Intervention and State Sovereignty - Responsibility to Protect*, 11. Retrieved from http://responsibilitytoprotect.org/ICISS%20Report.pdf, 20 March 2020.
[72] *Ibid,* 13.
[73] Carsten Stahn 2007. *Responsibility to protect: Political Rhetoric or Emerging Legal Norm?* The American Journal of International law. Vol. 101 (1), 104.

to their codified form. They are as follows; *just cause, right intention, last resort, proportional means* and *reasonable prospects*.[74] They will be inspected in their full form during analysis part.

R2P was adopted by UN World Summit 2005 with some exclusions: this criterion was among those which were detached at the last possible moment. However, it provides useful knowledge about the original intention of its authors on the application R2P and will be utilised later during discussion part. Additionally, the World Summit ended up limited R2P doctrine only on to four mass atrocity crimes - genocide, war crimes, ethnic cleansing and crimes against humanity. The first three crimes are found in the Rome Statute of the International Criminal Court and while ethnic cleansing is not a crime defined under international law, it has been defined by the UN as "*a purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas*"[75]. Furthermore, China and Russia took a great care that not a final stand was taken on the matter of legality of humanitarian intervention. After the World Summit, the Secretary General Ban Ki-Moon issued report about on implementation of Responsibility to Protect in 2009, establishing so-called three pillar strategy, which took the focus from military response to other approaches, and second report in 2010 which was called "*Early Warning Assessment and the Responsibility to Protect*".[76]

[74] Supra nota 71, 32-35.
[75] A United Nations Commission of Experts. S/1994/674, 33. Retrieved from https://undocs.org/S/1994/674 29 March 2020.
[76] United Nations Office on Genocide Prevention and the Responsibility to Protect. Retrieved from https://www.un.org/en/genocideprevention/about-responsibility-to-protect.shtml 29 March 2020.

3. Analysis

This thesis can now proceed with the analysis of gathered data and examine its application on the situation of Syria.

3.1. Evolving Human Rights

As previously mentioned, there is an argument that the human rights are evolving. Gareth Evans has stated that; "*we have seen over the last five years is the emergence, almost in real time, of a new international norm, one that may ultimately become a new rule of customary international law with really quite fundamental ethical importance and novelty in the international system.*"[77] It is worthwhile to examine on what legal basis this claim stands on. First, it is a statement of a fact that the conception of sovereignty has changed with establishment of international organisation exercising jurisdiction across national borders. For example, if someone deems that the treaty to protect human rights has been infringed by the state, this individual can take the case to international forum such as the Human Rights Committee under the International Covenant on Civil and Political Rights.[78] Article 2(7) of the UN Charter states as follows: "*Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.*"[79] It is this "domestic jurisdiction" which evolves with states willingly relinguishing their authority by adopting new international treaties. It is also how the human rights gain ground over the principle of sovereignty.[80]

However, the case law from ICJ speaks strongly against the view that this development would justify humanitarian intervention. Corfu Channel case involved the United Kingdom infringing the

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[77] Supra nota 67, 3.
[78] International Covenant on Civil and Political Rights, 1966. General Assembly resolution 2200A (XXI).
[79] Supra nota 4
[80] Kim, Young Sok 2006. *Responsibility to Protect, Humanitarian Intervention and North Korea*. Journal of International Business and Law. Volume 5 (1), 4.

sovereignty of Albanian government. ICJ ended up rejecting doctrines of intervention, protection and self-help by judging that "*The Court can only regard the alleged right of intervention as the manifestation of a policy of force, such as has, in the past, given rise to most serious abuses and such as cannot, whatever be the present defects in international organization, find a place in international law… The United Kingdom Agent has further classified "Operation Retail" among methods of self-protection or selfhelp. The Court cannot accept this defence either. Between independent States, respect for territorial sovereignty is an essential foundation of international relations*."[81] This influenced subsequent Nicaraqua case, where on the matter of the United States justifying the infringement of sovereignty on humanitarian grounds the Court judged that; "*In any event, while the United States might form its own appraisal of the situation as to respect for human rights in Nicaragua, the use of force could not be the appropriate method to monitor or ensure such respect... The Court concludes that the argument derived from the preservation of human rights in Nicaragua cannot afford a legal justification for the conduct of the United States*."[82]

Drawing from this material it is the opinion of this thesis that the human rights norms has not evolved on the level that the infringement of them could *alone* justify the use of force without the authorisation of the Security Council. Responsibility of Protect doctrine similarly has not provided any clause that could justify unauthorised intervention – in contrast, fear of this was one of the reasons the just war principles were excluded from final version. However, humanitarian grounds as an motivation weren't critised strongly: focus was more on the use of force as an method and a lack of proper authorisation. Considering the Geneve Convention and establishment of no-fly zone in Libya, it is opinion of this thesis that human rights are legitimate reason for humanitarian intervention, but don't themselves provide required legality for action.

