Hacettepe University Institute of Social Sciences

Department of International Relations

A CRITICAL ANALYSIS OF THE UNITED NATIONS HUMAN RIGHTS COUNCIL WITHIN THE FRAMEWORK OF THE RESPONSIBILITY TO PROTECT

Buşra KÜÇÜK

Master's Thesis

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ABSTRACT

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Three cornerstone initiatives which were the result of series of works of the United Nations (UN) for the wellbeing of peoples, the Sustainable Development Goals (SDGs), the United Nations Human Rights Council (HRC) and the principle of Responsibility to Protect (R2P) were born out of the need for "a more peaceful, prosperous and just world" in the 21st century. Placing the complementary relationship between these three initiatives at its center, this thesis focuses on the role that can be played by the HRC in the implementation of R2P. In order to understand this role, it takes SDG16 as a common framework for R2P implementation especially at the level of Pillars 1 and 2. As being directly related with human rights and human rights institutions, the success of SDG16 is arguably contingent upon the well-functioning of the HRC. In questioning the impact of the HRC on R2P's implementation, it is important to determine the contributions and shortcomings in the practices of the HRC as well as its mechanisms and procedures. To this end, the thesis adopts the method of case study, and comparatively analyses the implementation of R2P in the cases of the Democratic Republic of Congo (DRC), Libya and Syrian Arab Republic vis-à-vis the actions of the HRC with regard to these cases. Following from this, from an implementation point of view, this thesis argues that the HRC can play a role in the upholding of Pillar 1 and Pillar 2 responsibilities under R2P at the state and international levels in a way to contribute to the achievement of SDG 16, and accordingly, it can help to devise an early response in cases of imminent threats of atrocity crimes without the need for UN Security Council authorization.

Key words: United Nations Human Rights Council (HRC), Sustainable Development Goals (SDGs), Responsibility to Protect (R2P).

ÖZET

KÜÇÜK, Buşra. *Koruma Sorumluluğu Çerçevesinde Birleşmiş Milletler İnsan Hakları Konseyi'ne Dair Eleştirel Bir Analiz*, Yüksek Lisans Tezi, Ankara, 2021.

Birleşmiş Milletler'in (BM) insanların refahı için yapmış olduğu bir dizi çalışmanın neticesinde ortaya çıkmış üç önemli girişim olan Sürdürülebilir Kalkınma Amaçları (SKA), BM İnsan Hakları Konseyi (İHK) ve Koruma Sorumluluğu (R2P) ilkesi, 21. yüzyılda daha barışçıl, refah ve adil bir dünyaya duyulan ihtiyaçtan doğmuştur. Bu üç girişim arasındaki tamamlayıcı ilişkiyi merkezine alan bu tez, İHK'nın R2P uygulanmalarında oynayabileceği role odaklanmaktadır. Bu rolü anlamak için, SKA16'yı R2P uygulamalarının özellikle Sütun 1 ve 2 düzeylerindeki uygulamaları için ortak bir çerçeve olarak alır. İnsan hakları ve insan hakları kuruluşları ile doğrudan bağlantılı olan SKA16'nın başarısı tartışmaya açık bir şekilde İHK ve mekanizma ve prosedürlerinin başarılı bir şekilde işliyor olmasına bağlıdır. İHK'nın R2P'nin uygulanmasındaki etkilerini sorgularken, İHK ve mekanizma ve prosedürlerinin çalışmalarının katkılarını ve eksikliklerini belirlemek önemlidir. Bu amaçla, bu tez vaka çalışmaları metodu ile karşılaştırmalı olarak Kongo Demokratik Cumhuriyeti, Libya ve Suriye Arap Cumhuriyeti örneklerine karşı İHK'nın R2P uygulamalarını analiz etmektedir. Bundan hareketle, uygulama açısından, bu tez İHK'nın devlet düzeyinde ve uluslararası düzeyde R2P'nin Sütun 1 ve 2 sorumluluklarının yerine getirilmesinde rol oynayabileceğini ve buna bağlı olarak da İHK'nın BM Güvenlik Konseyi'nin iznine ihtiyaç duymadan vahşet suçları tehdidi durumlarında erken bir yanıt verilmesini tasarlamaya yardımcı olabileceğini savunmaktadır.

Anahtar kelimeler: İnsan Hakları Konseyi (İHK), Sürdürülebilir Kalkınma Amaçları (SKA), Koruma Sorumluluğu (R2P).

