

R2P, NATO and the Problem of Who Should Intervene?

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Abstract

One of the most challenging question concerning the R2P effectiveness is “who should intervene” in case of gross violations of human rights. Indeed, there are significant ambiguities surrounding the major issue regarding *who* in the international community should discharge the responsibility to protect. Recently NATO has been considered a legitimate actor to fulfil the duty to intervene for humanitarian reasons. Intervention in Kosovo in 1999 motivated Kofi Annan and the ICISS efforts to devise a doctrine of humanitarian intervention that resulted in the R2P. In 2011 in Libya NATO carried out the first military intervention inspired by the R2P. Furthermore, NATO ranks as the most legitimate international actor to live up to the *duty to react* enshrined in the R2P.

The paper contends the idea that NATO could or should be interpreted as the best option to fulfil the R2P provisions. NATO is obviously an international actor that can effectively undertake multilateral humanitarian interventions. However, NATO’s constitutive nature comprises aspects that are at odds with the R2P normative scheme. The particularistic character of the Alliance, which is inevitably based on a line of enmity, collides with the R2P universalistic objectives. Similarly, NATO’s enlargement and openness should not neglect the fundamental difference between a military alliance and a project of collective security. Moreover, NATO still remains a military alliance and its members are interested primarily on security issues that rarely, or just occasionally, match with humanitarian concerns. The paper will look at the NATO internal divisions and difficulties encountered carrying out the intervention in Libya to assess whether and how the aspects regarding the inner nature of the Alliance conflicting with the R2P help to explain those difficulties.

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The doctrine of the *Responsibility to Protect* (R2P) emerged as a way to square the circle of state sovereignty and protection of human rights in contemporary international arena. The report issued by the *International Commission on Intervention and State Sovereignty* (ICISS) in 2001 came after a decade of military interventions justified by humanitarian concerns. It sought to move beyond the controversial issue of the “humanitarian intervention” – particularly as it developed in the ‘90s concerning cases like Somalia, Bosnia, Kosovo and the problematic lack of international response to the genocide in Rwanda. The 2001 report and the R2P advocacy aim to foster a normative change reframing the notion of state sovereignty in terms of responsibility. The ambition has been to get over the divisive debate on the *right* to intervene (even abandoning the “humanitarian intervention” terminology) to embrace a broader reconceptualization of state sovereignty (ICISS 2001).

In this view, the R2P’s essential idea is that sovereignty should be interpreted as a responsibility of states to protect their own citizens. Consequently, the prerogative of sovereignty is conditional and its conditionality is based on the ability and capacity of a state to be responsible. If a state is not capable or is unwilling to be so the responsibility to protect should be borne by the international community which, under certain conditions, can interfere in its domestic jurisdiction to address gross violations of human rights.

Nonetheless, the R2P normative scheme is not devoid of ambiguities and controversial issues. One of the most debated is about *who* should intervene. It is not clear, indeed, where the responsibility rests when a state is unable or unwilling to stop a humanitarian crisis within its territory. The idea that the responsibility to protect, in extreme cases, moves from

the state to the international community does not offer any actual indication about the international actor that discharges that responsibility. The notion of 'international community' is too vague. As, James Pattison noted, "referring to the international community does not help us to identify who should actually intervene when humanitarian intervention is called for under the responsibility to protect doctrine" (Pattison 2010: 4).

Starting from the '90s NATO has emerged as an active and effective international actor carrying out military interventions motivated (also) by humanitarian purposes. NATO missions in the Balkans are by far interpreted as R2P interventions *ante litteram*. Particularly NATO intervention in Kosovo in 1999, due to its legitimacy based on humanitarian ground, paved the way for the ICISS project in 2000 which resulted in the R2P report. And more recently, NATO intervention in Libya was welcomed by several R2P advocates as a triumph of the R2P. Moreover, International Relations (IR) political theory has recently paid attention to NATO as a legitimate actor implementing the R2P. Even though it is widely recognized that the UN Security Council is the most appropriate institutional body to authorize humanitarian military interventions, it is also increasingly admitted that, on the one hand, the UN does not have the capabilities to intervene in high-intensity conflicts and, on the other hand, at times the UN Security Council might not find the necessary consensus for taking action. Against this backdrop, NATO has been seen as a legitimate agency to fulfil the R2P provisions, helping to answer in practical situations the question of *who* should intervene.

The paper contends the idea that NATO can be considered a key actor to implement the R2P, with or without the Security Council authorization. Obviously, NATO engaged in R2P-like interventions in the past and can do it in the future. We might also admit that NATO missions, with clear humanitarian purposes, can meet basic humanitarian intervention's criteria (just cause, last resort, proportionality in the use of force, reasonable prospects of success). However, it is debatable the idea that NATO can easily solve the problem of who should intervene in the R2P scheme. First, the delegation to NATO, even when it comes from a possible *right authority* like the UN Security Council, is a problematic one. In this process it should not be overlooked the fact that the delegate is more powerful than (and not accountable to) the delegator. Second, there is an essential difference between an international institution of collective security and a regional alliance. The universalistic nature of the former does not effortlessly match with the particularistic character of the latter. In other words, there is an inescapable discrepancy between the R2P universalistic stance and the specific representativeness/partisanship of an alliance. Third, although since the end of the Cold War NATO developed a wide political outreach, it remains a military alliance. The military nature of the organization does not necessarily fit with the political

purposes of the R2P. The disconnect between the political legitimate authority calling for action under the R2P framework and the *military* branch assigned to undertake it, coupled with the inevitable autonomy of the latter in planning and managing the military campaign, have consequences on whether (and how much) the mission is consistent with the R2P provisions.

In order to delve into the abovementioned issues and develop the central argument concerning the tricky relationship between NATO and the R2P doctrine, the paper proceeds as follows. The first section presents a brief overview of NATO military operations in the post-Cold War period emphasizing how they have been framed in terms of humanitarian interventions. The second section focuses more precisely on NATO and R2P, in particular dealing with two issues: the process through which the UN delegated to NATO some military actions for humanitarian reasons and the normative change relative to the doctrine of humanitarian intervention that increasingly interpreted NATO as a legitimate (if not the most legitimate) actor in the R2P scheme. The third section explores the problems, both practical and normative, arising from that interpretation of NATO as the most legitimate, and viable, actor to turn the R2P ethical ambitions into practice. Finally, the fourth section will look at NATO intervention in Libya to assess whether and how the aspects underlined in section three help to grasp the way the mission was managed and the possible incongruities with the R2P normative scheme.

