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Legal Preconditions for Armed Intervention in the Responsibility to Protect Concept: Remarks *de lege lata* and *de lege ferenda*

Prawne uwarunkowania interwencji zbrojnej w koncepcji „odpowiedzialności za ochronę". Uwagi de lege lata i de lege ferenda

ABSTRACT

The purpose of the article is to analyse the legal conditions of armed intervention under the concept of Responsibility to Protect (R2P). The author presented and assessed the effectiveness of undertaking military actions within its framework. It should be emphasized that the armed aspect of the R2P concept has not been broadly analysed in the doctrine. The author discussed the issues of the effectiveness of military intervention on the example of the "Odyssey Dawn" and "Unified Protector" operations in Libya in 2011. He also referred to the concept of applying the military intervention mechanism to the Syrian Arab Republic after 2011. The text indicates that the greatest weakness is the generality of the concept of armed intervention within the R2P concept and the vagueness of its forms of implementation. In the context of the military intervention in Libya, which occurred as a result of the lack of veto by one of the permanent members of the Security Council, the author showed that although the use of the formula of military intervention under the R2P model is possible, it is also reasonable to assume that in the near future in a similar situation, the permanent members of the Security Council will exercise their right of veto.

Keywords: Responsibility to Protect; R2P; armed intervention; Security Council; Libyan civil war; Syrian conflict

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INTRODUCTION

The final document of the United Nations World Summit, which is, on the one hand, the culmination of a meeting of state leaders and, on the other hand, a symbolic summary of the 60th anniversary of the United Nations, contains a *passus* concerning the international community's commitment to the so-called *Responsibility to Protect* (R2P).[1] Item 138 of this document indicates how States responsible for their citizens should understand the R2P concept: "Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability". This attempt to make individual governments responsible for protecting their populations from the most serious international crimes can be understood as a necessary consequence of the most tragic events of the 20th century, such as the genocide in Rwanda or the tragic events in the bloody civil war in Yugoslavia. The key objective of this action was to effectively engage the international community in resolving humanitarian crises and to counteract the peculiarly understood, non-involvement of countries in the most tragic events of the second half of the 20th century. In the common perception of both the representatives of the doctrine of international law and, among others, UN Secretary-General K. Annan, the new mechanism of action was to make it possible to shift the burden of responsibility from the "Right to Intervene", i.e. the classic model of humanitarian intervention, in favour of "Responsibility to Protect", thus placing the victims of particular conflicts, not, as it has been the case so far, the authorities of a given State, at the centre of the international community's attention.[2]

[1] United Nations General Assembly, *2005 World Summit Outcome*, A/60/L.1, 20.9.2006, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/meetingdocument/wcms_079439.pdf (access: 5.3.2023), hereinafter: the 2005 UN Summit Outcome Document.

[2] For the sake of complementarity of argument, it is worth recalling the statement of the then UN Secretary-General, K. Annan, who formulated a well-known question in the *Millennium Report* of 2000: "If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica, to gross and systematic violation of human rights that offend every precept of our common humanity?" (quoted after United Nations, *Responsibility to Protect*, https://www.un.org/en/genocideprevention/about-responsibility-to-protect.shtml, access: 5.3.2023).

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RESEARCH METHODS

As we know, the primary objective of establishing the R2P concept was to seek to link the *sine qua non* condition of the existence of each State, i.e. sovereignty, with the need to implement the responsibility for the protection of the population against the most serious threats such as human rights violations. The main purpose of the paper, however, is not to refer to the origin of an idea or the history of the R2P concept. The author refers in particular to the issue of binding conditions of the mechanisms of armed intervention within the framework of actions included in the R2P model. The author's intention is to bring closer both the cases of actual implementation of armed intervention and to show the situations in which it was not decided to use this relatively new ultima ratio of the international community. The author's intention is to try to assess whether the current legal framework for actions in the R2P model enables the actual achievement of the intended goals through military intervention. Finally, to consider whether it is justified for the effectiveness and credibility of the international community to continue to maintain the right to use direct military means, especially after the events of 2011 in Libya.

The author also examines the impact of military means used by the international community in the implementation of the military intervention in Libya, with particular reference to the consequences of the methods of operation chosen at that time.

The research methodology is based on a comparative analysis of the doctrinal foundations with practice, shown in the study of selected cases (Libya, Syria). The development of the formula of the R2P doctrine as well as the issues of the practical dimension of military intervention were also analysed. The research methods include the dogmatic-legal and theoretical-legal methods. Reference was made to selected acts of international law, especially UN Security Council resolutions. Recent research has also been reviewed.

Due to the specificity of the analysed issues, the text has been divided into smaller parts, which present the perception of the R2P mechanism by representatives of the doctrine, the context of the implementation of military intervention under R2P and its practical dimension. An assessment of the military intervention in Libya in 2011 was carried out and the influence of the UN on the perception of the essence of military operations was characterized.

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PERCEPTION OF RESPONSIBILITY TO PROTECT BY SELECTED REPRESENTATIVES OF THE DOCTRINE OF INTERNATIONAL LAW

Although the Responsibility to Protect issue has been the subject of a considerable number of scientific studies, paradoxically, the aspect of armed intervention most often remains on the sidelines of researchers' interests.[3] They most often focus on the prerequisites for the admissibility of applying the formula "Responsibility for Protection", referring to its basic advantages and disadvantages.[4] It is interesting that the last aspect of Responsibility to Protect, i.e. armed intervention, is responsible for such popularity of the R2P model among representatives of international law. This is probably due to the fact that many supporters of this concept used to oppose it to the earlier "Humanitarian Intervention", recognizing that the main factor differentiating the two models is that the R2P model treats military action as a last resort. However, there is no lack of opinion that Responsibility to Protect is a kind of *nihil novi*, still appealing and allowing the intervention of the Armed Forces. As P. Grzebyk points out, "it is not uncommon for R2P to be just a great marketing campaign to pack old dilemmas into new terms, pour old wine into new bottles. Indeed, if R2P is viewed solely in the context of an armed intervention (but it should be made clear that this should not be the case), then such an assessment is correct, since the armed intervention allowed by the R2P concept is a well-known

[3] Attention should be paid to the papers of such authors as A.J. Bellamy, *The Responsibility to Protect: A Defense*, Oxford 2015; *Theorising the Responsibility to Protect*, eds. R. Thakur, W. Maley, Cambridge 2015; A. Bohm, *Security and International Law: The Responsibility to Protect*, [in:] *Security and International Law: Studies in International law*, eds. M. Footer, J. Schmidt, N. White, L. Davies-Bright, Oxford 2018; *An Institutional Approach to the Responsibility to Protect*, ed. G. Zyberi, Cambridge 2015; *The Responsibility to Protect: The Promise of Stopping Mass Atrocities in Our Time*, eds. J. Genser, I. Cotler, Oxford 2012; A. Orford, *International Authority and the Responsibility to Protect*, Cambridge 2011; G. Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All*, Washington 2008; J. Pattison, *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?*, Oxford 2013; *The Responsibility to Prevent: Overcoming the Challenges to Atrocity Prevention*, eds. S.K. Sharma, J. Welsh, Oxford 2015; *The Oxford Handbook of the Responsibility to Protect*, eds. A. Bellamy, T. Dunne, Oxford 2016; N. Tsagourias, D. White, *Collective Security: Theory, Law and Practice*, Cambridge 2013; R. Menon, *The Conceit of Humanitarian Intervention*, Oxford 2016; G. Evans, M. Sahnoun, *Responsibility to Protect*, "Foreign Affairs" 2002, vol. 81(6), pp. 99–110; *United Nations Reform and the New Collective Security*, eds. P. Danchin, H. Fischer, Cambridge 2010.

[4] Among the few researchers who have taken up the military aspect of the R2P concept in their doctrine, attention should be paid in particular to the work of such authors as H. Teimouri, S.P. Subedi, *Responsibility to Protect and the International Military Intervention in Libya in International Law: What Went Wrong and What Lessons Could Be Learnt from It?*, "Journal of Conflict and Security Law" 2018, vol. 23(1), pp. 3–32; P. Grzebyk, *Miejsce interwencji zbrojnej w koncepcji „odpowiedzialność za ochronę" (R2P)*, "Stosunki Międzynarodowe" 2015, vol. 51(3), p. 61 ff. Cf. G. Evans, *The Responsibility to Protect…*, p. 128 ff.