3.2. The Use of Force in Syria

Now, thesis will proceed to examine whether there are any grounds to use the force to address the human right violations in Syria.

[81] International Court of Justice. 1949. I.C.J. 1. United Kingdom v. Albania.
[82] Supra nota 7.

3.2.1. Argument for legality

The Gulf War caused uprisings in Iraq among the Kurdi and Shia populations, but they were systemically supressed by the army. This led to humanitarian crisis that spread to neighbouring states, with both Iran and Turkey expressing the concern of these human rights violations and refugees fleeing to their territories. There was also a fear of repeat of Andal genocide, in which Iraqi army activities caused the death of more than 200 000 Kurds. However, many states were hesitant to accept the condemnation on simply basis of human rights violations as they feared this could led to further use of this as justification to the infringe the principle of sovereignty. For this reason, the Security Council reaffirmed with Resolution 688 the commitment to sovereignty, territorial integrity and political independence of Iraq and of all States in the region, but condemned the repression of the Iraq civilian population as a threat to international peace and security in the region. This was carefully drafted to avoid referring to simply on human rights violations and keeping the focus on the consequences on the region - namely, to Iraq and Turkey. It was viewed that the political turmoil spreading to their territories was an infringement of their sovereignty, thus giving the necessary justification against the Iraq's sovereignty.[83] Later, this was used as justification when UK and US established a no fly -zone over Iraq's territory together with Resolution 678.

There are many parallels with the circumstances of Syria. First, both countries are committing acts that could constitute as genocide against their own population. Secondly, this had led unprecedented refugee-flows to the neighbouring countries and even all way to Europe. It was also in Syria where ISIS was formed and launched its invasion to Iraq. In similar fashion as with Iraq in Resolution 688, humanitarian crisis in Syria is deemed to be a threat to international peace and security in the region and thus infringing the sovereignty of neighbouring countries, affirmed by the Security Council in Resolution 2165. However, both UK and US have later acknowledged that this alone wasn't a strong enough justification for establishment of no-fly zone and that Resolution 688 served mostly as a supplement: they argued the authority came from Iraq violating Resolution 1205 when failing to meet the deadline put by the Security Council, and from breach of the ceasefire in Resolution 687, arguing that these misdemeanors revived the authority to use the force under Resolution 678.[84] Most Resolutions concerning Syria emphasise that only solution to

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[83] Walling, Carrie Booth 2015. *Human Rights Norms, State Sovereignty and Humanitarian* Intervention. US, Johns Hopkins University Press - Human Rights Quarterly, Volume 37 (2), 393-394.

[84] Gray, Christine 2018. *International Law and the Use of Force*. Oxford, Oxford University Press, 350-351.

humanitarian crisis is a political one in cooperation with regime, while strongly condemning human rights violations committed by all parties. However, Resolution 2118 concerning chemical weapons ban left the door open for use of force in case Syria fails to fulfil its obligations.[85]

While it has been reported that most chemical weapons have been successfully decomposed, in Khan Shaykhun in April 2017 and later on Douma on 7 April 2018 there were further reports of chemical weapon attacks against the rebel positions,[86] and previously in May 2015, OPCW stated that they had found sarin and VX nerve agent at a military research site in Syria.[87] Further, while not addressed in the agreed "*Framework for Elimination of Syrian Chemical Weapons*", Syria has constantly employed the chlorine attacks against the rebel areas,[88][89] violating the Chemical Weapons Convention (which Syria joined after Resolution 2118) and failed to fulfil the ceasefire obligations placed by Resolution 2401[90] and Resolution 2336 by blocking humanitarian aid.[91] Resolution 2118 doesn't directly refer to use of force, but obligates the Security Council to impose measures under the Chapter VII of the UN Charter. However, as seen from breaches to previous resolutions, diplomatic approaches have been extensively tried and proven to be inadequate. Syria has not fulfilled its part of bargain and infringed the ceasefires and even the chemical weapons ban itself. From this it can be argued that the Security Council is legally bound to utilise Article 42 and allow the use of force. This is also implied meaning of inclusion of the Chapter VII in Resolution 2118. China and Russia were opposed to wording referring to the use of force for the fear that it would be abused, and thus this was compromise done in understanding that the military response would be utilised in the event of Syrian regime failing to fulfil its responsibilities.[92]