1. Humanitarian intervention and NATO in the post-bipolar international system

In the post-Cold war scenario NATO went through an intense process of transformation¹. The Alliance reacted and adapted to the dramatic change of the international system and to the new security challenges. In early '90 it was plain that the collapse of the USSR called into question the Alliance's strategic rationale and it was as much clear that NATO needed to change in order to avoid irrelevance. As Richard Holbrooke then stated "the threat is gone, [...] I believe if we left NATO unchanged in its present configuration, it would become irrelevant" (quoted in Frydrych 2008, p. 5).

The process of transformation encompassed changes on several aspects of the Alliance structure and activity. First of all, it entailed a change in the Alliance's strategic posture. Consequently, NATO adopted a new Strategic Concept in 1991, afterwards updated in 1999 and 2010. The strategic adaption main drivers were softening the reliance on nuclear

¹ See among others Cornish (2004), Hallams – Ratti – Zyla (2013), Carati – Frappi (2009), Wallander (2000), Frydrych (2008).

capabilities, improving the flexibility and readiness to tackle with different contingencies, streamlining the military command structure and embracing a crisis management attitude. In a nutshell, the strategic revision answered to a more volatile international scenario and more unpredictable security challenges (see Terriff 2013). Secondly, NATO launched a process of enlargement that in different stages (1999, 2004 and 2009) admitted 12 new member states – starting from the 16 members at the end of the Cold War. More generally the Alliance developed a real *open door* policy that alongside the admissions comprised partnerships, cooperation agreements and strategic dialogues with several countries even beyond Europe (Frydrych 2008). Thirdly, NATO launched its first operations *out of area* starting from the Balkans to interventions in Afghanistan and Libya.

It is the latter point – i.e. the Alliance's military operations – that is particularly relevant for the relationship between NATO and the humanitarian intervention. Therefore, it was the post-Cold War transformation, and particularly the crisis management approach, that increasingly associated NATO to interventions carried out for humanitarian purposes. The military operations in the Balkans (and more recently in Libya) furthered the idea that NATO in the new international scenario can play the role of an enabler of humanitarian interventions. Contributing to this association there are a number of reasons: the UN deficiencies in managing several humanitarian crisis, the Alliance military effectiveness and capabilities, the democratic character of NATO, the interventionary attitude adopted after the end of the Cold War and the humanitarian rhetoric that NATO political leaders attach to the operations. But in particular, the military interventions in Bosnia, in Kosovo and Libya are those that contributed the most to see NATO, at least in the Western countries, as a viable and legitimate actor to address gross violations of human rights in crisis marked by high-intensity conflicts.

The intervention in Bosnia-and-Herzegovina² was the first NATO military mission ever and was immediately framed in terms of humanitarian intervention. Operation *Deliberate Force*, and the ensuing NATO peacekeeping missions in Bosnia not only matched the ethical dimension of the new humanitarianism (Chandler 2002) but they were consistently part of it. The way NATO's role in the Bosnian crisis unfolded is indicative of the humanitarian stance the Alliance was acquiring.

In the first place, it reshaped the relationship between the UN and NATO. The latter intervened successfully where the former failed to stop the civil war. The *United Nations Protection Force* (UNPROFOR), established in 1992 to create security conditions necessary to achieve a negotiated settlement among conflicting parties, occurred to be unable to actually

² Henceforth Bosnia.

defend the *United Nations Protected Areas* (UNPAs) and devoid of the required capabilities to enforce the *no-fly zone* (Pirjevic 2002; Tardy 2011). In a constantly deteriorating situation in the field, while the UN role was ineffective, NATO arose as a key actor. The UN Security Council resolution 816, although not expressly mentioning NATO, authorized the Alliance to enforce the no-fly zone replying if necessary to the violations³. More generally, the UNPROFOR started to coordinate with NATO in order to use the Alliance's air power in support of its activities (*Ibidem*). Starting from 1993, NATO's operation *Deny Flight* imposed the ban of flights over Bosnia and offered close air support to UN peacekeepers. Hence, in February 1994 NATO engaged in a combat operations for the first time in its history, shooting down Bosnian Serb bombers that were infringing the no-fly zone. Henceforth the role of NATO in Bosnia escalated, seeking greater and greater autonomy from the UN, and culminated in the large-scale air campaign with the operation *Deliberate Force* in 1995 that put the civil war to an end.

Secondly, after the Dayton peace agreement, NATO launched a massive peacekeeping operation (*Stabilization Force* – SFOR – and *Implementation Force* – IFOR). Opposite to the UNPROFOR, IFOR and SFOR have been actually kept the peace in Bosnia in the following nine years⁴. IFOR and SFOR confirmed NATO's engagement in *crisis management* and revealed a strong Alliance's commitment to the post-conflict reconstruction. The impressive state-building project encompassed in the Dayton Peace Agreement, with the democratization goal and the promotion of human rights (Chandler 2000), contributed to the perception that NATO was emerging as a key actor for humanitarian operations in the post- Cold War scenario.

That is how NATO came out to be generally understood, from a Western perspective, as the most viable and effective multilateral institution to perform humanitarian military operations. In this view, the intervention in Bosnia had a fundamental role, a sort of a blueprint for future missions. Three years later the intervention in Kosovo confirmed NATO as a champion of humanitarian intervention. The operation *Allied Force* was greeted by several Western observers as a pure humanitarian intervention, lacking strategic or national interest rationales (Independent International Commission on Kosovo 2000: 4). For our argument it is worth emphasizing some differences between the interventions in Kosovo and

³ The UN Security Council Resolution 816 "Authorizes Member States, seven days after the adoption of this resolution, acting nationally or through regional organizations or arrangements, to take, under the authority of the Security Council and subject to close coordination with the Secretary-General and UNPROFOR, all necessary measures in the airspace of the Republic of Bosnia and Herzegovina, in the event of further violations to ensure compliance with the ban on flights" (<http://www.nato.int/ifor/un/u930331a.htm>).

⁴ In 2004, SFOR was substituted by an EU-lead mission, *Operation EUFOR Althea* (<http://www.euforbih.org>).