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ABBREVIATIONS

AFDL	Alliance for Democratic Liberation
AIDS	Acquired Immune Deficiency Syndrome
CHR	Commission on Human Rights
CoI	Commission of Inquiry
DRC	Democratic Republic of Congo
ECOSOC	Economic and Social Council
EU	European Union
GCR2P	Global Centre for the Responsibility to Protect
HIV	Human Immunodeficiency Virus
HLPF	UN High-Level Political Forum on Sustainable Development
HRC	Human Rights Council
ICC	International Criminal Court
ICISS	International Commission on Intervention and State Sovereignty
IEP	Institute for Economics & Peace
IMF	International Monetary Fund
ISIS	Islamic State in Iraq and Syria
M23	23 March Movement
MDGs	Millennium Development Goals
MONUC	United Nations Organization Mission in the Democratic Republic of the Congo

MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
NATO	North Atlantic Treaty Organization
NTC	National Transition Council
OIC	Organization of Islamic Cooperation
OHCHR	Office of the High Commissioner for Human Rights
ONUC	United Nations Operation in the Congo
OUP	Operation Unified Protector
OWG	Open Working Group
P5	Permanent Five Members of the United Nations Security Council
R2P	Responsibility to Protect
SDGs	Sustainable Development Goals
TB	Tuberculosis
UK	United Kingdom
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNDG	United Nations Development Group
UNFCCC	UN Framework Convention on Climate Change
UNGA	United Nations General Assembly
UNHRC	United Nations Human Rights Council
UNSC	United Nations Security Council

UNSMIL   United Nations Support Mission in Libya

UNSMIS   United Nations Supervision Mission in Syria

UPR   Universal Periodic Review

US   United States of America

VNRs   Voluntary National Reviews

WHO   World Health Organization

WSSD   World Summit on Sustainable Development

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INTRODUCTION

In the 2000s, numerous reform proposals were made within the United Nations (UN), regarding the promotion and protection of human rights. To recommend several immediate steps to improve peoples' lives in the new century, in March 2000, the UN Secretary-General Kofi Annan presented to the Member States the report titled "We the Peoples – The Role of the United Nations in the 21st Century", which is also known as "the Millennium Report of the Secretary-General" (UN, 2000). This report paved the way for cornerstone initiatives that resulted in the adoption of the Millennium Development Goals (MDGs) and its successor, the Sustainable Development Goals (SDGs); the reform of the Commission on Human Rights (CHR) with the establishment of the Human Rights Council (HRC) in 2006; and the adoption of the principle of the Responsibility to Protect (R2P) in 2005. While these developments seem to be separate from each other, they are interconnected and complementary. In this regard, based on the interrelation between the SDGs, the HRC and R2P, which are directed towards a better functioning of the UN, this thesis focuses on the role played by the HRC concerning the implementation of R2P based on the common ground presented within the framework of SDG16.

Such interrelation arises from the central focus of the report of the Secretary-General, which aims to promote and protect human rights. As Annan reminds:

> For even though the United Nations is an organization of states, the Charter is written in the name of "we the peoples". It reaffirms the dignity and worth of the human person, respect for human rights and the equal rights of men and women, and a commitment to social progress as measured by better standards of life, in freedom from want and fear alike. Ultimately, then, the United Nations exists for, and must serve, the needs and hopes of people everywhere (UN, 2000, p. 6).

As Annan clarifies, there was an obvious need for improvement under the umbrella of the UN in the early 2000s due to the undesired experiences of the 1990s. For instance, the UN had failed to prevent many gross human rights violations such as those in Bosnia-Herzegovina, Rwanda, Somalia and Kosovo. An important first point of reflection in this regard was the reform of the UN, and especially the Security Council. In his report Annan emphasized the unique nature of the UN with regard to its universal membership and comprehensive scope as well as the importance of its effective performance on "sharing

information, conducting negotiations, elaborating norms and voicing expectations, coordinating the behavior of states and other actors, and pursuing common plans of action" (UN, 2000, p. 6). However, the UN, as the Report suggested, needed (and still needs) to adapt itself to the changing conditions to achieve its goals and to function more effectively.

The second focus of the Report was the notion of development. It states that without ending poverty, it is not possible to materialize most of the fundamental human rights such as the right to work, the right to social security, the right to education, etc. As such, the promotion and protection of human rights requires social progress and development, which in turn requires respect for human rights. As emphasized in the Report, sustainable development and human rights are two interconnected frameworks, and in many respects, they cannot be separated.

Following up on the Millennium Report, the Millennium Summit was held in September 2000 with the participation of 149 Heads of State to address the role of the UN in the twenty-first century. In the Millennium Declaration, which was unanimously adopted in the Summit, the Member States promised to act together regarding poverty, safe drinking water, health, economy, technology, environment, and respect for law and human rights. The Declaration emphasized the importance of promoting and protecting human rights to achieve sustainable development (UNGA, 2000).