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humanitarian intervention (…) this time covered by the less controversial term 'right of response' and paying more attention to the victims' perspective than that of the intervening State".[5]

In turn, A. Hehir points out that "a key aspect of R2P was the attempt to reformulate the terms of the debate surrounding humanitarian intervention. The term 'humanitarian intervention' was deemed inappropriate as it was criticized by humanitarian aid workers and also appeared to prejudice favourably any intervention so described. (…) The responsibility to protect therefore resides first with individual states and only secondly with the international community".[6]

It is highly worrying that observations similar to those expressed by P. Grzebyk are expressed, among others, by G. Evans, former Vice-President of the International Commission on Intervention and Sovereignty of States: "There is a lingering tendency in some quarters (…) to argue that RtoP is not a new idea at all, just old doctrine – and in some respects even old practice – in a new bottle. Certainly, as a number of contributions note, the idea of 'sovereignty as responsibility' had been articulated and actively promoted earlier by Francis Deng (…) in the context of Internally Displaced Persons (IDPs)".[7] According to G. Evans, the discussion on the use of military force within R2P overshadows the real goals set for this doctrine: "(…) it is also unfortunate that so much of the R2P discussion should have focused on this subject, because this has led many (…) to misunderstand R2P as being only about the use of force and just another way of talking about 'humanitarian intervention', when in fact (…) it is about much more than that – about prevention at least as much as, if not more than, reaction, and about many much less extreme kinds of reaction".[8] It should be noted, however, that these words were written before the events taking place in some Arab countries in the framework of the so-called Arab Spring, which – as will be proven later in the article – reoriented the previous convictions of representatives of some countries and many representatives of the doctrine of international law.

It will be a truism to say that while in the "Humanitarian Intervention" model, acceptance of military action is at the centre of the intervening party's actions, the opposite model, i.e. R2P, distinguishes a number of actions that precede the application of military intervention. In this solution, military intervention was to be the last resort. One should pay attention to the already famous document *The Responsibility to Protect* of 2001, which is a report of the International Commission

[5] P. Grzebyk, *op. cit.*, p. 63.

[6] A. Hehir, *Humanitarian Intervention: An Introduction*, Hampshire 2010, pp. 113–114.

[7] G. Evans, *Lessons and Challenges*, [in:] *The Responsibility to Protect: The Promise of Stopping Mass Atrocities…*, pp. 376–377.

[8] Idem, *The Responsibility to Protect…*, p. 128.

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for State Intervention and Sovereignty (ICISS),[9] which clearly states that within the framework of both Responsibility to Prevent and Responsibility to React activities, the authors of the report allowed the use of the so-called military measures and – which is particularly important in connection with the subject matter of the work – military intervention.

THE IMPLEMENTATION OF MILITARY INTERVENTION UNDER THE R2P AS A CHALLENGE TO INTERNATIONAL LAW

Of course, the report providing the formal basis for the conclusion of the R2P concept in the 2005 UN Summit Outcome Document makes it clear that recourse to so-called military measures under the Responsibility for Prevention should be final and preceded by an in-depth analysis of potential impacts. Item 3.33 of the ICISS Report points out *expressis verbis*: "The move in each case from incentives for prevention to more intrusive and coercive preventive measures, such as threats of economic sanctions or military measures, is a significant one and should never be undertaken lightly. Such actions may result in the application of very high levels of political and economic – and in extreme cases military – pressure, and to that extent will require a relatively high level of political commitment on the part of the external actors". A similar reservation is made in the report in the context of military intervention under the so-called "Responsibility for Response". Item 4.3 stipulates that "the failure of either root cause or direct prevention measures to stave off or contain a humanitarian crisis or conflict does not mean that military action is necessarily required. Wherever possible, coercive measures short of military intervention ought first to be examined, including in particular various types of political, economic and military sanctions".

With regard to the legal regulations on the admissibility of military intervention under the R2P model, it should be noted that in the 2005 UN Summit Outcome Document, the ambitions of the authors of the 2001 ICISS Report were significantly reduced in terms of the admissibility of military intervention. It was to be admissible under the terms of Chapter VII of the United Nations Charter in situations of genocide, war crimes, ethnic cleansing and crimes against humanity.[10] Without going into the details of these crimes, it should be pointed out that the doctrine argues that "intervention can only take place in the case of intentional (because an international crime cannot be committed out of carelessness) criminal activities of

[9] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect: Report*, December 2001, https://walterdorn.net/pdf/Responsibility-to-Protect_ICISS-Report_Dec2001.pdf (access: 5.3.2023), hereinafter: the ICISS Report.

[10] Items 138–139 of the 2005 UN Summit Outcome Document.

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the State, and not when state structures prove inefficient in a situation of natural disaster or socio-economic crisis, as mentioned in the ICISS Report".[11]

This issue should be subject to a certain nuance and it should be noted that there are often situations where it is difficult to prove to the State that individual crimes are criminal offences. The case of the armed conflict that has been going on in the Syrian Arab Republic since 2011 indicates that the government has been accused of committing, among other things, war crimes, while numerous ethnic cleansing was carried out in Syria by terrorists from the so-called Islamic State or members of other terrorist groups. It is interesting to note that the authors of the 2005 UN Summit Outcome Document decided to specifically recognize ethnic cleansing as a premise for the admissibility of military intervention. Such an action is surprising in that it both multiplies the premises of criminal responsibility and complicates the application of a uniform conceptual apparatus in international law.

It should be recalled that, according to the Rome Statute of the International Criminal Court (ICC), so-called ethnic cleansing falls within the broad concept of the category of "Crimes against humanity", categorized as types in Article 7 of the ICC Statute.[12] It includes such forms of crimes as deportation, forced displacement of people (see Article 7 (1) (d) of the ICC Statute), and persecution of any identifiable group or community on political, racial, national, ethnic, cultural, religious, gender within the meaning of paragraph 3, or on other grounds generally regarded as inadmissible under international law, in connection with any of the acts to which this paragraph refers or with any of the crimes falling within the jurisdiction of the Court (Article 7 (1) (h) of the ICC Statute).

The lack of reference to the semantics of the ICC Statute cannot also be explained by the difference in time between the adoption and entry into force of individual instruments. As you know, the ICC Statute entered into force on 1 July 2002, i.e. three years before the adoption of the key United Nations document on the R2P model. This inconsistency of concepts may seem surprising, since one of the objectives of R2P is to bring the most serious *delicta iuris gentium* perpetrators to justice. It follows *expressis verbis* from item 138 of the 2005 UN Summit Outcome Document, according to which "the international community should, as appropriate, encourage and help States to exercise this responsibility [sic!] and support the United Nations in establishing an early warning capability". Thus, if the international community refers to acts threatened by the repression of the universe, it should do so consistently. Moreover, it should be remembered that, as a last resort, opposing persistent human rights violations is to be achieved by allowing the use of coercive measures. All the more so, it is not surprising that

[11] P. Grzebyk, *op. cit.*, p. 64.

[12] Rome Statute of the International Criminal Court done at Rome on 17 July 1998 (Journal of Laws 2003, no. 78, item 708), hereinafter: the ICC Statute.

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some representatives of the doctrine of international law have some reserve for the possibility of applying this coercion. For example, H. Teimouri and S.P. Subedi represent the view that the importance of the challenges posed to the international community is highlighted on the one hand, and on the other hand the lack of specific norms of international law is unfortunately highlighted. "The use of coercive measures to protect endangered people remains one of the most challenging aspects of contemporary international law. Responsibility to Protect (R2P) was introduced to respond to the grave cases of massacres, but this notion has remained more in the realm of political rhetoric rather than in international law".[13] It should be noted that the problem signalled by researchers is of a much broader nature and fits in with the commonly understood effectiveness of both the regulations present in international law and the implementation of the rule of law by bodies of international organizations ensuring collective security.

There is no doubt that the indications concerning the nature of the military intervention within R2P are of a general nature. It seems reasonable to draw attention to the material-legal regulations on how military intervention in the framework of R2P should be implemented, and then to show their effectiveness on concrete examples.

When analysing the source of such high popularity of activities associated with R2P and noting the enthusiasm of many researchers, it should be remembered that the famous 2005 UN Summit Outcome Document was adopted after repeated recourse by the international community to the institutions of humanitarian intervention. The latter, as we know, has repeatedly proved to be ineffective and to generate undesirable consequences. It should be noted that according to S.J. Wyatt "relatedly, concerns surrounding humanitarian intervention misuse and abuse have been exacerbated following the skewed humanitarian rhetoric employed by the USA and the UK during the invasion of Iraq in 2003 (with both countries invoking the language of the responsibility to protect in an attempt to legitimize their actions)".[14] It is interesting that the R2P concept, which seems to be gaining the status of a recognized institution of international law, paradoxically is not based on the letter of international conventions, but *de jure* and *de facto* results from the so-called soft law. The 2001 ICISS Report as well as the 2005 UN Summit Outcome Document are only a recommendation addressed to both the international community and individual countries highlighting their particular responsibility for civil protection. It seems that the relatively short time that has elapsed since the R2P concept crystallized does not allow it to be considered an existing international custom. It should be remembered that an inherent element necessary for States to recognize that an activity can be classified as an international custom is the constant, unquestionable

[13] H. Teimouri, S.P. Subedi, *op. cit.*, p. 1.