Bosnia. While the civil war in Bosnia was a matter of concern in Europe because of the instability it could bring about and the refugees flows it caused, in Kosovo the crisis was more limited and it was not threatening the overall European stability. That is the reason why intervening in Bosnia had in early '90s also a strategic motivation – particularly when the European security was going through the delicate transition to an uncertain post-bipolar order. In 1999, the ethnic conflict in Kosovo was a far less threatening crisis, it was geographically circumscribed and it was not perceived as a possible epicentre of a wave of instability affecting the European post-bipolar security. Against this backdrop, the humanitarian purposes of NATO's intervention in Kosovo appeared as the only driver behind the military action.

Furthermore, the case of Kosovo presents another remarkable departure from the Bosnia precedent. The intervention was recognized as illegal – due to the lack of a UN Security Council resolution backing the Alliance air campaign – but it was deemed to be legitimate (Independent International Commission on Kosovo 2000; Caplan 2003). That signalled an autonomous role of NATO conducting humanitarian military operations from the UN. The very fact that, notwithstanding its illegal nature, NATO's intervention in Kosovo was perceived as legitimate is noticeable to appreciate both the growing role of human rights legitimizing forcible interference in the domestic affairs of a sovereign state and NATO's profile as a humanitarian intervener.

Even more meaningful was the reaction of the UN: instead of plainly accusing the Alliance for defiance of international law and for side-lining the UN, the Secretary General Kofi Annan tacitly accused the inadequacy of the organization and its institutional arrangements for the lack of legalization behind the military intervention. Indeed, in his annual report to the UN General Assembly (1999) he rhetorically asked to those uncomfortable with the use of force in the absence of a Security Council Authorization if they would have blamed a possible military response, not in Kosovo, but to stop the genocide in Rwanda⁵. More generally, the then Secretary General presented his reflections on the intervention in Kosovo in terms of a stark dilemma between the issue of an *unlawful* action undertaken by a regional organization without a UN mandate and the *legitimacy* of effectively halting gross and systematic violations of human rights (see Chesterman 2003). In this context NATO appeared not only as the most *effective* but also as a *legitimate* actor performing humanitarian military operations even without the UN authorization.

⁵ See the UN document "The Secretary General Presents His Annual Report to the General Assembly", 20 September 1999 (<http://www.un.org/press/en/1999/19990920.sgsm7136.html>).

Moving from that dilemma Kofi Annan called for an international debate to reflect upon the permissibility of humanitarian intervention in a world of sovereign states. Responding to that appeal the government of Canada sponsored the ICISS which eventually issued in 2001 the report on the *Responsibility to Protect* (ICISS 2001). In a sense, it was a NATO 'unilateral' intervention with its humanitarian legitimacy that contributed to the emergence of the R2P doctrine.

Ten years after the release of the ICISS report on R2P NATO played again a leading role in the humanitarian intervention practices. The Alliance operation *Unified Protector* in Libya in 2011 was greeted by the R2P advocates as a triumph of the doctrine. Gareth Evans, co-chair of the ICISS, declared that NATO intervention in Libya was "a textbook case of the R2P norm working exactly as it was supposed to" and similarly the UN Secretary General Ban Ki-Moon affirmed that "by now it should be clear to all that the Responsibility to Protect has arrived" (both quoted in Hehir 2013, p. 8). Likewise in Kosovo, NATO's intervention in Libya was appreciated for its fundamental humanitarian purposes, as another R2P supporter, Thomas Weiss, noted: "[t]he international action against Libya was not about bombing for democracy, sending messages to Iran, implementing regime change, keeping oil prices low, or pursuing narrow interests. These may result, but the dominant motivation for using military force was to protect civilians" (Weiss 2012, p. 171).

In brief, NATO in 2011 was again at the centre stage of the emerging doctrine of humanitarian intervention. In this case the use of force occurred with a plain UN authorization – the UN Security Council Resolution 1973 – and NATO appeared as a reliable and legitimate enabler of the R2P. It is important to note that the intervention in Libya was interpreted – particularly by the R2P supporters – as a revitalization of the humanitarian intervention, both normatively and in practice. It was considered a sort of a resumption of the humanitarian operations of the '90s that the war on terror, the war in Iraq and the non-intervention in Darfur contributed to neglect (Heinze – Steele 2013).

It is worth noting here that NATO is more commonly associated to humanitarian interventions precisely for the operations in the Balkans and Libya and remained dissociated from the controversial war in Iraq in 2003 and the operation *Enduring Freedom* in Afghanistan. In the first case several NATO's countries opposed the US decision to invade Iraq and distanced the Alliance from the accusation of pursuing strategic interests in the Middle East (Schuster – Maier 2006; Weiss 2004). In the second case, NATO took the command of the *International Security Assistance Force* in 2003 (after the unilateral American mission *Enduring Freedom*) with peacekeeping and reconstruction tasks. Even though later on ISAF reframed its mandate in terms of counterinsurgency and assumed a

more offensive approach against the Taliban, NATO offered the multilateral structure to deal with the reconstruction and the promotion of human rights in Afghanistan, toward which the US was not initially interested (Carati 2015; Bird – Marshall 2011)

2. NATO and R2P: How the Alliance came to represent a feasible actor for implementation

Further than the humanitarian interventions briefly mentioned in the previous section, NATO recently appeared as a viable and legitimate actor to foster the R2P doctrine thanks to two complementary processes. The first concerns the practice of the UN delegating to NATO (and possibly to other regional organizations or group of states) various peacekeeping tasks. Being NATO the most effective multilateral organization dealing with security and military affairs in the current international system, the Alliance benefited from such a process of delegation in terms of credibility, perceived efficiency and political prestige. In this way NATO increased its prominence in the field of humanitarian intervention and ultimately in the R2P agenda.

The second process occurred at the normative level and refers to the principle of *right authority* drawn from the Just War tradition and conveyed in the ICISS report on R2P (ICISS 2001, pp. XII-XIII). After the intervention in Kosovo, precisely for its alleged legitimacy despite the lack of the UN authorization, the requisite of the collective mandate to deem an intervention *just* partially faded in favour of the normative acceptance of unilateral humanitarian action. The more the legitimacy of humanitarian intervention distances itself from the *right authority* clause (i.e. the idea that a humanitarian intervention to be considered legitimate needs a mandate from an universal collective security organization), the more NATO ascends as an appropriate enabler of the humanitarian provisions covered by the R2P doctrine (even when the Alliance acts without the UN approval). The remaining part of the present section focuses on these two process in turn.