Later in 2001, with the adoption of the MDGs as an implementation road map of the Millennium Declaration, the Member States committed to fight against poverty and act for development together. The MDGs were born out of the need to offer a solution to multidimensional problems. However, since they focused on the problems only from a poverty perspective and missed other significant dimensions of the Millennium Declaration such as human rights, good governance, as well as peace and justice, it could not fully achieve the outcomes until 2015 as planned. Although poverty decreased sharply from 1990 to 2015, the conflicts that erupted in different parts of the world such as the Arab uprisings in the 2010s showed that development cannot be sustainable without peace, security, good governance, and/or freedom and equality.

In 2012, governments came together for the Rio+20 Summit and worked on the idea of sustainable development. As a result of the Summit, in September 2015, the 2030 Sustainable Development Agenda was adopted by the UN General Assembly. As a result, the MDGs were replaced with a more comprehensive agenda, namely "the 2030 Sustainable Development Agenda" comprising of 17 Goals. The SDGs focus also on social and environmental problems besides the economic ones. Although the SDGs are interrelated with one another, and equally important, the inclusion of SDG16 ("Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels") to the new Agenda was a crucial contribution of the 2030 Agenda since this was a fundamental missing component in the MDGs. This issue has been a primary focus in the limited number of studies on SDG16. For instance, Seita et al. (2016), Zuber (2016), Leininger et al. (2019) and Blind (2020) argue that SDG16 has a major role to play in this regard. SDG16 is a social development goal in itself, and at the same time it contributes to the sustainability of other goals. However, as also shown in the related studies, it is one of the most criticized, hardest to monitor and achievable goal (Dasandi & Mikhaylov, 2019; Ivanovic et al., 2018; Baradei, 2019; Laberge & Touihri, 2019; Bhattacharya & Khan, 2016).

On the other hand, regardless of the studies on the SDGS, we see that during the first years after its establishment, the HRC has been a subject matter of studies in the context of its succession of the CHR, as well as its ability to overcome the shortcomings of the old Commission (see Ghanea, 2006; Lauren, 2007; Scannella & Splinter, 2007; Schrijver, 2007; and Terlingen, 2011). Later, it began to be criticized due to the same shortcomings of the old Commission as cited by many authors (see Schaefer, 2010; Freedman, 2013; Hug & Lukács, 2014; Hug, 2015; Freedman, 2017). However, some others argue that its mechanisms and procedures are promising contributions that the new Council brought to the human rights agenda (see Redondo, 2008; Sweeney & Saito, 2009; Subedi et. al., 2011; McMahon & Ascherioand, 2012; Pramendorfer, 2020). For instance, the mechanisms of the HRC allow us to study these topics from the viewpoint of the implementation of R2P. While the Global Centre for the Responsibility to Protect (GCR2P) emphasizes that the HRC's mechanisms and procedures play an "essential role

in providing early warning of the risk factors that can lead to crimes against humanity, ethnic cleansing, war crimes and genocide", there are only few studies about the relationship between the HRC and R2P's implementation (GCR2P, 2020a). While earlier works draw attention to the potential contributions of the HRC to R2P's realization (see Brunnee and Toope, 2005; Nanda, 2007), Pramendorfer (2020) highlights the stronger potential of the HRC and its procedures and mechanisms in comparison to the Security Council concerning R2P's implementation. Strauss (2016) argues that although there is a general agreement on the role that the HRC can play in this regard, due to the lack of an agenda item dedicated to R2P and the "limited willingness to become involved in mass atrocities prevention … this role remains largely undeveloped by the organization itself" (p. 315). Based on this existing gap in the literature where SDG16, the HRC and R2P are generally discussed within separate contexts, this study takes as its starting point the interconnection between these three. While the SDGs are the goals that the UN wants to achieve in the new millennium for the sake of human beings, the well-functioning of the HRC especially at the level of Pillar 1 responsibilities of states and Pillar 2 responsibilities of the international community, is one way to lead the UN to the achievement of these goals. First of all, as a part of the initiatives that were taken in the early 2000s, they all serve to improve human rights and their protection. Above all, upholding the responsibility to protect at the national level serves to achieving the goals of SDG16. In this regard the HRC can play a supportive role in the fulfilment of such responsibilities at the state and international levels as it is the main human rights body within the UN system.

In this vein, this study asks what role the HRC plays in the implementation of R2P under Pillars 1 and 2 based on the targets set under SDG16, and critically examines its actual practices through comparative case analyses. To this end, this thesis is organized under four main chapters as well as an introduction and a conclusion. To lay the necessary grounds for its empirical analysis, the first chapter focuses on SDG16. It first provides the historical background of the SDGs, and discusses the transition process from the MDGs to the SDGs. Then, in a more focused manner, the three components of SDG16, namely peace, justice and strong institutions are examined separately.