[14] S.J. Wyatt, *The Responsibility to Protect and a Cosmopolitan Approach to Human Protection*, Cham 2019, p. 179.

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practice of States. The fact that the 2005 UN Summit Outcome Document was adopted by the United Nations General Assembly or the use of R2P mechanisms in cases such as the numerous human rights violations taking place in Côte d'Ivoire in 2011 after the presidential elections won by A. Ouattara does not yet show that the R2P mechanism can be considered part of international custom. A supporter of a similar position is T. Gill: "R2P does not constitute a (new) binding rule of international law, although it undoubtedly reflects certain existing legal obligations. R2P has not been incorporated into either an international convention, nor does it at present reflect a rule of customary international law. It lacks both sufficient practice and, in particular, *opinio iuris,* which would indicate that States consider it to be a binding rule of customary law".[15]

In view of the above, a number of comments of a general nature should be made. Considerations on the legal conditions for military intervention under the R2P model should be examined in principle within the framework of the follow-up to the UN Security Council decision authorized by Chapter VII of the UN Charter. The author deliberately ignores the implementation of interventions by the Armed Forces of individual countries resulting from an independent decision of those States. As it has been shown, the R2P concept is an emanation of a measure that is both preventive and responsive to the most serious human rights threats within the framework of collective security. It seems reasonable to assume that the advantages and disadvantages of positivizing military action in the R2P concept can, and perhaps should, be considered in principle in relation to the institutionalized action of states at the international level rather than the sphere of grassroots action by individual states.

There are two main points worth mentioning. Firstly, according to the ICISS Report, items 6.3 to 6.7 state that it is the UN Security Council that decides on the use of the R2P formula and the principle of non-intervention. Of course, the ICISS Report in item 6.7 provides for a specific situation where, in the face of the inability of the Security Council to take a decision due to the lack of unanimity among its members, the General Assembly, based on the "Uniting for Peace" formula, may issue a resolution authorizing the use of force. "To these Charter bases for General Assembly action must be added the 'Uniting for Peace' resolution of 1950, creating an Emergency Special Session procedure that was used as the basis for operations in Korea that year and subsequently in Egypt in 1956 and the Congo in 1960. It is evident that, even in the absence of Security Council endorsement and with the General Assembly's power only recommendatory, an intervention which took place with the backing of a two-thirds vote in the General Assembly would clearly have powerful moral and political support" (item 6.7 of the ICISS Report). However, the authors of the report in item 6.31 allowed for the possibility of intervention

[15] T. Gill, *The Security Council*, [in:] *An Institutional Approach…*, p. 86.

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by the group "pursued by a regional or sub-regional organization acting within its defining boundaries". The indication in item 2.25 of the ICISS Report is of fundamental importance for the concept of military intervention under R2P: "The emerging principle in question is that intervention for human protection purposes, including military intervention in extreme cases, is supportable when major harm to civilians is occurring or imminently apprehended, and the state in question is unable or unwilling to end the harm, or is itself the perpetrator".

Secondly, item 4.1 of the ICISS Report points out that coercive measures may include military action, but with the proviso that "in extreme cases – but only extreme cases". The authors of the report specified six key criteria for armed intervention, i.e.: right authority, just cause, right intention, last resort, proportional means and reasonable prospects.[16] There is no doubt that the key to the legitimacy of military action under R2P is to take action on the part of states authorized to intervene in order to guarantee the key aspect of military action, i.e. proportional means. The understanding of this term consists of three essential elements which must be provided simultaneously. These have been categorized as types in item 4.39 of the ICISS Report which states: "The scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the humanitarian objective in question. The means have to be commensurate with the ends, and in line with the magnitude of the original provocation. The effect on the political system of the country targeted should be limited, again, to what is strictly necessary to accomplish the purpose of the intervention. While it may be a matter for argument in each case what are the precise practical implications of these strictures, the principles involved are clear enough".

It should also be noted that the design of item 4.39 of the ICISS Report may raise some questions from a praxis point of view. Of course, as indicated earlier, sometimes the wordings of individual items are typical of a document without binding legal force, such as the ICISS Report. In this case we are not dealing with the text of an international convention. Although it will be a truism to say that the estimation of the scale, duration and intensity of the planned military intervention will be made by representatives of the armed forces, as the experience of the intervention in Libya has shown, is a fundamental accusation made by the author of the article regarding the admissibility of military actions under the R2P model. The events surrounding the uprising against Colonel Muammar Gaddafi, who has been in power since 1969, show that military planners prioritize the effectiveness of military action over providing these proportional means.

[16] Item 4.16 of the ICISS Report states that "while there is no universally accepted single list, in the Commission's judgment all the relevant decision making criteria can be succinctly summarized under the following six headings: right authority, just cause, right intention, last resort, proportional means and reasonable prospects".

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THE PRACTICAL DIMENSION OF MILITARY INTERVENTION UNDER THE R2P MODEL

As regards the practical dimension of military intervention under the R2P model, reference should be made to the best-known and at the same time most controversial example of the application of the formula discussed here, i.e. the application of the R2P mechanism to the revolted Libya in 2011. It should be recalled that Resolution 1973 of 17 March 2011 was the first resolution to sanction the use of military force to protect civilians against a legitimate government responsible for using violence against its own citizens.[17] This resolution formed the basis for the international Operation "Odyssey Dawn", in which Italy, the United Arab Emirates, Denmark, the Netherlands, Qatar, Spain and Norway also participated alongside the United States. The above-mentioned operation, which took place from 19 to 31 March 2011, was soon replaced by an operation under the aegis of the Unified Protector North Atlantic Pact, which took place from 23 March to 31 October 2011.

There is no doubt that recourse to the R2P mechanism has made it possible for the group of states involved, which, in the first five days of Operation "Odyssey Dawn" alone, have carried out more than 336 combat flights using the most modern machines available to the intervening States.[18] It should be recalled that one of the objectives of this military operation was to establish, as set out in point 2.1.2 of Annex 17 and 18 of the United Nations Security Council Resolution 1973 so-called no-fly zone. T.R. Phinney, in turn, indicates that "Operation Unified Protector (OUP) was unique in its relatively short duration and lack of a 'blue' land component. In total, the OUP CFAC planned and executed 218 air tasking orders (ATOs), 4 flew over 26,500 sorties including 9,700 ground attack sorties, 5 destroyed over 5,900 military targets, and de-conflicted over 6,700 humanitarian aid flights and ground movements. 6 Compared to the 38,000 sorties flown during the 78-day NATO air

[17] Resolution 1973 (2011), adopted by the Security Council at its 6498th meeting on 17 March 2011, S/RES/1973 (2011). It should be noted that this resolution was adopted by the members of the Security Council by a majority of 10 votes "for", including permanent members such as the USA, the UK and France, with two abstentions: China and the Russian Federation. It should be added that on 26 February 2011 the Council also adopted Resolution 1970, one of its main objectives being to establish the embargo on arms deliveries to the Libyan Armed Forces. See Resolution 1970 (2011), adopted by the Security Council at its 6491st meeting on 26 February 2011, S/RES/1970 (2011).

[18] C. Hoyle highlights the participation in operation "Odyssey Dawn" of such advanced aircraft as the B-2 Spirit and the newest US Navy electronic warfare aircrafts Boeing EA-18G Growler or Northrop RQ-4 Global Hawk drones. Hoyle points out that "with first priorities being to take down Gaddafi's air defence systems and command and control network, while also limiting the movements of his air force by enforcing a no-fly zone, the opening salvoes involved the launch of more than 110 Tomahawk land attack missiles from US Navy frigates and submarines and by the UK Royal Navy" (C. Hoyle, *How 'Odyssey Dawn' Tamed Libya's Air Defences*, 28.3.2011, https://www.flightglobal.com/news-focus-how-odyssey-dawn-tamed-libyas-air-defences/99043.article, access: 5.3.2023).

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campaign over Kosovo, OUP's air planners had fewer assets with which to execute their task in a much larger area of responsibility – a region comparable to Alaska".[19]

The demonstrated scale of military involvement of both members of the international community in "Odyssey Dawn" and "Unified Protector" operations shows that the operations carried out exceeded by far the assumptions made by the ICISS Report authors. One of the key findings of the ICISS Report is the provision present in item 7.31 stating that "this means [i.e., to win the hearts and minds of the rescued population] accepting limitations and demonstrating through the use of restraint that the operation is not a war to defeat a state but an operation to protect populations in that state from being harassed, persecuted or killed. Taking these considerations into account means accepting some incrementalism as far as the intensity of operations is concerned, and some gradualism with regard to the phases of an operation and the selection of targets. Such an approach may also be the only way to keep the military coalition together. While this is a clear violation of the principles which govern war operations, one has to keep in mind that operations to protect are operations other than war". It should be added that the massive activities of the coalition air force led to a situation where not only insurgents but also civilians came into possession of hundreds of thousands of weapons, sometimes posing a deadly threat to civilian air traffic if they fell into the hands of terrorist groups.[20] The uncontrolled consequence of the destruction of

[19] T.R. Phinney, *Reflections on Operation Unified Protector*, "Joint Force Quarterly" 2014, vol. 73, p. 87.