The UN practice of delegating to regional organizations or member states the deployment of military force occurred after the end of the Cold War. In the bipolar system, as a reflection of its strategic nature, there was a general “unwillingness on the part of any of the permanent members of the [UN Security] Council to allow other states or organizations to assume authority over how UNSC resolutions were to be carried out or to delegate to them an opportunity to deploy military force” (Keating 2013, p. 165). The end of the Cold War and the new circumstances changed the UN approach. The Security Council resolutions authorizing the use of military force have become one of the primary instrument through which the UN deals with humanitarian crisis (Blokker 2000; Karlsrud 2015; Sarooshi 1999).

There are a number of factors accounting for the spread of peace-building missions operating under 'delegated authority'. First, as Tom Keating noted, "contributing governments were often unwilling to operate under constraining UNSC mandates in [...] risky circumstances" (Keating 2013 p. 166). In other words, states tend to deploy their troops abroad retaining a margin of control over their soldiers, particularly in high-intensity conflicts. That favoured mechanisms of delegation in which the UN can overtake the reluctance of nation states to put their troops under an international authority. Second, in response to particular crises it is difficult to gain the necessary support among the UN members, it is often easier to assign to neighbouring states or organizations, that have regional interests at stake, the duty of undertaking the necessary missions (*Ibidem*, p. 166). Third, keeping in mind the high number and scope of the UN peace operations in post-Cold War period, delegating responsibilities to member states or regional organizations has also an economic rationale. Thus, the delegation has been affected by the limits of the UN's scarce resources. Fourth, some regional organization – namely NATO – developed the necessary capabilities, command structures and military procurement to conduct robust peace operations before and better than the UN (Dorn 1998). Consequently, many states are more comfortable contributing to multilateral operations within organizations with clear operative concepts and competences. Finally, the frequency of the UN authorizations in the post-Cold War years responded to the demands coming from states or regional organizations seeking international legitimacy (Coleman 2007). NATO, the EU, Western countries in particular tend to attain a UN mandate for the use of force as a way of gaining legitimacy.

The practice of 'delegated authority' by the UN bolstered the view of NATO as a crucial actor for peace operations and, in turn, amplified the humanitarian stance of the Alliance. That process of delegation has been consistent with the normative process mentioned above. Indeed, recently the reinterpretation of the Just War theory – starting from the famous book *Just and Unjust Wars* by Michael Walzer (1977) – has lessened the normative requirement of the *Right Authority* in favour of other criteria (just cause, right intention, proportionality, prospect of success). In this vein, the normative understanding of the UN authorization as *desirable* but *not indispensable* for the legitimacy of humanitarian interventions advanced the view of NATO as a legitimate intervener even when it acts without a UN's mandate.

In the late '90s, Mona Fixdal and Dan Smith (1998), in an article focusing on humanitarian intervention and just war theory, touched upon the controversial issue of the legitimate authority in charge to *decide* on the use of force for humanitarian reasons. They stress two fundamental points, both drawn from a cosmopolitan view of international politics, that have been reinforced by several scholars in the following years. As Rex Martin noted, they

are actually already present in Rawls and Walzer reflections upon the legitimacy of humanitarian interventions (see Martin 2007). The first argument has to do with the admissibility of unilateral actions to address gross and systematic violations of human rights. They contend that, “[i]f the United Nations is unlikely to sponsor rampant interventionism, the alternative seems to be to accept a narrower basis for multilateral actions (e.g., the North Atlantic Treaty Organization or the European Union) or even endorse unilateral action” (Fixdal – Smith 1998, p. 294). The second point concerns the relationship between the right authority clause and other Just War criteria and the argument is that the more the cause is *just*, the means are *proportionate*, the war is the *last* resort and there are reasonable *prospects of success*, the less intervention requires a mandate from a right authority. In their words, “For humanitarian intervention, the legitimate authority criterion can be regarded as responsive to the other criteria. The more glaring the injustice to be remedied, the less clear the authority may need to be; conversely, the more there are alternatives to the use of force, the more solidly grounded the authority for intervention must be” (*Ibidem*, p. 295).

These two arguments persistently recurred in the recent literature on humanitarian intervention and the implicit (often explicit) reference is the case of NATO unlawful but legitimate intervention in Kosovo. For instance, Terry Nardin vibrantly disputed the illegitimacy of unilateral actions, writing that:

“[i]t is regrettable that NATO’s decision to intervene in Kosovo had to be made outside the framework of the United nations [...]. But if unilateral intervention is illegal and procedures exist for collective action, and yet the international community as a whole is unable to act affectively, must individual states also ‘stand idly by’? As the UN secretary-general Kofi Annan implies in discussing the world’s failure to act in Rwanda, to say ‘yes’ is to repudiate common morality” (Nardin 2003, p. 22).

Nicholas Wheeler in his influential book on the topic, *Saving Strangers*, refers to only four criteria to satisfy the requirements of a legitimate intervention: “supreme emergency” that shocks the moral conscience of mankind as a *just cause*; the principle of *last resort*; the *proportionality* of military means; and a positive *humanitarian outcome* (Wheeler 2000)⁶. The right authority is not mentioned as a determinant of the intervention’s legitimacy. This normative view makes that legitimacy depending from the *justness* of motivations, conduct

⁶ See also Fabre (2008), Martin (2007), Tesòn (1998), Hehir (2013, pp. 38-39), Wheeler (2003).

and outcome and not from considerations concerning 'who' intervenes. According to Wheeler's perspective, even though in principle the UN's mandate remains the preferable way to authorize humanitarian interventions, that is not an indispensable aspect for their legitimacy. In a nutshell, as Rex Martin unequivocally stated, "[w]e must get beyond the point where we regard all rescues unauthorized by the UN as *illegal*" (Martin 2007, p. 86, emphasis in the original).