The second chapter examines the HRC as the main human rights body of the UN. To give a brief history of the HRC, its reformation from the CHR is discussed before the analysis of the Council's structure and membership. To establish the main links with R2P, it discusses the main contributions of the new Council, its mechanisms, and procedures.

The third chapter lays the empirical background for the R2P principle. After studying the perception change from the right to intervene to the responsibility to protect, the chapter outlines the main components of the principle as adopted under the UN. Then, it analyses the relationship between R2P and state sovereignty. This is followed by an overview of R2P's three-pillar implementation strategy and a discussion of the potential contribution of the HRC vis-à-vis each pillar's practice.

Following these descriptive overviews of the main components of the study, the fourth chapter analyses three key cases, which have been recognized as crises falling within the scope of R2P. These three cases help to show the different levels of UN involvement, as well as to critically assess the contribution(s) of the HRC. The first case is that of the Democratic Republic of the Congo (DRC) wherein the UN has been involved at the request of the Congolese government. The second case is that of Libya, wherein the use of force was employed for the first time in an R2P crisis with the authorization of the UN Security Council against the will of a standing government, which was later replaced. The third case is the highly politicized case of Syria wherein the Security Council has been rendered highly ineffective in delivering an R2P response due to deadlocks caused by the vetoes cast. Each case has its unique reflections as to the role the HRC plays in the implementation of R2P due to the differing levels of cooperation between the national authorities as well as their allies. Nevertheless, by tracing the responses of the international community up to now, such comparative analysis allows us to have a general idea on the level of the HRC's involvement. In this vein, with its focus on the first two pillars of R2P, and especially Pillar 1, this study aims to provide a critical overview on the role of the HRC in implementing R2P as outlined in the 2009 Report of the UN Secretary-General. Following separate overviews of the timeline of events and international responses, in the final section of the chapter, a comparative evaluation of these cases will be presented.

Following from this, the conclusion chapter provides a brief overview of the study and presents its concluding remarks with a reflection on the criticisms against the HRC in relation to R2P's implementation. Finally, the thesis argues that despite its shortcomings, with mechanisms and procedures, the HRC can contribute to the prevention of R2P crises by assisting States in fulfilling their Pillar 1 responsibilities as well as by invoking Pillar 2 responsibilities of the international community on the basis of the early warning signs it collects.

CHAPTER 1

FROM MILLENNIUM DEVELOPMENT GOALS TO SUSTAINABLE DEVELOPMENT GOALS AND SDG16

When the international community has experienced new challenges in the 1990s, it started to comprehend the interrelation between the problems, and decided that a change of approach was in order. The reform and innovation attempts of the UN at the beginning of the 2000s were the outcomes of such understanding. The adoption of the Millennium Development Goals in 2001—which were later replaced by the Sustainable Development Goals in 2015—was one of the first attempts of the UN to offer solutions to the problems of the new century.

1.1. THE MILLENNIUM DEVELOPMENT GOALS

The MDGs were adopted in 2001 as a road map to implement the UN Millennium Declaration. Though the MDGs have often been criticized for being another "shallow Western idea", it is important to remind that they were a product of many developments and conferences over the years (McArthur, 2014). To have a better comprehension of the MDGs as well as the SDGs, in this Chapter, first the developments that laid the ground for their adoption will be discussed.

1.1.1. A Brief History

In the 1990s, there was an increase in poverty, hunger, environmental pollution and health problems all over the world. Many people in Africa suffered from HIV/AIDS, tuberculosis, malaria (Pettifor, 2005), while also child deaths significantly increased (McArthur, 2013). Approximately 1.2 billion people were living in absolute poverty (Littlefield et al. 2003). Due to the financial crises of the 1990s and the dramatic decline in the aid budgets after the Cold War, states could not achieve economic stability. Meanwhile, mistrust towards the World Bank and the International Monetary Fund (IMF) increased (McArthur, 2014), as did unemployment rates (Bianchi, 2015). These were

among the issues that required international attention. The visible biodiversity loss in 1992 was another issue that required immediate international action (Sachs et al., 2009).

In the light of such developments, in 2000 the world leaders came together and structured the UN Millennium Declaration, which set development goals to be achieved globally by 2015. This was "a political declaration signed by 189 countries, including 145 heads of state/government, that committed to ending poverty as a key goal for the twenty-first century along with peace, human rights, and democracy" (Fukuda-Parr & Hulme, 2011, p. 18). With this Declaration, the world leaders decided to act together with world's poorer countries against poverty (McArthur, 2013).