This thesis present an argument that in similar manner as with the establishment of no-fly zone over Iraq, the Security Council is legally bound to allow the use of force against Syrian regime under authorisation of Resolution 2118 supplemented with Syria's breaches of Resolution 2401

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[85] Supra nota 39, 4.
[86] United Nations 2017. *Seventh report of the Organisation for the Prohibition of Chemical Weapons-United Nations Joint Investigative Mechanism.* S/2017/904, 20-21.
[87] OPCW, (2017). *OPCW Fact-Finding Mission Confirms Use of Chemical Weapons in Khan Shaykhun on 4 April 2017.*
[88] Supra nota 85, 30.
[89] United Nations, (2016). *Fourth report of the Organization for the Prohibition of Chemical Weapons-United Nations Joint Investigative Mechanism.* S/2016/888.
[90] Supra nota 34.
[91] *Ibid.*
[92] Michael R. Gordon 2013. *U.N. Deal on Syrian Arms Is Milestone After Years of Inertia.* Retrieved from https://www.nytimes.com/2013/09/27/world/middleeast/security-council-agrees-on-resolution-to-rid-syria-of-chemical-arms.html?pagewanted=all&_r=0 20 March 2020.

and Resolution 2336. Question becomes whether no-fly zone in Iraq were legitimate to begin with, but this thesis points out that while differing opinions on the matter exist, there has not been any Resolution or international outcry to condemn the no-fly zone established by UK and US as was with Iraq invasion of 2003[93]. In contrast, the UN Secretary-General stated when UK, US and France launched missile and air attack against facilities Iraq's nuclear weapons programme in January 1993 that; *"The raid yesterday, and the forces that carried out the raid, have received a mandate from the Security Council, according to Resolution 678, and the cause of the raid was the violation by Iraq of Resolution 687 concerning the ceasefire. So, as Secretary-General of the United Nations, I can say that this action was taken and conforms to the resolutions of the Security Council and conforms to the Charter of the United Nations."*[94]

For this reason, it is opinion of this thesis that in similar fashion as with Iraq, the same argumentation can be used to address the breaches of international law by Syrian regime to make the use of force and intervention legal, though it acknowledges that this is a grey area with differing opinions among Member States. Furthermore, whether it merely recognises the authority to enforce Resolution 2118 or broader humanitarian intervention cannot be determined and its inspection is left from this thesis – however, the use of force has required legality.

3.2.2. Argument for legitimacy

It is now possible to proceed to explore the grounds for legitimacy of humanitarian intervention or any use of force. As stated before, for this intervention to have legitimacy, it must fulfil conditions placed by just war theory framework: for this reason, the principles of R2P will be used as they explain the intentions of doctrine's authors. Syria is unwilling not only to protect its people, it is also responsible for the atrocities which are simultaneously directly threating people inside and outside of its borders. This fulfills the conditions for the application of doctrine previously mentioned, and thus gives the other states responsibility to act. As diplomatic approach and sanctions have not resulted in notable chance, this thesis examines the responsibility to protect with military means.

[93] United Nations 2019. *Security Council Seventy-fourth year 8623rd meeting Thursday, 19 September 2019*. S/PV.8623.
[94] Supra note 84.

According to reports, Syria has disappeared 65 000 of its population[95] and overall 586 100 people have been killed during the civil war and millions displaced[96]. Additionally, it has attacked deliberately the civilian targets and bombed discriminately high-population areas with banned cluster bombs[97]. Responsibility of protect doctrine states that the requirement of just cause is fulfilled if there is "A. *Large-scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action or state neglect, inability to act, or a failed-state situation"*. Additionally, Syrian 2014 detainee report states Syria is imprisoning people opposing the state and their relatives in prison camps, where they're subjected to forced labour, rape and torture. Numbers up to 11 000 have been "systematically killed".[98] It is stated that in B. clause for just cause that: "*Large-scale ethnic cleansing, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror, or rape.*" Thus, both A. and B. have been adequately fulfilled.