No wonder then that the ICISS report on R2P retains a dose of ambiguity upon the issue of right authority. Since the report was the result of an initiative in response to the UN Secretary General Kofi Annan appeals to 'forge' international consensus on a doctrine of humanitarian intervention, the report is obviously respectful of the UN international authority. However, while it is renowned that "[t]here is no better or more appropriate body than the United Nations Security Council to authorize military intervention for human protection purposes" (ICISS 2001, p. xii), the report claims also that the Security Council should 'work better' – i.e. without obstructing resolutions authorizing humanitarian intervention as happened in Kosovo – to retain its credibility. The point, although vague, is pretty manifest when the report asserts that if the Security Council "fails to discharge its responsibility to protect in conscience-shocking situations crying out for action, concerned states may not rule out other means to meet the gravity and urgency of that situation – and that the stature and credibility of the United Nations may suffer thereby" (*Ibidem*, p. xiii). The unilateral action is not deemed illegitimate or unequivocally condemned. In addition, it should be noted that the 'conscience-shocking' terminology is revealing since it recalls Walzer and Wheeler words justifying unilateral actions.

Finally, it is worth mentioning one of the most comprehensive and thorough analysis grasping the question of 'who should intervene' in the R2P normative framework: the James Pattison book *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene* (2010). Adopting what the author calls a Moderate Instrumentalist Approach (close to a consequentialist normative perspective), the *effectiveness* is considered the essential ingredient of the intervention's legitimacy. Amid other aspects (intervener's credentials, representativeness, respect of *jus in bello*) the most legitimate intervener is the one that is most likely to be effective⁷. James Pattison, after a detailed and careful examination of the most controversial issues on the right authority principle, comes to conclude that "amongst currently existing interveners, NATO would probably rank as the most likely to be legitimate. This is because of its effectiveness, which can be seen both in its success in previous missions (such as Bosnia and Kosovo) and in its level of military

⁷ See also Jennifer Welsh's book review (2010, p. 422).

infrastructure (Pattison 2010, p. 200). Besides NATO *credentials* for its past operations, the Alliance is also 'representative' in the sense that it is made of democratic member states and its decision-making is based on consensus and, undertaking military operations, it tends to conform international law of armed conflict – *jus in bello* (*Ibidem*, pp. 200-201). In this picture, not only the legitimacy of UN peace operations is impaired by their questionable effectiveness but, more generally, the UN authorization can *improve* the degree of legitimacy but it is not *decisive* for the humanitarian intervention's *justness*.

3. NATO and R2P: Ambiguities and incongruities.

The emergence of NATO as a legitimate – possibly the most legitimate – organization enforcing the R2P doctrine, as it has been shown, stems from the experience of humanitarian interventions carried out from the '90s, the practice of 'delegated authority', and the normative course mitigating the role of collective security and advancing the legitimacy of 'unilateral' actions (particularly with NATO intervention in Kosovo as the empirical reference).

While it is undeniable that NATO could undertake military operations consistent with the R2P, yet it is debatable the idea that the Alliance can easily solve the problem of who should intervene. If, as Thomas Weiss pointed out, in the way of making R2P a reality "[t]he essential challenges of humanitarian intervention are not normative but, rather, operational" (Weiss 2014, p. 133), the temptation to see NATO as a feasible solution is high. In other words, the more we admit that today the main question concerning the R2P "is how to act, not how to build additional normative consensus" (*Ibidem*, p. 171) – although I would be more cautious on the R2P's normative achievements – the more NATO appears as a practical solution to operationalize the doctrine. In theory, just as an exercise of abstraction, generalizing the reactions we witnessed during NATO campaigns in Kosovo and Libya, had NATO undertaken several similar interventions R2P advocates would probably interpret that as a step toward fulfilment.

However, the consistency between the R2P and NATO's interventions – higher or lower it may be – should not neglect some essential limitations in the interpretation of NATO as the (possible) executive branch of the doctrine. The problem of who should intervene in the R2P framework is more challenging and fundamental than solely looking for available states or regional organizations reacting to human rights abuses. And it goes beyond the normative efforts to grasp the legitimacy of who is intervening. The point is not denying that NATO can

intervene according the R2P provisions, instead the aim is to shed light on some irrepressible incongruities between the Alliance and the universal normative ambitions of the doctrine.

This section addresses three main problems concerning the relationship between NATO and R2P. The first refers to the issue of the 'delegated authority' and delve into the problematic delegation of international responsibilities to a resilient, but still regional, alliance. The second has to do with the conflicting nature of the R2P and NATO in terms of universalism and particularism, while the former has an universalistic stance the latter is based on a particularistic political assignment. The third stems from the military character of the Alliance that inevitably affect the planning and management of the operations. Although they point to specific issues these problems are strictly related to each other: the 'delegated authority' difficulties develop from the more general issue of authority in international politics and it is intertwined with the tension between universalism and particularism; in turn, the particularistic nature of an alliance – vis-a-vis a collective security organization – is necessarily combined with its military stand.

Starting from the first point, delegation of responsibilities to NATO is not devoid of normative dilemmas and practical concerns. The R2P refers – sometimes implicitly but often openly – to a universal enterprise to make sovereign states responsible. The idea is that when a state is “unwilling or unable to do so, that responsibility must be borne by the broader community of states” (ICISS 2001, p. viii). But the heart of the problem is that the international community, when entrusted of that responsibility, is short of *authority*. James Pattison cleared the point noting that the R2P “implies that there currently exists an *unassigned* responsibility to intervene (in certain cases) which falls on the international community in general but on no one in particular” (Pattison 2010, p. 10, emphasis in the original). That is to say that the R2P calls for a responsibility without having an international body capable of enforcing it against irresponsible states. The implicit admission is that the UN could be but is not the international authority that the R2P requires. Put it in another way, the collective security organization, thanks to its universal assignment, is the natural point of reference for the doctrine, yet it lacks the necessary authority to enforce its provisions. From the deficiencies of the UN comes the problem of *who* should intervene and, consequently, the delegation of responsibilities to individual states or regional organizations.

Delegating responsibilities to NATO, albeit it could appear a practical solution consistent with the R2P, is problematic for the fact that the delegate is a great deal more powerful of the delegator. When NATO intervenes it *is* the actual international authority and should not be confused with the executor of the decision of *another* international, universal authority embodied in the UN or in the more vague notion of international community. Since NATO

decides whether and how to intervene in critical situations it is sovereign, meaning that it is not recognizing superior authority above it (see Moses 2014). In this view, the intervention in Kosovo is not the doctrine in action outrunning the UN inadequacies, but is the Alliance in action affirming its international authority. The case of NATO intervening consistently with the R2P exceeds, and is largely autonomous from, considerations about the humanitarian credentials of its military operations. We can obviously estimate the humanitarian nature of NATO's interventions, assessing their legitimacy, nevertheless we should not mystify those interventions with implementations of universal norms.