However, this was not an easy task to achieve. In history, there were similar attempts to cope with economic crises, environmental problems, inequality, hunger and poverty, etc. Hulme (2009) lists some of the previous attempts as well as the motivations to prepare the UN Millennium Declaration as follows:

> President Franklin D. Roosevelt's 'Four Freedoms' speech in January 1941, the 1948 Declaration of Human Rights, the development goals that were declared by governments in the 1960s, the World Bank's World Development Report in 1990, the World Conference on Education for All (Jomtien) in 1990, the UN World Summit for Children in September 1990, the UNCTAD Conference on the Least Developed Countries and a Conference on Drug Problems, the United Nations Conference on Environment and Development (the Rio Summit) in June 1992, the International Conference on Food and Nutrition in Rome in December 1992, the World Conference on Human Rights in Vienna in 1993, the International Conference on Population and Development at Cairo in 1994, the World Summit on Social Development in March 1995, the UN's Fourth World Conference on Women in Beijing in September 1995, the UN's declaration of 1996 as the International Year for the Eradication of Poverty, the Second UN Conference on Human Settlements in Istanbul in June 1996, the World Food Summit in Rome in November 1996 and International Development Goals prepared by Development Assistance Committee in 1996.

However, none of these attempts were successful enough to prevent environmental problems and poverty, or to provide development. People may think that focusing on a single subject makes achieving the goal easier, but all of the summits that convened prior to the Millennium Declaration and focused on a single goal failed to meet the expectations. Hence, it was observed that the problem of poverty cannot be eliminated without dealing with the interconnected issues such as health or education. This suggests

that the problems stated in the Millennium Declaration were mutually reinforcing, so that their solution needs to be multidimensional.

1.1.2. Millennium Development Goals

In 2001, with the coordination of the UN Secretary-General Kofi Annan, the implementation road map of the UN Millennium Declaration, namely the MDGs with 8 goals, 18 targets and 48 indicators were adopted via Resolution 56/326 (McArthur, 2014). Nelson (2007) argues that the MDGs were like operational goals, targets and indicators to achieve the principles of the Universal Declaration of Human Rights, which also aims to provide and protect human well-being. Besides, the MDGs were an important step towards global mobilization to address issues concerning "poverty and hunger, education, gender equality, child mortality, health, environment" and promoting "global partnership for development". The eight MDGs are as follows: Goal 1: "Eradicate extreme poverty and hunger"; Goal 2: "Achieve universal primary education"; Goal 3: "Promote gender equality and empower women"; Goal 4: "Reduce child mortality"; Goal 5: "Improve maternal health"; Goal 6: "Combat HIV/AIDS, malaria and other diseases"; Goal 7: "Ensure environmental sustainability"; Goal 8: "Develop a global partnership for development" (UNGA, 2001).

Although these goals were adopted in 2001, they became effective only after a conclusion had been reached on how to finance the implementation of these goals at the "UN International Conference on Financing for Development" in Monterey in March 2002 (McArthur, 2013). "The international community recognized the need for a new partnership of rich and poor countries" (Sachs & McArthur, 2005), wherein the rich would donate tens of billions of dollars to help poor countries' development strategy (McArthur, 2013). Accordingly, "the world's only time-bound targets" about ending extreme poverty (Oleribe & Taylor-Robinson, 2016), which were to be reached by 31 December 2015 came into effect (McArthur, 2013).

What makes the MDGs important and novel in contrast to prior development attempts that focus on a single subject is the interrelation between the problems. For example,

while poverty itself can be the reason of ill-health, the latter also might be the reason behind the former (Haines & Cassels, 2004). Hence, interrelated problems require interrelated and multidimensional solutions. The interrelation between the MDGs is one of their most important features. Fukuda-Parr and Hulme (2011) consider the MDGs as a super-norm that has eight interrelated goal norms to solve the problem of extreme poverty within the context of itself.

> Conceptually, the MDGs constitute a single package; although each of the eight MDGs is important as an individual norm, they are strategic components of the broader supernorm that extreme, dehumanizing poverty is morally unacceptable and should be eradicated. The MDGs are interrelated both as normative ends and instrumental means. As ends, each is a necessary part of human dignity. As means, they reflect the findings of research since the 1980s showing the synergies among them; for example, education contributes to reducing child mortality and better health contributes to improving worker productivity (Fukuda-Parr & Hulme, 2011).

With the MDGs, the international community accepted the multidimensional nature of poverty which is beyond the level of income.

1.1.3. Achievements of the MDGs

According to Jeffrey D. Sachs (2015), the Special Adviser to the UN Secretary-General on the MDGs, the MDGs were more successful than those old summitries to cover expectations. He argues that although the MDGs were not legally binding, they made a difference in the development agenda. Such success of the MDGs compared to past attempts in the development agenda became an inspiration for its successor, namely the "United Nations 2030 Agenda for Sustainable Development".