Motivation for right intention has been a roadblock for previous resolution. According to it the intervention should be done without any ulterior motivations at work. It asks following question; "*Is the primary purpose of the proposed military action to halt or avert human suffering, whatever other motives may be in play?"* This has been the main concern for Russia during the veto. Its representative stated that "*if it was true that the "humanitarian troika" was guided exclusively by humanitarian objectives, then his delegation would support its draft resolution. Unfortunately, the goal of the text is to save international terrorists entrenched in Idlib from their final defeat."*[99] Both China and Russia define rebel forces as simply "terrorists", which has some merit according to reports.[100][101] These concerns are outside the scope of this thesis, and for now it is deemed that the principle of right intention has not been fulfilled – or more precisely, perceived being fulfilled. It is also hard to examine the principle of proportional means, which asks "*Is the scale, duration,*

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[95] Amnesty International 2014. *Between Prison and the Grace - Enforced Disappearances in Syria*. Retrieved from https://amnestyfr.cdn.prismic.io/amnestyfr%2F89dab200-e198-4619-88ab-34145e30ed09_mde2425792015english+%282%29.pdf 20 March 2020.
[96] Syrian Observatory for Human Rights 2020. *Syrian Revolution NINE years on: 586,100 persons killed and millions of Syrians displaced and injured*. Retrieved from http://www.syriahr.com/en/?p=157193 20 March 2020.
[97] Human Rights Watch 2012. *Syria: Despite Denials, More Cluster Bomb Attacks*. Retrieved from https://www.hrw.org/news/2012/10/23/syria-despite-denials-more-cluster-bomb-attacks 20 March 2020.
[98] Human Rights Watch 2014. *If the Dead Could Speak: Mass Deaths and Torture in Syria's Detention Facilities.* Retrieved from https://www.hrw.org/sites/default/files/report_pdf/syria1215web_0.pdf 20 March 2020.
[99] United Nations 2019. *Security Council Seventy-fourth year 8623rd meeting Thursday, 19 September 2019*. S/PV.8623.
[100] Human Rights Watch 2012. Syria: Armed Opposition Groups Committing Abuses. Retrieved from https://www.hrw.org/news/2012/03/20/syria-armed-opposition-groups-committing-abuses 20 March 2020
[101] Arman Sarvarian 2018. *Humanitarian intervention after Syria*. Cambridge, Cambridge University Press, Vol. 36 (1), 20-47.

and intensity of the planned military action the minimum necessary to secure the defined human protection objective?" However, it brings out the maybe one of the biggest practical problem with the intervention. It is very difficult to disarm the Syrian regime without disproportionate damages to its infrastructure and casualties among the population. This takes many opinions from the table. When conducting the intervention, the parties would be obligated to respect *jus in bello* principle and Geneve conventions, task hard in a country middle of civil war. However, this kind of exploration is out of the scope of this thesis as well and will not be examined further, and it is simply concluded that from information gathered this requirement has not been adequately fulfilled.

Finally, there are the principles of last resort and reasonable prospects. Former ask whether "*every non-military option for the prevention or peaceful resolution of the crisis been explored, and are there reasonable grounds for believing lesser measures will not succeed?"* International community has tried sanctions and diplomacy to address the situation of Syria, with little to no effect, mostly because of the gridlock concerning the matter on the Security Council.[102] It is noteworthy that Resolution 2118 was succesfully passed to get rid of the chemical weapons of Assad's regime[103]: however, it is reported that this has not stopped them being used, and other human rights abuses continue being conducted with impunity. It is the opinion of this thesis that there has been an adequate effort and at this point this condition has been fulfilled.

On the principle of reasonable prospects, R2P asks "*Is there a reasonable chance of the military action being successful in meeting the threat in question, and are the consequences of action not likely to be worse than the consequences of inaction?"* Main arguments China and Russia provide for their differing opinions is that the rebel forces are "terrorists" and are dominated by radical elements from extremist movements.[104] It is opinion of this thesis that while it is likely that Assad's regime could be disarmed with Western forces, in similar fashion to Libya, the outcome also could mirror the effects this intervention had. Following the Resolution 1973, Libya deteriorated into a bloody civil war between mix of religious fundamentalism, tribalism and the old regime

[102] Supra nota 39, 2-3. Retrieved from https://undocs.org/S/RES/2118(2013) 20 March 2020.
[103] *Ibid*, 4. Retrieved from https://undocs.org/S/RES/2118(2013) 20 March 2020.
[104] Supra nota 92.

remnants.[105][106] There isn't any guarantee that the present opposing groups could effectively guarantee the stability and the rights of minorities, such as Alawites and Christians. There is counterevidence from their actions thus far that opposite could be true, and that there's a justifiable fear that they could engage in similar human right abuses as present regime. For this reason, this requirement has not been fulfilled.