[20] A. Hauslohner cites the example of one of the hundreds of deserted warehouses of the Libyan army, from which hundreds of state-of-the-art SA-24 airborne missiles were taken by unknown perpetrators. As she stresses, "the looting of Gaddafi's arsenals and the collapse of the Libyan state could have nightmarish implications for governments struggling to contain local and global terrorist threats. The looted missiles, tank shells and other weapons will be difficult to trace in a country with little centralized authority and a plethora of autonomous militias. (…) Libya's thousands of miles of mostly unattended and highly permeable desert borders exacerbate the threat" (A. Hauslohner, *Gaddafi's Abandoned Arsenals Raise Libya's Terror Threat*, 7.9.2011, https://content.time.com/time/world/article/0,8599,2092333,00.html, access: 5.3.2023). In March 2011, P. Bouckaert, Director of Human Rights Watch, described the Libyan National Transitional Council's abandoned and uncontrolled arms and ammunition depots, specifically the Ajdabiya storage facility. "No guards were defending the facility, allowing civilians to haul away munitions. Human Rights Watch inspected 20 of the 35 weapons bunkers. Inside were thousands of 122mm Grad rockets – one single bunker contained more than 2,000; hand-held SA-7 Grail surface-to-air missiles capable of shooting down a civilian airplane; various guided anti-tank missiles, including AT-2 Swatter, AT-3 Sagger, AT-4B Spigot, AT-14 Spriggam, and AGM-22; hand-held rocket-propelled grenade launchers (RPG-7); 76mm and 106mm high-explosive squash-head (HESH) rounds; 73mm PG-15V anti-tank missiles; 105mm howitzer high explosive projectiles; 105mm white phosphorus artillery projectiles; 105mm High-Explosive Anti-Tank (HEAT) rounds for recoilless guns; 100mm, 122mm, and 155mm artillery shells; 51mm, 60mm, 81mm, and 120mm high explosive mortar rounds; 81mm white phosphorus mortar shells; and many other types of munitions" (quoted after Human Rights Watch, *Libya: Aban-*

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the command structures of the Libyan army was to allow the civilian population to loot warehouses with the armaments of the Libyan army.[21] This was a natural consequence of the international community's decision not to engage in a costly, lengthy and most likely bloody intervention with land-based forces – instead of it, the NATO Member States decided to conduct an air campaign.

The director of Human Rights Watch, P. Bouckaert, suggested that the transition authorities in Libya, even before the outbreak of the Second Civil War, were not taking effective action to secure the remains of Colonel Gaddafi's authoritarian rule. "It is disturbing that, two weeks after taking control of Tripoli and western Libya, the transitional authorities have yet to secure some of the country's most sensitive weapons storage facilities".[22] The fact that Muammar al-Gaddafi opened huge warehouses of military equipment and the mass surrender of weapons supporting him to the civilian population was also important for the security of the Libyan citizens.[23]

The reality of a war-torn Libya is brought closer to I. Adjei when he wrote in 2018: "Currently, Libya is in a state of lawlessness because the governance system has become weak. There are also different ruling factions, Tripoli section and Tobruk section (…) and this has resulted in difficulties in maintaining law and order in the country".[24] Almost two years later, the political and humanitarian situation in Libya further deteriorated when the States such as the Russian Federation and Turkey supplied the other parties to the civil war with modern armaments as for African conditions. In May 2020 Russia sent relatively modern MIG-29 fighter planes and SU 24 bombers to help General Khalifa Haftar's forces, while Turkey provides the Government of National Accord forces with TAI Anka and Bayraktar TB2 drones.[25]

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doned Weapons, Landmines Endanger Civilians, 5.4.2011, https://www.hrw.org/news/2011/04/05/libya-abandoned-weapons-landmines-endanger-civilians, access: 5.3.2023).

[21] S. Dagher, *Libyans Loot Weapons From Desert Cache*, 21.5.2020, https://www.wsj.com/articles/SB10001424052970203405504576602201905770000 (access: 5.3.2023).

[22] Human Rights Watch, *Libya: Secure Unguarded Arms Depots*, 9.9.2011, https://www.hrw.org/news/2011/09/09/libya-secure-unguarded-arms-depots (access: 5.3.2023).

[23] NBC News, *Gadhafi 'Opens the Arms Depot' to Supporters*, 26.2.2011, http://www.nbcnews.com/id/41793330/ns/world_news-mideast_n_africa/t/gadhafi-opens-arms-depot-supporters/#.Xspr-8Dgo2x (access: 5.3.2023).

[24] I. Adjei, *The Concept of Responsibility to Protect and the Libya Intervention*, "International Journal of Science and Research" 2018, vol. 7(9), p. 190.

[25] T. Grove, J. Malsin, *Russian Warplanes in Libya Signal New Risky Phase of Conflic*t, 4.6.2020, https://www.wsj.com/articles/russian-jet-fighters-in-libya-signal-new-risky-phase-of-war-11590776569 (access: 5.3.2023); B. Everstine, *AFRICOM: Russia Deploys Fighter Jets to Libya, Hides Military Insignia*, 26.5.2020, https://www.airforcemag.com/africom-russia-deploys-fighter-jets-to-libya-hides-military-insignia (access: 5.3.2023). It is a peculiar paradox that Russia, which did not oppose the adoption of UN Security Council Resolution 1973 establishing the so-called no-fly zone in Libya, is now laying the foundations for General Haftar's Libyan National Army Air Force.

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ASSESSMENT OF THE MILITARY INTERVENTION IN LIBYA IN 2011

It is evident that military intervention is the ultimate measure, the most severe, a kind of *ultima ratio* at the disposal of the international community, which paradoxically sets and will continue to set the tone for the entire R2P concept. An analogy in the field of criminal law for the purposes of this deduction may be an excellent example of the validity of such reasoning. There is no doubt that the presence of the principal penalty or the absence of a principal penalty has a specific stamp on every code. At present, the absence of a basic penalty is a determinant of the legislator's humanitarianism and a feature of most democratic legal States. It is deceptive for the perception of the R2P concept to place the classical military intervention as a certain last resort. There is no doubt that when deciding on the advisability of using the R2P model, the international community will assess on a case-by-case basis whether there are any reasons to use the *ultima ratio* of R2P activities.

In conclusion, it seems that the greatest weakness is the generality of the concept of armed intervention within the R2P concept and the vagueness of its forms of implementation. This seems to be the fundamental weakness of the R2P model and the potential for its abuse, as well as the justification for its criticism, which, what should be pointed out, its opponents, rightly so, are very willing to use. The consequences of the lack of a precise regulation of the admissibility and, importantly, of the ways in which armed intervention is implemented are clearly visible. After the Libyan events, the controversy and allegations against the R2P formula are clearly growing. It is reasonable to formulate a controversial question as to whether it is at all legitimate to consider armed intervention under the R2P mechanism. Since this final stage of R2P coincides with the previously used mechanism of "Humanitarian Intervention", one should perhaps consider moving away from it. It is armed intervention, or rather the absence of it, that could be a factor differentiating the two institutions of international law.

There is no doubt that, taken as a whole, the R2P model represents a new quality in addressing humanitarian threats and violations of international law on human rights, as demonstrated by the application of this institution in relation to the events in Côte d'Ivoire and Kenya. However, it should be noted *expressis verbis* that, following the actions of part of the international community in Libya, it will no longer be possible to give due credit to the military action taken under the R2P model. It should be noted that the problem of ineffectiveness of the mechanism of armed intervention within the framework of R2P is not limited only to general legal recommendations within the framework of the indicated soft law, but also concerns lack of a casuistic, even enumerative enumeration of the principles of implementation of actions of an armed nature or economic interests of individual states which try to mask their real intentions by invoking the R2P

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formula.[26] This situation in Libya is highlighted by A. Etzioni, according to whom the intervening countries were relatively quick to recognize that the main objective of the ongoing military action is not so much to provide humanitarian protection but to seize the opportunity to change the existing regime. "Very quickly, the goal of the Libyan mission expanded. In April 2011, Obama, French President Nicolas Sarkozy and British Prime Minister David Cameron published a joint pledge asserting that regime change must take place in order to achieve the humanitarian goal. They stated, 'Gaddafi must go, and go for good', so that 'a genuine transition from dictatorship to an inclusive constitutional process can really begin, led by a new generation of leaders'. Moreover, they added that NATO would use its force to promote these goals: 'So long as Gaddafi is in power, NATO must maintain its operations so that civilians remain protected and the pressure on the regime builds'."[27]