First of all, the MDGs were successful since they were universal goals that acquired acceptance by almost all governments and political leaders which is not easy to achieve (Vandemoortele, 2011). In addition, they led to the adoption of new policies as well as the establishment of new institutions to help the implementation and measurement of the goals. For example, the World Health Organization (WHO) formed the Task Force in order to monitor health related MDGs (WHO, 2015). In addition, "the IMF and the World Bank adopted and implemented new debt-relief proposals", and "the Global Fund to Fight

AIDS, TB, and Malaria" were established (Sachs, 2015). Vandemoortele (2001) argues that the world finally understood that for the sake of human development, they have to cooperate and act together.

More importantly, as McArthur (2013) emphasizes, the MDGs received this international attention, despite the fact that there was no responsible institution for implementing the MDGs, and the goals' implementation was bound by only the will of governments and private organizations. Accordingly, both Sachs (2015) and John W. McArthur (2013) who were also part of the UN Millennium Project, highlight the achievements and the significance of the MDGs in the international development agenda.

Although scholars focusing on the SDGs criticize the MDGs for setting development goals only for developing countries rather than focusing on a global agenda, the MDGs were still of significance for the international cooperation since "they are framed as a compact that recognizes the contribution that developed countries can make through fair trade, development assistance, debt relief, access to essential medicines, and technology transfer" (Haines & Cassels, 2004).

Regarding the success of specific targets of the MDGs, Target 1A ("Reduce by half the proportion of people living on less than a dollar a day"), Target 6A ("Halt and begin to reverse the spread of HIV/AIDS"), Target 6C ("Halt and begin to reverse the incidence of malaria and other major diseases") and Target 7D ("Achieve significant improvement in lives of at least 100 million slum dwellers, by 2020") are considered among the most important accomplishments of the MDGs (Evans & Steven, 2012). Moreover, "the number of people living in extreme poverty declined worldwide by more than half, falling from 1.9 billion in 1990 to 836 million in 2015" (Oleribe & Taylor-Robinson, 2016). The under-five mortality reduced "from 12.7 million deaths in 1990 to 6.3 million deaths in 2013—mainly through improved management of pneumonia, diarrhea, and measles" (Taylor, et al., 2015). Also access to drinking water increased from 48% to 68%, and the number of people infected with HIV/AIDS decreased by half and half (Liverman, 2018). Although the achievements of the MDGs notwithstanding, there is also a need to address their weaknesses.

1.1.4. Weaknesses of the MDGs

Although the MDGs were much more successful compared to the previous attempts, they did not achieve the desired success rate. For instance, Target 1B ("Achieve full and productive employment and decent work for all, including women and young people"), Target 5A ("Reduce by three quarters the maternal mortality ratio") Target 5B ("Achieve, by 2015, universal access to reproductive health"), Target 6B ("Achieve, by 2010, universal access to treatment for HIV/AIDS"), Target 7A ("Integrate the principles of sustainable development into country policies and programmes; reverse loss of environmental resources"), and Target 7B ("Reduce biodiversity loss, achieving, by 2010, a significant reduction in the rate of loss") were among the targets failed to be achieved by 2015 (Evans & Steven, 2012).

Due to the failure to achieve an overall success, there are many criticisms of the MDGs in the related studies. The first is the "reductionist view of development". In order words, the MDGs are lacking the idea of peace, security, democracy and good governance, freedom and equality, which are among the fundamental objectives of the UN Millennium Declaration (Vandemoortele, 2011). Moreover, the problems that the MDGs focus on are viewed too narrowly. For example, although eradicating hunger is the first goal of the MDGs, the focus is not on food security or hunger, but rather on poverty related hunger problems (Battersby, 2017).

Second important criticism of the MDGs is concerned with their focus group. It is not very clear whether they are universal goals as they are supposed to be, or just goals for developing countries set by developed ones (Battersby, 2017). When some goals are considered, such as Goal 1 ("Eradicate extreme poverty and hunger") and Goal 2 ("Achieve universal primary education"), it may not be necessary to take action to this end for developed countries, as they have already achieved this goal. Nevertheless, as McArthur (2014) reminds, the MDGs are created as a "global plus national" strategy. He states that in the "Reporting on the Millennium Development Goals at the Country Level" of the UN Development Group (UNDG), the goals are mentioned as global goals that should be "contextualized within the country-specific situation" (p. 8). In other words, all countries should have their own development agenda in the context of the MDGs and for

those who are already "within reach, additional MDG-plus targets can be set" (Sachs & McArthur, 2005, p. 350). The developed countries that are the international development partners of those poorer countries should also help poorer countries to implement their development agenda apart from being donors (Sachs & McArthur, 2005). On the other hand, there is a criticism concerning the fact that states should set their MDG+ targets in accordance with their own situations while there are many missing points in measurement and implementation (Saith, 2006).