The picture of NATO implementing the R2P – in the name of the international community or according to a UN's mandate – is misleading because it fails to account for the asymmetrical relationship between the 'executive branch' and the political authority. Even when NATO undertakes military operations with the UN authorization the relationship between the two cannot be reduced to a principal-agent scheme where the 'principal' delegates to the 'agent' a particular task. Social sciences emphasized how the principal cannot completely check the performance of the agent, the latter has usually been selected for its knowledge, expertise and skills and consequently it might exceed its mandate or pursue individual goals thanks for the information gap. However, it is assumed that there is a hierarchical relationship and, secondly, that the principal retains the authority that can be used to devise more detailed mandates or withdraw the mandate altogether. Between the UN – or the international community – and NATO does not exist such a relationship. NATO, even when intervenes according to a Security Council resolution, is not an executive branch of the UN. The Alliance is not accountable to it, cannot be sanctioned by it and the UN has not the power to detail or withdraw the mandate. In a few words, during its operations (inspired or not by the R2P) NATO retains its international authority and does not respond to a supranational, universal body or norm.

This lead us to the second problem: the universal essence of the R2P and the particularistic nature of an alliance. The R2P is deemed to be embraced universally both for its core assumptions and its expectations. On the one hand, it is based on a universal understanding of human rights and, more generally, human security (Weiss 2012). Furthermore, in the R2P literature there is a reference to a common (meaning a universal) morality (Jennifer Welsh - Thielking – MacFarlane 2002). On the other hand the universal character of the R2P is implied in its commitment, indeed it speaks of a responsibility which concerns *every* state in the world and it is supposed to be enforced globally. That universal stance of R2P does not matches effortlessly with the particularistic assignment of NATO.

One of the essential difference between a collective security organization (or a collective security project) and an alliance is that the former is inclusive while the latter is based on a discrimination. The collective security or a universalistic doctrine such as the R2P refer to sharing the management of international politics. They encompass the entire community of states within which *every* member can potentially threaten the international order or potentially contribute to preserve that order. The inner logic of the collective security and R2P refers to action of *all* against *one* – the *all* representing the international community and the *one* representing the wrongdoer.

The inner logic of an alliance is the opposite: to defend a *group* of states from other states. That because any alliance originates from a source of enmity. States promise one another military assistance against a threat (Walt 1987). In this sense, alliances are established to defend the security of a particular group of states and are *particularistic* communities. Since they are constitutively interested in defending who is part of the alliance against someone that is not part of it, its logic is not inclusive but discriminatory. Therefore, in any alliance security issues are not framed in terms of common goods but in terms of ‘us’ against ‘them’.

Those differences entail limitations for the idea that a regional alliance could be a possible enabler of the R2P’s universalistic project. NATO has changed remarkably in the last two decades and that could have given the impression that it has taken the form of a collective security organization. The above mentioned *open door policy* furthered its inclusiveness. Yet, NATO remains an alliance, its strategic objectives can only occasionally coincide with the normative ones envisaged by the R2P.

Finally, another aspect which is proper of any alliance is the military side of the organization. Since the alliance is a promise of mutual military assistance its military commitment is fundamental. NATO is not an exception. Nowadays it is more than a simple military community (as it was during the Cold War), the political dimension grew alongside the transformation process, yet its commitment to the security of member states still remains its core business (Carati 2009). Contrary to other types of cooperation (economic, political, diplomatic or cultural), the alliances imply a focus on the use of force. Otherwise they cannot be properly named alliances.

The military aspect heightens the degree of autonomy the ‘agent’ asserts against the ‘principal’. Even when acting under the UN or R2P aegis, NATO takes full control over the nature and scope of military operations. In part that results from the practice of delegation, but the military dimension of the organization appears as a key factor increasing that autonomy. That is due to the necessities coming from military operations. Indeed, in order

to be effective in a military campaign it is essential to have well-defined strategic and tactical objectives and it must be clear the ultimate enemy to be fought. These military requirements does not easily fit the R2P framework. Protecting civilians is anything except that a clear-cut goal for the military. That is the reason why there are always considerable divergences between the R2P provisions or Security Council resolutions and the way NATO operations are carried out – e.g. in the air campaign in Kosovo or the regime change in Libya (Hehir – Murray 2013; Wheeler 2003, pp. 194-195). The point to be stressed is not the generic gap between ethical justifications and military actions but the fact that NATO, thanks to its military expertise and capabilities, has an extensive and influential autonomy in R2P-like interventions. In other words, the problem does not refers just to practical limits but it concerns the political (and normative) discretionary power of NATO in planning and managing the military operations.

4. NATO in Libya: the R2P in action?

NATO's intervention in Libya, as already noted, was interpreted as a considerable normative achievement by the R2P advocates⁸. The Security Council resolution 1973 was more or less inspired by the doctrine. It authorized "all necessary measures to protect civilians and civilian-populated areas under attack or threat of attack in Libya"⁹. And, most important, the resolution did not remain 'dead letter' but a military intervention to enforce a no-fly zone followed suit. The general view in Western countries was that the bloodbath threatened by Colonel Qaddafi was avoided and for R2P supporters the quick international reaction to human sufferings was eased by the already existing consensus around the doctrine.

In this picture, NATO emerged as the legitimate actor enforcing the R2P with a UN mandate: a "textbook case" of the R2P in action (see Hehir 2013, p. 8). According to this interpretation the problem of who should intervene was proficiently solved: when the government of Libya failed to protect its own population and turned to be accountable for human rights abuses the 'responsibility to protect' the Libyans moved to the international community, hence the UN Security Council condemned the abuses and authorized all necessary measures to stop them and NATO intervened through the practice of 'delegated authority'. From the perspective of the R2P advocates, the limits of the intervention are to be found in the lack of a *post-conflict* mission in Libya, in the sparse participation to the mission among NATO members or in the reluctance to send ground troops by NATO. But the delegation of

⁸ See among others Hehir (2013), Pattison (2010) and Weiss (2012).