The commitment of the North Atlantic Treaty Organization (NATO) in changing the system of power in Libya is also underlined by S. Zifcak, according to whom: "In the end, the NATO strategy morphed progressively into one that embraced regime change. President Obama, after having initially rejected the idea that Libyan intervention should embrace regime change, encapsulated the altered objective in the following terms: The goal is to make sure that the Libyan people can make a determination about how they want to proceed, and that they'll be finally free of 40 years of tyranny and they can start creating the institutions required for self-determination".[28] It should be recalled that this assumption was clearly in breach of the guidelines for actions undertaken under R2P, which are set out in item 4.39 of the ICISS Report, specifically the reasonable requirement that the aim of the measures is not to reorganize a State's political system: "The effect on the political system of the country targeted should be limited, again, to what is strictly necessary to accomplish the purpose of the intervention". The commitment of NATO Member States to the removal of Gaddafi's regime from power was demonstrated by the targeting of precise air strikes at places where people close to the power camp were expected to be found. R. Reike, referring to M. Hosenball and M. Ryan, is

[26] It should be recalled that already in September 2011, J. Borger and T. Macalister wrote in "The Guardian": "Rebel leaders had already made clear that countries active in supporting their insurrection – notably Britain and France – should expect to be treated favourably once the dust of war had settled. (…) The new Tripoli government has denied the existence of a reported secret deal by which French companies would control more than a third of Libya's oil production in return for Paris's support for the revolution" (J. Borger, T. Macalister, *The Race Is on for Libya's Oil, with Britain and France Both Staking a Claim*, 1.9.2011, https://www.theguardian.com/world/2011/sep/01/libya-oil, access: 5.3.2023).

[27] A. Etzioni, *The Lessons of Libya*, "Military Review" 2012, vol. 92(1), p. 49.

[28] S. Zifcak, *The Responsibility to Protect after Libya and Syria*, "Melbourne Journal of International Law" 2012, vol. 13, p. 8. Other researchers, including N. Tsagourias and N.D. White, have also observed that the authority of Resolution 1973 was exceeded. See more N. Tsagourias, N.D. White, *op. cit.*, p. 264.

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writing: "Moreover, even though NATO officials insist that their list of targets did not include individuals, air strikes started to hit locations closer to Colonel Gaddafi, e.g. his Bab al-Aziziya compound in Tripoli, killing his son Saif al-Arab and other family members".[29]

It should be noted that the evaluation of military intervention carried out on the basis of the R2P model, based on the example of just one case study, i.e. Libya in 2011, is not authoritative. This view is expressed by L. Glanville, whose opinion is that "since the unanimous endorsement of R2P by States at the UN World Summit in 2005, there has been only one clear case, Libya, in which it was widely agreed that military intervention would be a just and prudent response to the occurrence of mass atrocities, and in that case the international community did not fail to intervene. Perhaps the norm is not so weak after all".[30] However, this view cannot be accepted, because while in fact drawing conclusions on the basis of just one case is not reliable, this particular case was a clear warning signal to the Russian Federation and China that the R2P formula could be used to remove governments in States with which these powers have particularly close diplomatic relations. Hence, as A. Mateiko points out: "Russia was quick to suggest Resolution 1973 became 'a scrap of paper to cover up a pointless military operation'. This criticism sought to delegitimize the 'Libyan model', so as to prevent the West from using it for future R2P endeavours without an explicit UNSC authorization and therefore posing a wider normative challenge to unrepresentative brutal regimes".[31] Other

[29] R. Reike, *Libya and the Prevention of Atrocity Crimes*, [in:] *The Responsibility to Prevent…*, p. 349. It is interesting that many sources contain information indicating the involvement of NATO forces in the physical liquidation of Muammar Gaddafi. For example, see B. Farmer, *Gaddafi's Final Hours: NATO and the SAS Helped Rebels Drive Hunted Leader into Endgame in a Desert Drain*, 22.10.2011, https://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8843684/Gaddafis-final-hours-Nato-and-the-SAS-helped-rebels-drive-hunted-leader-into-endgame-in-a-desert-drain.html (access: 5.3.2023).

[30] L. Glanville, *Syria Teaches Us Little about Questions of Military Intervention*, 7.2.2014, https://www.e-ir.info/pdf/46570 (access: 5.3.2023), p. 2.

[31] A. Mateiko, *Russia's Stance on the Responsibility to Protect: Congruence, Sources of Scepticism and the Problem of Abuse*, Moscow 2014, p. 6. It is interesting that the issue of the Russian Federation's support for Resolution 1973 has raised a dispute between the then Russian Prime Minister V. Putin and President D. Medvedev. Putin called the resolution "medieval calls for crusades". See more BBC News, *Medvedev Rejects Putin 'crusade' Remark Over Libya*, 21.3.2011, https://www.bbc.com/news/world-europe-12810566 (access: 5.3.2023. According to N. Kuhrt (*Russia, the Responsibility to Protect and Intervention*, [in:] *The Responsibility to Protect and the Third Pillar: Legitimacy and Operationalization*, eds. D. Fiott, J. Koops, London 2015, p. 109), "in seeking to explain Russian support for Libya, several factors need to be taken into account: the general opprobrium for Qadaffi in the wider region, Moscow's lack of significant economic or strategic interests, and the positioning of Medvedev internally in advance of the elections in Russia. To some extent one must see the apparently contradictory statements of President Medvedev and Prime Minister Putin in the light of these domestic politics. It has been speculated that President Medvedev was trying to get

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researchers also point out that the R2P doctrine cannot be a kind of smokescreen for changing governments. For example, L.M. Herța points out that "responsibility to protect does not include regime change (as designed by its proponents) and that while states do agree on the need to protect civilians, they do not however agree on the necessity to change governments".[32] A.J. Bellamy concludes that the main problem in the Libyan context was not the use of force, but the just mentioned regime change: "(…) the problem was not so much the use of force to protect civilians from mass atrocities – (…) this had been duly authorized by the Security Council – but the facts that this use of force resulted in regime change and that this result was intended by those responsible for implementing the Security Council's decisions even though the Council itself had not specifically authorized regime change".[33] It is important to note that in the doctrine some researchers make explicit allegations about the methods of applying the R2P formula against Libya, which have far exceeded the expectations of some UN Member States and have distorted the ICISS Report. As S.J. Wyatt concludes: "Russia and China argued that NATO had exceeded its mandate and attacked what they perceived to be an abuse of the provisions of SCR1973. In particular, the tactical use of NATO air-power to support the rebel offensive against Tripoli, the arming of rebels despite the enactment of an arms embargo, the presence of special forces troops on Libyan territory, the bombing of Libyan TV and the attempted assassination by drone of Gaddafi all strained against the protecting civilian logic of the doctrine, undermining the 'Immaculate Intervention' contemplated by Russia and China and discrediting the legal authorization of R2P".[34]

Western support for a compromise on missile defense in Europe which explains Russia's failure to veto the resolution on Libya – certainly this may have been a factor, in particular given the internal posturing in advance of the leadership rotation between Putin and Medvedev".

[32] L.M. Herța, *Responsibility to Protect and Human Security in UN's Involvement in Libya*, "Studia Universitatis Babes-Bolyai Europaea" 2019, vol. 64(2), p. 236.

[33] A.J. Bellamy, *R2P and the Problem of Regime Change*, [in:] T.G. Weiss, R. Thakur, M.E. O'Connell, A. Hehir, A.J. Bellamy, D. Chandler, R. Shanahan, R. Gerber, A. Williams, G. Evans, *The Responsibility to Protect: Challenges & Opportunities in Light of the Libyan Intervention*, November 2011, https://www.e-ir.info/wp-content/uploads/R2P.pdf (access: 5.3.2023), p. 22. Like A. Bellamy, the issue of the excessive involvement of NATO countries in efforts to stop the offensive of loyalist troops in Libya is underlined by R. Shanahan (*R2P: Seeking Perfection in an Imperfect World*, [in:] T.G. Weiss, R. Thakur, M.E. O'Connell, A. Hehir, A.J. Bellamy, D. Chandler, R. Shanahan, R. Gerber, A. Williams, G. Evans, *op. cit.*, p. 27): "Another aspect of the R2P concept that may yet have negative repercussions is the way it was applied in Libya, particularly the degree to which the UN-authorized forces became partisan. Initially the no-fly zone was seen as a purely defensive measure to prevent the pro-government Libyan military forces from directly firing on civilian population centres. Although NATO claimed that it did not provide close air support to the NTC forces, this was in reality a definitional distinction as it undertook offensive, if not necessarily close, air support".

[34] S.J. Wyatt, *op. cit.*, pp. 180–181.

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INFLUENCE OF UN EFFECTIVENESS ON ARMED OPERATIONS IN THE R2P FORMULA

It seems that the problem of effectiveness and purposefulness of the military actions discussed in the article in the context of the R2P model has to be considered in a broader perspective and should be treated as an emanation of the challenges of the largest collective security system in the world, i.e. the United Nations. Within this organization, the greatest problem is to ensure the effectiveness of the Security Council in carrying out its responsibilities under the UN Charter.