The third fundamental criticism against the MDGs concerns their inadequacy in setting guidelines as to how governments or institutions will realize this development agenda (Battersby, 2017). Hence, while the indicators set the expected outcomes, they do not indicate how the targets can/should be implemented (Battersby, 2017).

Another problem is how to track and measure the progress. Some goals of the MDGs have non-quantitative targets (Vandemoortele, 2011). For example, neither any of the targets of the MDG 8 ("Develop a Global Partnership for Development") were quantified, nor were there sufficient data about Target 1C ("Reduce by half the proportion of people who suffer from hunger") (Evans & Steven, 2012). The monitoring of the MDGs required a data improvement not only for developing countries but also for developed countries (López-Menéndez & Pérez-Suárez, 2016). All in all, the lessons learnt from the MDGs on the basis of the failures and weaknesses mentioned above, led to the development of the 2030 Agenda for Sustainable Development.

1.2. SUSTAINABLE DEVELOPMENT GOALS

Although the 2030 Sustainable Development Agenda succeeded the MDGs, its ideational roots can be traced back to 1972, namely to the relationship between environment and development as acknowledged at the Stockholm Conference on the Human Environment, where the Brundtland Commission started to work on unifying the concepts of development and environment (Kates, Parris, & Leiserowitz, 2005). In the 1990s, the works on environmental issues and sustainable development gained speed, and many agreements that also provided a basis for the MDGs were signed. The Rio Earth Summit

of 1992, the World Summit on Sustainable Development of 2002, the Rio+20 Summit of 2012, and the creation of the Open Working Group on Sustainable Development Goals in 2013 by the General Assembly are some of these important developments regarding the sustainable development agenda.

1.2.1. The Path to the Sustainable Development Agenda

The UN Conference on Environment and Development (UNCED), which is commonly known as the Rio Earth Summit, was held in Rio de Janeiro, Brazil, in June 1992. At the Summit, sustainable development idea was placed at the core of the development agenda, and some critical agreements such as the "Rio Declaration of Principles", "the United Nations Framework Convention on Climate Change", "the Convention on Biological Diversity", "Agenda 21" (an action plan for sustainable development), and the "Statement on Forest Principles" were signed for the sake of environment and living creatures (Cicin-Sain, 1996; Schreurs, 2012).

Later on, in September 2002, "the World Summit on Sustainable Development" (WSSD), which is also known as Johannesburg Summit was held in Johannesburg, South Africa, (SDGs Knowledge Platform, n.d.). The WSSD convened with the aim to provide "a balance between economic development, social development and environmental protection", "poverty eradication" and "good governance within each country and at the international level". During the Summit, the issues mentioned in Agenda 21 and the MDGs were addressed (Schreurs, 2012).

The treaties that were signed at the Rio Earth Summit of 1992, even though some of them were legally binding (such as the "UN Framework Convention on Climate Change", UNFCCC), the "UN Convention on Biological Diversity", failed to achieve their promises (Sachs, 2015). Although the rate of extreme poverty decreased sharply, there were increases in environmental, social and economic problems.

In June 2012, the "UN Conference on Sustainable Development", which is commonly known as "the Rio+20 Summit" was convened in Rio de Janeiro, Brazil. With the motto of "the future we want", world leaders came together within the context of social,

economic and environmental problems that the world faced throughout the 20th century and also most importantly for the sustainable development idea (The Lancet, 2012). During the Summit, the basis of the idea of the SDGs was proposed (Sachs, 2015). Moreover, the creation of "the Open Working Group on Sustainable Development Goals"—to help preparation of the SDG—and the "UN High-Level Political Forum on Sustainable Development" (HLPF)[1] were among the outcomes of the Rio+20 Summit (Bhattacharya, et al., 2014; SDGs Knowledge Platform, n.d.).

Following the Rio+20 Summit of 2012, the General Assembly established the Open Working Group (OWG) with its 30 seats (Bhattacharya et al., 2014). Although membership to the OWG was voluntary (Cling, Razafindrakoto & Roubaud, 2016), the seats were allocated to states based on the criteria of geographical location and the level of development (Bhattacharya et al., 2014). The OWG convened thirteen times between 2013 and 2014 for developing the SDGs. In September 2014, the UN General Assembly approved the final draft of the outcome document of the OWG, which presented the 17 Goals and their 169 targets (WHO, 2015, p. 7).

1.2.2. The Sustainable Development Goals

At the UN Sustainable Development Summit in New York held between 25 and 27 September 2015, the General Assembly adopted Resolution 70/1 titled "Transforming our world: the 2030 Agenda for Sustainable Development" (SDGs Knowledge Platform, n.d.). The 2030 Sustainable Development Agenda with its 17 goals,[2] 169 targets and 230

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[1] The General Assembly decided to create the HLPF for the purpose of following up on and reviewing the SDGs annually. The HLPF's format and organizational aspects were outlined in 2013 with Resolution 67/290 (SDG Knowledge Platform, n.d.).