⁹ UN Security Council resolution 1973 (<http://www.un.org/en/sc/documents/resolutions/2011.shtml>).

authority to NATO is scarcely investigated in relation to the broader issue of *who* should intervene in the R2P framework.

Building on the incongruities between R2P and NATO underlined in the previous section (i.e. the challenging delegation to a more powerful actor, particularism vs. universalism, and the military nature of NATO), the remaining part looks at the Alliance's intervention in Libya exploring their impact. It focuses in particular on three issues: how the resolution 1973 was interpreted by NATO's leaders; the military operations with regard to the goal of protecting civilians; and the marginalization of the African Union (AU) diplomatic initiatives.

Many observed that NATO's intervention in Libya exceeded the mandate of resolution 1973 since it shifted from the aim of protecting civilians to regime change (see Hehir – Murray 2013). Beyond considering the decision right or wrong, this shift has been basically interpreted as a *political* decision by NATO leaders, in particular by president Obama, Sarkozy and Cameron. What is behind that decision and its implications for the R2P is a question that remained less explored. In other words, how this shift can tell us something about the problem of who should intervene has been somewhat neglected. Nevertheless, the autonomous (re)interpretation by NATO leaders of the UN's mandate reveals the above-mentioned incongruities between NATO and R2P.

First of all, the possibility to take decisions independently from the initial international mandate denotes the problematic delegation of responsibilities to a powerful military organization like NATO. The Alliance, exactly because it *decided* what to do in Libya, disclosed where the actual authority rests (Moses 2014, pp. 101-102). The way the operation *Unified Protector* in Libya was carried out confirms a hierarchy behind the decision-making opposite to that imagined by the R2P. Apparently the UN, as a collective security organization, reacted to the crisis in Libya calling for action according to the international responsibility to protect and consequently NATO, answering the international request, implemented the resolution 1973. The reality is rather different: many accounts of the military campaign indeed confirm that when operation *Unified Protector* started the UN was no more present in NATO's deliberations, the military campaign was planned and directed independently (Chivvis 2014). NATO was not accountable to the UN or to another political body endorsing the R2P, in fact complaints against the orientation toward regime change had no effect on the Alliance decision-making or on the military operations (Keating 2013). Neither the UN nor other international organizations or states were in a position to oppose NATO's intervention and the way it was undertaken. In short, the unrestricted possibility for NATO to interpret the resolution 1973 and the lack of accountability to an international (universal) organization reveal that exceeding the mandate was not only a matter of

inaccurate control of the 'principal' over the 'agent'. Conversely, it derives from a more constitutive problem: the very fact that no constraints or liability can be exerted over NATO.

The controversial (re)interpretation of the resolution 1973 in the direction of regime change is more deeply understood if we bear in mind the military nature of the Alliance. In this view, regime change was not only a political decision but also a way to give effectiveness to military operations. The purpose to protect civilians was too vague for the situation in Libya in March 2011 (Chivvis 2014; Kuperman 2013a). Put it bluntly, NATO needed an *enemy*. The unfolding civil war should be framed in terms of a more elementary picture sharply dividing the victims of abuses from the perpetrators (Moses 2014, pp. 110-111). In this way NATO turned to be "the de-facto air force of Libyan rebels" (Goldberg quoted in Keating 2013, p. 185).

Furthermore, NATO increasingly interpreted the regime change (or more generally the war against Qaddafi) as a military necessity in part for it was considered a precondition to defend civilians and in part to overtake the military stalemate in the summer 2011 (Michaels 2013, p. 209-210). That depended from NATO's decision to avoid sending ground troops and carry out only a military air campaign. The air campaign not only is not the best option to defend civilians on the ground (basically for its inaccuracy) but it also asks for a local ally on the ground¹⁰. The subsequent cooperation between NATO and Libyan rebels responded more to military necessities deriving from the way NATO planned the operations rather than to a serious assessment of abuses of human rights on the ground¹¹.

Moreover, the inconsistency between the way in which the military action was taken on and the R2P's purpose to protect civilians emerged in at least three events. The first is the alleged cooperation between NATO and Sudanese intelligence. As Alex de Waal remarked:

"[w]hen NATO began its air campaign in March, military planners were concerned that it would have limited impact without effective ground forces. [...]. Part of the gap was filled by special forces from Britain and France, and part from Jordanians and Qataris. However, the Jordanians had relatively little experience of combat operations and the Qataris had only what the TNC [*Transitional National Council*] called 'Qataris weapons' – dollars and riyals. The greatest contribution came from Sudan" (de Waal 2013, p. 73)

The government of Sudan, that was already hosting Libyan opposition groups, was concerned by the presence of Darfurian rebels in Libya and the possibility that they could

¹⁰ On this point, even if it referred to the interventions in Afghanistan and Iraq, see Biddle (2005/6).

¹¹ On the flaws concerning the oversimplified picture of Qaddafi loyal forces attacking unarmed and innocent civilians see Kuperman (2013a, 2013b).

acquire weapons. Consequently, its policy was to cooperate with the TNC in order to neutralize that threat. In addition, “backing the TNC presented the opportunity for helping sympathetic Islamists to power [... and] it was a chance to consolidate alliances with Qatar and, very discretely, with NATO” (*ibidem*, p. 73). The rationale of such a secret and uncomfortable liaison between NATO and Sudanese intelligence can be explained only by the military necessities of an air campaign that desperately needed information to select the right targets. Conducting war, especially privileging air bombing, entails making alliances – sometimes embarrassing alliances – and the logic is primarily that of military necessity (*ibidem*, p. 79). The trade-off between military effectiveness and consistency with the universal norm of the responsibility to protect is more likely solved in favour of the former when the ultimate and unrivalled authority is a military alliance.

Another episode that reveals incongruities between NATO operations in Libya and the R2P is related to the primary aim to overthrow Qaddafi. That aim became increasingly apparent during the military campaign and it was pursued at times even at the expense of the R2P goal of protecting civilians. As Alan Kuperman noted:

“If NATO had sought merely to protect civilians, in accordance with its authorization, the trans-Atlantic alliance would have enforced the no-fly zone, bombed forces that were threatening civilians, and attempted to forge a ceasefire. Instead, NATO took actions that were unnecessary or inconsistent with protecting civilians, but which fostered regime change. Less than two week into the intervention, for example, NATO began attacking Libyan forces that were retreating and thus not a threat to civilians, who were far away. At the same time, NATO started bombing forces in Gaddafi’s hometown of Sirte, where they represented no threat to civilians because the residents supported the regime” (Kuperman 2013a, p. 197)¹².