The bloody civil wars that have been going on since 2011 in the Syrian Arab Republic and in Libya in 2011 and then from 2014 to the present day expose the total lack of effectiveness not only of the United Nations but also of the international community and constitute a kind of vote of distrust in the effectiveness of collective security systems. Some researchers, such as G. Andreopoulos, explicitly point out that the collective security perceived so far is in crisis: "Is the concept of collective security viable? To its critics, as well to some of its supporters, the requirements for its realization are so formidable as to render the concept deeply flawed, or unable to provide 'a workable and acceptable means' to achieve peace and order in the international system".[35]

It should be noted that the period of deceptive stabilisation that took place in Libya in 2012–2014, after the collapse of authoritarian rule, was perceived by many politicians as stable, without noticing the centrifugal trends of this strongly clan-like society. Such an approach, as modelled by many military and political figures of the military intervention carried out within the framework of R2P, resulted in the process of pushing Muammar Gaddafi away from power being obscured by the second, and as it seems more important, process, i.e. the creation of a system of power that in the transition period society would be able to understand and accept. For example, in 2013 J. Greenleaf pointed out that in the opinion of diplomats from some Western countries military intervention was a success. "Although some scepticism remains regarding the future of the oil-rich North African nation, an overwhelming consensus of opinion considers the air war in Libya a resounding success and a testament to what a coalition-led operation can do. Tomas Valasek, of the Center for European Reform in London, asserts that it was 'as good a war as it comes'. Diplomats from the United States and Europe agree with this evaluation, similarly describing the war's merits in superlatives".[36]

[35] G. Andreopoulos, *Collective Security and the Responsibility to Protect*, [in:] *United Nations Reform…*, p. 155.

[36] J. Greenleaf, *The Air War in Libya*, "Air & Space Power Journal" 2013, March–April, pp. 28–29.

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From today's point of view, it seems that only the end of the long authoritarian rule, over 40-year long, initiated by the coup d'état of 1969, which overthrew the monarchy, can be considered a success. A bloody civil war, rivalry between clans and tribes, the division of the Armed Forces into a Libyan National Army and a loyal Government National Accord, the public's ignorance of the rules of democracy, the rapid increase in crime – including organized crime responsible for smuggling illegal refugees into Europe – are just some of the unplanned consequences of paradoxically one of the most efficient military interventions in history. One should agree with the view expressed by S. Akbarzadeh and A. Saba: "As illustrated in the case of Libya, inherent in the practice of R2P is its role in facilitating regime change. While removing by force a murderous regime may halt or prevent the murder of innocent civilians, the empirical evidence suggests that foreign-imposed regime change is fraught with complications. In the post-Gaddafi era, characterized by chaos, disorder and lawlessness, Libyans are subjected to widespread and systematic human rights violations on a scale that far exceeds the brutal excesses of the Gaddafi regime".[37]

The recent months' offensive of the Libyan National Army led by General Khalif Haftar to Tripoli, defended by the Government of National Accord forces, or the subsequent offensive of Syrian government forces to the terrorist-controlled province of Idlib between December 2019 and March 2020, highlight the fact that the failure of the UN Security Council to take real action is a result of the continued rivalry between its permanent members.[38] The examples of civil wars that have been going on for many years clearly show that, faced with the actual participation of so many parties in both conflicts, supported by both global powers – see the United States and Russia – and regional – Turkey, the imposition of the entire system of sanctions by the UN will be both ineffective and will affect only a few, usually weaker parties to the conflict.

The debate on the reform of the Security Council, which has been going on for decades and which aims to make this body more effective and efficient, is therefore clearly topical. This long-standing process, which has not yet ended with a change in the substantive and procedural regulations of the UN Charter – includ-

[37] S. Akbarzadeh, A. Saba, *UN Paralysis Over Syria: The Responsibility to Protect or Regime Change?*, "International Politics" 2018, vol. 56(4), p. 15.

[38] The scale of the humanitarian crisis caused by the civil war and the crimes committed by the so-called Islamic State, in Syria is evidenced by data presented by the Syrian Observatory for Human Rights, referred to by Human Rights Watch. The number of people killed in the Syrian conflict in the period to March 2018 was estimated at 511,000. According to estimates of the United Nations High Commissioner for Refugees, the number of so-called Internally Displaced Persons amounts currently to 6.6 million people and the number of refugees amounts to over 5 million. Data from Human Rights Watch, *Syria: Events of 2018*, https://www.hrw.org/world-report/2019/country-chapters/syria (access: 5.3.2023).

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ing the composition of the Security Council and the specific substantive and legal powers of its permanent members, which have remained unchanged for almost 75 years (sic!) – has led to a growing conviction among both doctrine and national authorities that the reform of the Security Council must be treated as a necessity. Many researchers stress that the assessment of the role of the UN in maintaining international order must be negative. For example, A. Szpak stresses that in recent years "the crisis of effectiveness of this organization has been caused, among other things, by the fact that States are guided not only by the primacy of their own national interests, but also by the lack of effective means of influencing powers that do not respect international law. It is true that the UN failed to prevent genocide in Rwanda (1994), ethnic cleansing during the conflict in the former Yugoslavia (1991–1995), crimes against humanity committed in Darfur in Sudan (2004), and was unable to bring an end to the non-international armed conflict in the Democratic Republic of Congo, which claimed millions of lives (1989–2009). The UN has also recently been marginalized by the US, which launched an armed assault on Iraq in 2003, despite the lack of authorization from the Security Council. The intervention in Libya in 2011 and the overthrow of Muammar al-Gaddafi and the absence of intervention in Syria (…) contributed to the creation and functioning of the so-called Islamic State (ISIS). In Syria, the failure of the UN Security Council to act has even led to the creation of a 'fallen State'."[39] According to N. Deller, the lack of efficiency of the Security Council affects the effectiveness of the R2P doctrine. "The concerns about implementing RtoP are most sharply directed at the Security Council. It has failed miserably to prevent past atrocities and is criticized as unrepresentative and outdated. A few UN Member States have suggested that the existing structure has been so utterly delegitimized that they cannot support any initiative that promotes, or even recognizes, the *status quo*. For these countries, RtoP cannot be implemented until the Council's composition, however, requires an amendment to the UN Charter (…)".[40]

[39] A. Szpak, *Nowe instrumenty ONZ zapewnienia bezpieczeństwa międzynarodowego i budowania pokoju*, "Rocznik Bezpieczeństwa Międzynarodowego" 2016, vol. 10(1), p. 110. However, it seems difficult to agree with the view that Syria can be considered as a fallen State. Even during the most difficult period for Syria, associated with the offensive of the so-called Islamic State and the so-called Free Syrian Army, the legal government of Syria controlled around 15% of the country's most populous area in July 2015. It should also be remembered that a large area of the country is desert or semi-desert and is not uninhabited. It is interesting that according to the estimates of the Chief of General Staff of the Armed Forces of the Russian Federation, General Giersimov, the so-called Islamic State would take about 2 months to fully conquer the Syrian state. See more V. Baranets, *My perelomili khrebet udarnym silam terrorizma*, 29.12.2017, http://archive.redstar.ru/index.php/component/k2/item/35551-my-perelomili-khrebet-udarnym-silam-terrorizma (access: 5.3.2023).

[40] N. Deller, *Challenges and Controversies*, [in:] *The Responsibility to Protect*..., p. 81. L. Mälksoo brings the issue of the need to reform the Security Council closer. Cf. L. Mälksoo, *Great Powers*

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Other researchers, such as K. Ferguson, also see the failure of the UN Security Council's actions in both Libya and Syria, while noting that the demonstrated inefficiency affects the Council's credibility as a body. "The implications for the UN should be taken seriously. Security Council responses to both Libya and Syria raise questions about the Council as a legitimate forum of multilateralism. There is pressure on the Council to review its working practices when it comes to responding to mass atrocities – from calls for the P5 to voluntarily suspend their veto power to suggestions of more substantial reform. But reform will be slow".[41]

At the same time, K. Ferguson proposes to use methods that will make it possible to peacefully strengthen the protection of civilians and prevent atrocities: "(…) creating mechanisms such as all-party groups that facilitate cross party dialogue; establishing cabinet portfolios responsible for the protection of civilians; and allocating resources to prediction, prevention and protection activities".[42]

It seems that while these *modi operandi* would undoubtedly gain the recognition of the Council's Member States, they will no less fail in the most serious cases to meet their expectations. According to the author, it should not be forgotten that many of the serious human rights violations take place in authoritarian States, as exemplified by Libya Gaddafi, Syria al-Assad or Somalia in the period after the fall of Mohammed Siad Barre. A characteristic feature of these countries is that they remain to a large extent closed States, inaccessible to outsiders, with a significant degree of development of security services. Such internal conditions seriously hamper the use of these tools.