As it was demonstrated before, the legitimacy to provide necessary groundwork for this action can only be achieved through principles of just war theory. This thesis applied R2P, and it was found that while there some requirements were fulfilled – *just cause* (both A. and B.) and *last resort* – other weren't; these were *right intention, reasonable prospects* and *proportional means*. For this reason, there are no basis for legitimate intervention in Syria. Considering the situation in Libya, it is no wonder there is a little will to pass similar resolution in Syria. Even in the case of Resolution 1973 it could be argued that R2P application in Libya was illegitimate, as it failed to fulfil the responsibility to rebuild. Thus, the conditions of legitimacy have not been fulfilled.

[105] Ramesh Thakur 2013. R2P after Libya and Syria: Engaging Emerging Powers. Washington, The Washington Quarterly, Vol. 36 (2), 61-76. Retrieved from https://www.tandfonline.com/doi/full/10.1080/0163660X.2013.791082 20 March 2020.
[106] AJ Kuperman 2013. *A model humanitarian intervention? Reassessing NATO's Libya campaign.* US, Harvard Kennedy School - International Security, MIT Press, Vol. 38 (1), 105-136.

CONCLUSION

To conclude, it has been argued that human rights are evolving and can be used as legal basis for the humanitarian intervention. This was exempified by R2P doctrine and claim of Gareth Evans. This thesis explored how the humanitarian intervention functions on practical and theoretical level, refererring to case law, legislation and primary principles important to this subject. Additionally, background history concerning its application and just war tradition were summarised to better understand the context this doctrine stands on. They were used to analyse further tension between human rights and sovereignty and the gap between legitimacy and legality. The legal humanitarian intervention can still be authorised only with the Security Council authorisation, but human rights have evolved to be an legitimate criteria for intervention. However, Niracaqua and Corfu Channel cases demostrate that the sovereignty cannot be infringed simply on the humanitarian grounds alone.

Finally, it was examined can the human right abuse committed by Syrian regime give either legal or legitimate basis for humanitarian intervention. This was conducted with application of R2P principles and with justifications based on Iraq's no-fly zone. While the large-scale crimes against humanity by Syria's regime were acknowledged, it was found that intervention cannot be justified on the humanitarian grounds alone, and conditions of R2P doctrine weren't adequately fulfilled, making potential intervention illegitimate. However, by application of the use of force for breaches against Resolution 2401 and Resolution 2336, deriving the authority from Resolution 2118, the Security Council is legally obligated to allow the to use the force in order to realize the UN Resolutions in similar manner as was the case in Iraq. However, its extend cannot be determined and whether it gives necessary justification for full-scale humanitarian intervention is topic for future research. At minimum it can be argued to at least give authority to implement Resolution 2119 adequately, but this is task is practically impossible without engaging in similar regime-change operation as with Libya. It should be pointed out that his same line of argument was utilised in Iraq and resulted in no-fly zone, though admidly whether this had international blessing is contested topic. This legal field would benefit from cleaner take on the matter, but obvious political factors understandably make this unlikely to occur.

This thesis proposes that the main utility of this research is not actually that it would justify the humanitarian intervention, but instead that there is a genuine threat of it. While it was found that there is not adequate legitimacy for the action, even the fact that there are legal grounds to argue

for the the use of force may push the parties to negotiation table, mirroring the effects the Kosovo intervention had on the Serbs. Syrian regime has continued the abuse of human rights with only limited retribution, making it unlikely to stop without external pressure. This thesis proposes that the matter of Syrian violations of resolutions could be brought forward to the Security Council, and the matter of the use of force could be utilised as leverage to motivate Syria from taking further actions and to implement a lasting ceasefire with rebel forces.

This thesis researched whether from existing legislation and drafted resolution is possible to derive authority for the use of force in Syria as every other previous proposed solution is either inadequate or failed on implementation process. It was a good case study to shed light on the weaknesses of the Security Council and lay some ground work on the future research on the matter. Indeed, the protection of human rights is one of the greatest challenges facing the international law, and is hard to imagine scenario where the use of force – or at least the genuine threat of it – would not be needed to enforce them. Syria is a good example on what may occur unless there is effective mechanism on place to address these violations: without a fear of ramification for breaking rules, the states have a little reason to respect them. To add before end, it is also notewothy that while it may seem that present system has utterly failed, R2P proves that there is a real effort and will to construct both legal and legitimate way to respond to similar humanitarian crisis while staying inside the scope of international legislation. This gives hope that the future development will see ever slight improvement to current system which may at some point provide solution to the current gridlock preventing the Security Council from taking action.

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