Similarly, the engagement of some NATO countries (namely Great Britain and France) helping the rebels exceeded the genuine purpose of protecting civilians. The goal became supporting the uprising against Qaddafi providing aid, military assistance and weapons to opposition forces. That sponsorship had nothing to do with the responsibility to protect, especially when the rebels were launching offensive operations encompassing civilian casualties (Chiviss 2014; Kuperman 2013a; Kuperman 2013b).

A third circumstance in which NATO’s military operations departed from the R2P occurred in Sirte. In September and October 2011 the city, where the remaining forces loyal to Qaddafi were resisting, was put under siege by the rebels with NATO’s air support. The dramatic consequences for the civilians in the city after weeks of fierce attacks and air bombing have been reported by the *UN Human Rights Council* (2012). As Jeremy Moses pointed out,

¹² See also Chivvis (2014), Kuperman (2013a; 2013b).

referring to the siege, “[i]t is utterly unconceivable that the damage done to the city can be represented in terms of ‘human protection’” (Moses 2014, p. 114). Indeed, the considerable humanitarian suffering of innocent civilians in Sirte can be hardly justified in terms of proportionality. NATO’s role in the siege and its support to opposition forces – who were responsible of indiscriminate attacks, torture and rape (UN Human Rights Council 2012) – was utterly incompatible with any notion of responsibility to protect. Again, its rationale can be figured out only in terms of military necessity once regime change became the ultimate goal.

Finally, how NATO exceeded the UN’s mandate inspired by the R2P is additionally demonstrated by the marginalization of the AU diplomatic initiatives during the crisis. The interpretation of the crisis (and the international mandate to solve it) that NATO’s member states embraced was rather different from that adopted by African leaders. While the former saw the conflict as the result of human rights abuses carried out by a dictator against innocent victims, the latter understood the conflict as a civil war. Consequently, for NATO’s leaders the solution was toppling Qaddafi whilst for the AU was a negotiated ceasefire followed by a political settlement. The AU’s leaders, condemned the brutal repression of protesters and the excessive use of force by Qaddafi in February 2011 (Dembinsky – Reinold 2011). In the meantime, it established an ad hoc High Level Committee dealing with the crisis with the aim of facilitating dialogue to find a peaceful solution.

All the African countries in the UN Security Council (Gabon, Nigeria and South Africa) voted for resolution 1973 but attaching a different meaning to its content (de Waal 2013). Actually, the operative provisions of the resolution turned to inhibit the AU efforts: on 19 March African representatives of the High Level Committee planned a flight to Libya but the same day the no-fly zone entered into force and “Panel members received a curt message from the US and the UN saying that, should they proceed with their visit, their security could not be guaranteed” (*Ibidem*, p. 67). As a consequence the regional diplomatic effort promoted by the AU was frustrated and the organization side-lined.

The marginalization of the AU initiative displays once again where the actual international authority rested and the limits of delegating responsibilities to a *particular* regional alliance. Taking on the role of the enforcer of the UN resolution, NATO did not act in the name of an inclusive notion of the international community. On the contrary, it was its particularistic character, coupled with military supremacy, that prevailed over a concerted endeavour to tackle the crisis. The issue cannot be easily debunked to a mere problem of coordination or to the necessity of rapid military action, but it is more substantive. NATO, like any alliance, has a *particularistic* assignment that cannot easily fit the universalistic commitments of the

R2P. There are inevitable limitations in pretending that an alliance can genuinely act in the name of the international community and that is especially true for a powerful alliance like NATO. In this view, side-lining the AU did not result from a bargaining between different regional organizations representing different parts of the broader international community but it was instead an authoritative decision taken by the most powerful not by the most representative.

Conclusion

Since 2001 the normative achievements of the R2P have been remarkable. Instead, the operative side of R2P, as even its supporters concede, remains underdeveloped. One of the primary obstacles to turn the doctrine into practice concerns the problem of who should intervene, since its universal scope cannot rely on a comprehensive and effective international authority. In the current international system only regional organizations, coalitions of the willing or individual states can undertake R2P-like interventions. In absence of a collective global authority the responsibility to protect, as broad its consensus may be, still represents an 'unassigned duty'.

According to several R2P advocates, NATO in recent years emerged as a legitimate actor that in particular circumstances can take the responsibilities to react to gross and systematic violations of human rights. The paper does not contend the humanitarian credentials of NATO's interventions. Instead, it deals with the limitations related to the entrustment of a regional alliance for the duty to carry out R2P-like missions – the problematic delegation, the particularistic quality of an alliance and its military nature. The main argument is that NATO cannot be a solution to the problem of who should intervene, even though NATO's interventions can be occasionally consistent to the doctrine. The tricky issue of who should intervene is more substantial than merely measuring the legitimacy of NATO's interventions according to Just War criteria. There exist some more constitutive and inescapable limitations to the assignment to a particularistic, exceptionally powerful organization the enforcement of the universalistic norm represented by the R2P.

The case of NATO's intervention in Libya is a crucial test to delve into those limitations. Since it was greeted as a textbook example of the R2P in action, it is an excellent case to assess to what extent NATO represented the enabler of the R2P. Generally the literature supporting the R2P pays little attention to detailed analysis of the conflict and military operations, focusing instead on whether someone intervened, its motivations, effectiveness and outcomes. However, a focus on how NATO planned and carried out its operations in the

intervention (particularly the one that seemed the most inspired by the R2P) can reveal the incongruities between NATO and the R2P relative to the problem of who should intervene.

More empirical investigation is needed for this purpose. In addition, probably in the coming years more exhaustive analysis of the conflict in Libya in 2011 and NATO's intervention will be available. The aim of the paper was to present a preliminary inquiry on aspects of the intervention that make the incongruities between NATO and the R2P come apparent. The focus is on the controversial interpretation of the resolution 1973, the episodes of inconsistency between some military operations and the goal of protecting civilians and, finally, the marginalization of the AU diplomatic initiatives. They tend to confirm that behind the 'delegated authority' to NATO there are not mere problems of coordination or accountability but more substantial issues that point to the limit of interpreting NATO as the enabler of the R2P.

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