The terrible balance of the Syrian civil war cannot be forgotten either. The Human Rights Watch report, based on Syrian Observatory for Human Rights data, shows a total of 511,000 deaths (sic!) in 2018, while the United Nations High Commissioner for Refugees estimates the number of Internally Displaced Persons at 6.6 million and refugees under the 1951 Geneva Convention relating to the Status of Refugees at over 5 million.[43] The already mentioned S. Akbarzadeh and A. Saba point out that the persistent divisions within the Security Council and the Libyan experience make constructive action within a key UN body practically impossible. "The uncompromising positions, over the past 6 years, of Russia and China and the P3 states on the fate of the Syrian regime of Bashar al-Assad have not only paralysed the Security Council but they have effectively made the Council itself

Then and Now: Security Council Reform and Responses to Threats to Peace and Security, [in:] *United Nations Reform…*, p. 94 ff.

[41] K. Ferguson, *Did the Libyan Intervention Give R2P a Bad Name?*, 16.3.2017, https://www.una.org.uk/did-libyan-intervention-give-r2p-bad-name (access: 5.3.2023).

[42] *Ibidem*.

[43] See Human Rights Watch, *Syria…* The atrocity problem of the civil war in Syria is also highlighted by K. Bannelier-Christakis, *Military Interventions against ISIL in Iraq, Syria and Libya, and the Legal Basis of Consent*, "Leiden Journal of International Law" 2016, vol. 29(3), p. 744.

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an obstacle to the resolution of the Syrian crisis. Ultimately, the legacy of Libya and the attempt to replicate a similar scenario in Syria has hampered the protection of Syrian civilians".[44]

It seems, therefore, that the words of UN Secretary-General K. Annan, who in his address to the UN General Assembly on 20 September 1999 spoke memorable words, still remain valid: "As we seek new ways to combat the ancient enemies of war and poverty, we will succeed only if we all adapt our Organization to a world with new actors, new responsibilities, and new possibilities for peace and progress. (…) The inability of the international community in the case of Kosovo to reconcile these two equally compelling interests – universal legitimacy and effectiveness in defence of human rights – can only be viewed as a tragedy. (…) It has revealed the core challenge to the Security Council and to the United Nations as a whole in the next century: to forge unity behind the principle that massive and systematic violations of human rights – wherever they may take place – should not be allowed to stand. (…) A global era requires global engagement. Indeed, in a growing number of challenges facing humanity, the collective interest is the national interest. Third, in the event that forceful intervention becomes necessary, we must ensure that the Security Council, the body charged with authorizing force under international law – is able to rise to the challenge. The choice, as I said during the Kosovo conflict, must not be between Council unity and inaction in the face of genocide – as in the case of Rwanda, on the one hand; and Council division, and regional action, as in the case of Kosovo, on the other".[45]

Undoubtedly, the extensive statement made by the UN Secretary-General in 1999 deserves special attention because, in the context of such humanitarian crises as those that took place in Sierra Leone, Sudan, the Balkans, Cambodia, Afghanistan, Timor-Leste or Rwanda, K. Annan stressed that, in addition to military intervention, there are other measures that can become effective. *Ad hoc* international tribunals, early warning, preventive diplomacy, preventive deployment and preventive disarmament, according to the UN Secretary-General, may be sufficient measures to prevent many armed conflicts.

In 1999, the Secretary-General formulated an important question relating to the possibility for some states to appeal to the institution of armed intervention, but not authorized by the Security Council decision. "To those for whom the greatest threat to the future of international order is the use of force in the absence of a Security Council mandate, one might ask – not in the context of Kosovo – but in the context

[44] S. Akbarzadeh, A. Saba, *op. cit.*, p. 15.

[45] Statement by UN Secretary-General, Kofi Annan, to the UN General Assembly of 20 September 1999. See more United Nations, *Secretary-General Presents His Annual Report to General Assembly*, Press Release SG/SM/7136 GA/9596, https://www.un.org/press/en/1999/19990920.sgsm7136.html (access: 5.3.2023).

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of Rwanda: If, in those dark days and hours leading up to the genocide, a coalition of States had been prepared to act in defence of the Tutsi population, but did not receive prompt Council authorization, should such a coalition have stood aside and allowed the horror to unfold?".[46] In the reality of that time, this question was rhetorical in nature, and what is important in the context of the subject discussed here, before the R2P concept crystallized.

In the light of the experience of the Libyan civil war and its impact on the migration crisis that Europe is experiencing from 2015 onwards, or in the face of the still unfinished civil war in the Syrian Arab Republic, it should be concluded that any military intervention should be based on the approval of the Security Council, which should effectively supervise the implementation of the military action itself and precisely define its objectives. As the example of Libya has shown, Resolution 1973 was in fact a blanket resolution in which the intervening countries reoriented assumptions of the military intervention. Civil protection and security have given way to the willingness to seize the opportunity to change the political regime in Libya. Such a belief in the possible involvement of the Security Council in supervising the course of military intervention, although it may seem even utopian, is, after all, a result of the principle of the rule of law, which is inextricably linked to its observance of the law, including the UN Charter. *Praeter legem* actions, as demonstrated by the activity of the powers and members of the Security Council at the same time, especially in the context of the situation in Syria, result in further political opportunism and the primacy of particularism over the objectives of the United Nations. The view expressed by S. Zifcak should also be noted. According to this author, if the Security Council were to authorize an R2P military intervention, then one should "establish an independent monitoring mechanism to review the intervention's continuing implementation. The mechanism would be required to report to the Security Council on the consistency between actions on the ground and the mandate in relation to which they have been taken. If the mandate is exceeded, the conduct of the intervention would return to the Security Council for further discussion and review".[47] However, it seems that this mechanism could only work if military intervention activities were carried out by a UN force. Otherwise, the proposed mechanism would be unrealistic, as it is difficult to imagine a situation in which the Armed Forces of States implementing coercive intervention would be willing to put their personnel at risk by informing them of planned military activities. Given the strong polarization of positions in the Security Council, the proposed mechanism would be dysfunctional.

[46] *Ibidem*.

[47] S. Zifcak, *op. cit.*, p. 34.

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CONCLUSIONS

To sum up, it seems reasonable to refer to the numerous voices present in the doctrine of law, stressing the possibility of adapting the R2P formula both to change the authorities in Damascus and to provide humanitarian aid to the Syrian population. Many researchers have forgotten about the already indicated particularism of Security Council members and propose the use of military intervention under the R2P mechanism. For example, Z. Zakiyah is considering the possibility for Arab countries to use the R2P formula to ensure the protection of civilians. As he stresses: "Although there are many debates regarding the notion of R2P such as the issue of sovereignty, the military intervention and motives of the participating countries, in Syrian case it follows the principles of R2P which concern more on the human security and assisting these people in need. Meanwhile, the purposes of the military intervention are to provide secure environment for both civilians and humanitarian actors working on the ground, therefore, the distribution of aid will work well".[48] It should be noted, however, that ensuring safety on land, once complete control of the air is ensured, would require the involvement of ground troops in the first place. Such demands, however noble they may be, are not relevant to the Syrian real situation. It should be remembered that part of the installations of the Syrian Arab Army is operated by soldiers of the Russian Federation. On many occasions, Russian soldiers use numerous bases, especially Syrian air force.[49] It seems unlikely that any State, in order to ensure effective military intervention in Syria, would decide to launch an open attack on Russian military bases, temporary dislocation sites or military installations. Nor should it be forgotten that after 9 years of continuous engagement in combat, Syrian units – especially the Syrian anti-aircraft defence – represent a military potential far greater than that of Libya.

It seems that disregarding these conditions is a mistake, which is due to the fact that the above-mentioned recommendation of the ICISS Report that the goal of an armed intervention under the R2P is not to conquer a given country is not taken into account. It is important to remember the consequences of applying this model of action to a chaotic Libya, characterized, as the conflict has shown, by the weakness of the central authorities. In 2011, Libya did not maintain particularly close political-military relations with Russia. Hence, Muammar Gaddafi, a close

[48] Z. Zakiyah, *Responsibility to Protect in Syrian Crisis: What Can Be Expected from the Muslim Community?*, "Analisa Journal of Social Science and Religion" 2019, vol. 4(2), p. 297.

[49] Since 2015, Russian aviation has repeatedly operated from many Syrian air bases in the country's territory: Shayrat Airbase, Hama Military Airport, Tiyas Military Airbase, and most recently Qamishli airport in the northeast of the State. See Arab News, *Russia's New Base in Qamishli Is a Message. But for Whom?*, 16.11.2019, https://www.arabnews.com/node/1584731/middle-east (access: 5.3.2023). It should be recalled that currently the main military bases of the Russian Federation in Syria are the air force base in Khmeimim and the naval port in Tartus.

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ally of Moscow since the 1970s, did not meet with a veto that could protect him in the Security Council's vote on Resolution 1973. Thus, the actions of the loyalists faithful to him against opposition groups were paralyzed. K.P. Mueller points out that the key to overthrowing Gaddafi was to gain the support of the international community. "The most challenging aspects of the intervention were situational, and many of these were resolved diplomatically prior to March 19 through the actions of the GCC, the Arab League, and the U.N. Security Council".[50]

In the case of Syria, the situation is diametrically opposed. Since the involvement of the Armed Forces of the Russian Federation in the civil war, in September 2015, there has been a real consolidation of power centred around Bashar al-Assad, who indeed enjoys considerable public support as a politician guaranteeing the secular character of the Syrian State.[51] As the author pointed out earlier, maintaining the dominant position in Syria is of key importance for Russia, while at the same time affecting the possibility of providing assistance to the civilian population under the aegis of other states and guaranteed by force. There is no doubt that it is of strategic importance for the Russian Federation to maintain a permanent military presence in the Syrian Arab Republic. Firstly, it allows control of an area of strategic importance for the transport of oil and gas from the Gulf to Europe. Secondly, Russia's military presence in Syria is an embodiment of Moscow's political and military ambitions in the Middle East. Finally, there is no doubt that Syria plays for Russia a role analogous to that of the Kaliningrad Oblast, i.e. a kind of unsinkable air carrier.[52] As early as 2015, even before the active involvement of the Russian armed forces in Syria, A.J. Bellamy stated that the realities of the Syrian civil war are very different from those with which the UN and later the North Atlantic Treaty Organization confronted Libya. "Compared to Libya in early 2011, the situation in Syria is more complex as there are few clear front lines, to my mind there are no plausible military options for external intervention, and the region is badly divided on the question of how best to respond. Indeed, in sharp contrast to the Libyan case, two significant regional players – Iran and Hezbollah – have threatened to escalate the crisis should the West (or the UN) intervene".[53] In the context of considering the chances of a possible repetition of the Libyan model in Syria after 2011, S. Sewall points out that the decision to involve possible military intervention implementers in the framework of R2P is, in fact, an effect of the future profit and loss account, apart from the Security Council's approval. "Closely related is the question of force

[50] K.P. Mueller, *Victory through (Not by) Airpower*, [in:] *Precision and Purpose: Airpower in the Libyan Civil War*, ed. K.P. Mueller, Santa Monica 2014, p. 373.

[51] Not without significance for the political reality of Syria, is the fact that the al-Assad family comes from the Alawite minority.

[52] W. Kowalski, *Quantitative Methods of Measurement of the Effectiveness of the Russian Impact in Syria*, [submitted for publication].

[53] A.J. Bellamy, *The Responsibility to Protect…*, pp. 146–147.

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protection for intervening powers. If the costs and risks to interveners are high, they may be less willing to engage in R2P missions. Yet if significant force protection is a political prerequisite for R2P intervention, this will affect the means used (and perhaps associated levels of civilian harm)".[54]

The Russian Federation now sees Syria ruled by Bashar al-Assad as its key ally in the Middle East, so it is not surprising that since the start of the civil war in Syria, Russia has consistently counteracted all attempts at diplomatic action in the UN Security Council that could enable the international community to act either as part of the R2P model or as part of classical humanitarian intervention. An example is the vote in the Security Council on 8 October 2016 on the French proposal for a resolution S/2016/846.[55] One of its key provisions was to establish a no-fly zone over Aleppo. The motion for a resolution was vetoed by the Russian Federation.[56] The considerable scale of Russian military involvement in Syria, for as long as it seems, will be an extremely effective protective umbrella against Bashar al-Assad's rule, paralysing any attempt at military intervention along the Libyan model.[57] Finally, States wishing to intervene in Syria under the R2P model must bear in mind that the Syrian Arab Army, hardened during the 9-year war – including the Islamic State and numerous terrorist groups – with far more modern armaments than the Libyan army in 2011, with logistical support and training provided by the Russian Federation, would be an incomparably more demanding opponent than the loyalist forces in Libya. Of course, it would be possible to coordinate the action of the powers, with the United States at the forefront, from a military point of view, to ensure the establishment of a no fly-zone in Syria, not least in view of the presence in that country of numerous Russian military installations with the Russian Federation's air force base in Khmeimim and the thousands of Russian military advisors assigned, among others, to key Syrian anti-aircraft defence units, but this should be regarded as unrealistic.

Perhaps the question should be asked whether, in the light of the experience of the Libyan civil war in 2011, the conceptualization of military action based on

[54] S. Sewall, *Military Options for Preventing Atrocity Crimes*, [in:] *The Responsibility to Prevent*..., p. 171.

[55] United Nations Security Council, S/2016/846, https://undocs.org/en/S/2016/846 (access: 5.3.2023).

[56] As a curiosity related to the justification by Russia's Permanent Representative to the UN, V. Churkin, of the advisability of vetoing the draft resolution, it should be pointed out that the Russian side has just cited an example of actions taken by the Western powers in Libya. "We all know the background to the Syrian crisis. After destroying Libya and considering that a great success, the troika of the three Western permanent members of the Security Council turned on Syria" (quoted after United Nations Security Council, 7785th Meeting, S/PV.7785, https://undocs.org/en/S/PV.7785 (access: 5.3.2023).

[57] The issue of the scale of the Russian Federation's military involvement in Syria is explained in detail by A. Lavrov (*Russia in Syria: A Military Analysis*, "Chailott Paper" 2018, vol. 146, p. 47).

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the Libyan case law is justified at all? In the realities of modern armed conflicts, pointing to the creation of "only" no fly-zone in reality means a complete failure of the state's defence capabilities in practice, and is therefore a massive blow to the key elements of the command infrastructure of the armed forces, air bases and all military units that may pose even the slightest threat to the air forces of the intervening States.

As has been shown, the experiences of the civil war in Libya in 2011, as well as the counterpoint of the civil war in Syria, clearly show that when military units of one of the powers are deployed in the territory of a country that uses organized violence against its own citizens, it radically moves it away a chance to apply military intervention under the R2P formula.

Referring to the question formulated in the introduction, whether the current legal framework for activities in the R2P model enables the actual achievement of the intended goals through military intervention, the answer should be in the affirmative. However, this opinion should be nuanced and it should be pointed out that if the armed forces of one of the permanent members of the Security Council are involved in a given country, then the possibility of achieving the assumed goals is abandoned. Thus, it is reasonable to point out that when formulating the key *de lege ferenda* postulate regarding the implementation of military intervention under the R2P, it is necessary to be aware of the problem of the loss of credibility of these actions in the light of the Libyan experience. Thus, the most important postulate still remains a clear definition that the undertaken military actions cannot contribute to changing the political system in a given country, and the content of the UN resolution cannot be blanket.

It seems that, although the use of force on such a scale as has been used to protect civilians from atrocities by Libyan armed forces loyal to Muammar al-Gaddafi and hired by mercenary loyalists has made the possible future use of military intervention formula within the R2P formula still likely, it is reasonable to assume that, in the short term, there will be no case in the UN Security Council of a State which, as in the case of Resolution 1973, will result in none of the permanent members of the Security Council having recourse to its right of veto. It should be remembered that even the most perfect mechanisms of international law still do not balance the role of particular interests of individual States, as evidenced by the ongoing nightmare of the Syrian civilian population.

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ABSTRAKT

Celem artykułu jest analiza prawnych uwarunkowań interwencji zbrojnej w ramach koncepcji „odpowiedzialności za ochronę" (*Responsibility to Protect*, R2P). Autor przedstawił i ocenił skuteczność podejmowania działań wojskowych w jej ramach. Należy podkreślić, że zbrojny aspekt koncepcji R2P nie był szeroko analizowany w doktrynie. Autor omówił kwestie skuteczności interwencji wojskowej na przykładzie operacji „Odyssey Dawn" i „Unified Protector" w Libii w 2011 r. Odniósł się także do koncepcji zastosowania mechanizmu interwencji wojskowej w Syryjskiej Republice Arabskiej po 2011 r. W tekście wskazano, że największą słabością koncepcji interwencji zbrojnej w ramach mechanizmu R2P jest ogólnikowość i niejasność jej form realizacji. W kontekście interwencji wojskowej w Libii, do której doszło w wyniku braku weta ze strony któregoś ze stałych członków Rady Bezpieczeństwa, autor wykazał, że jakkolwiek zastosowanie formuły interwencji wojskowej w ramach modelu R2P jest wciąż możliwe, to uzasadnione jest także założenie, iż w najbliższym czasie w zbliżonej sytuacji stali członkowie Rady Bezpieczeństwa skorzystają z prawa weta.

Słowa kluczowe: odpowiedzialność za ochronę; R2P; interwencja wojskowa; Rada Bezpieczeństwa; wojna domowa w Libii; konflikt syryjski