[2] Goal 1. "End poverty in all its forms everywhere"; Goal 2. "End hunger, achieve food security and improved nutrition and promote sustainable agriculture"; Goal 3. "Ensure healthy lives and promote well-being for all at all ages"; Goal 4. "Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all"; Goal 5. "Achieve gender equality and empower all women and girls"; Goal 6. "Ensure availability and sustainable management of water and sanitation for all"; Goal 7. "Ensure access to affordable, reliable, sustainable and modern energy for all"; Goal 8. "Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all"; Goal 9. "Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation"; Goal 10. "Reduce inequality within and among countries"; Goal 11. "Make cities and human settlements inclusive, safe, resilient and sustainable"; Goal 12. "Ensure sustainable consumption and production patterns"; Goal 13. "Take urgent action to combat climate change and its impacts"; Goal 14. "Conserve and sustainably use the oceans, seas and marine resources for sustainable development"; Goal 15. "Protect, restore and

indicators was built on the idea of sustainable development (Battersby, 2017). The new Agenda was "universal, transformative, integrated, indivisible and ambitious", and it is seen as the central piece of the development agenda for the period between 1 January 2016 and 31 December 2030 (Sachs, 2015). With the Paris Agreement[3] that was signed in December 2015, the 2030 Agenda gained more strength (López-Menéndez & Pérez-Suárez, 2016).

According to Resolution 70/1, this new Agenda aims to complete the unfinished job of the MDGs. Hence, the SDGs are broader in scope and cover social and environmental dimensions in addition to economic ones (Lönnroth & Raviglione, 2015). Different from the MDGs, with the addition of environmental dimensions to social and economic ones, the SDGs refer both to the developing countries and to the rest of the world at the same time (Abel et al., 2016). Accordingly, "[i]t is accepted by all countries and is applicable to all, taking into account different national realities, capacities and levels of development and respecting national policies and priorities. These are universal goals and targets which involve the entire world, developed and developing countries alike" (UNGA, 2015, para. 5).

The MDGs were severely criticized because of focusing too much on poor countries and too little on the richer ones. Only task of the developed countries was "to add their solidarity and assistance through finances and technology" (Sachs, 2012). However, given that the SDGs are universal goals, they charge every country in the world from Switzerland to China, from the US to Bangladesh with duties on sustainable development for the current and the next generations (Sachs, 2012; 2015). Accordingly, the SDGs

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promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss"; Goal 16. "Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels"; Goal 17. "Strengthen the means of implementation and revitalize the global partnership for sustainable development" (SDGs Knowledge Platform, n.d.).
[3] In December 2015, parties to the UN Framework Convention on Climate Change (UNFCCC) convened for the purpose of "keeping a global temperature rise this century well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5 degrees Celsius" (UNFCCC web page, n.d.). Moreover, they would nationally determine contributions (NDCs), which are going to be national goals to be achieved in the long-term (Savaresi, 2016). This is a legally binding treaty for its parties "within the definition of the Vienna Convention on the Law of Treaties" (Bodansky, 2016). The Paris Agreement entered into force on 4 November 2016.

assume that there is no fully developed country, but there are countries that are expected to make more progress (Bolaji-adio, 2015).

The SDGs, like the MDGs, are interrelated goals. Therefore, one goal cannot be fully achieved without the other one. The interrelation between the goals arises from the problems that we face in the 21st century, which make it necessary to achieve these goals in every part of the world. The motto of the SDGs, "Leave no one behind" highlights the importance of it, as it does not only target countries or states but also individuals. It covers all segments of the society and aims to prevent the social, economic, or political exclusion of women, people with disability, minorities etc. (Stuart & Woodroffe, 2016).

Unlike the MDGs, there are "intermediate milestones" in the SDGs to see if the goals will be achieved by 2030 (Sachs, 2012). The year 2019 was one of them, as the progress on the 2030 Agenda and climate change was reviewed at the HLPF in July (Malik, 2019). "Quality, accessible, timely and reliable disaggregated data" collection about the latest developments is really critical for the success of the 2030 Agenda. The Secretary-General presents the SDG Progress Report annually at the HLPF, and uses national reviews of states as a basis (UNGA, 2015, Paras. 75, 76, 83). According to the Agenda, follow-up and review at the HLPF "will be voluntary and country-led, will take into account different national realities, capacities and levels of development and will respect policy space and priorities" (UNGA, 2015, Para. 74.a). Accordingly, at the annual meetings of HLPF, states share their voluntary national reviews (VNRs) in order to share their experiences, successes, the challenges they faced as well as the lessons they have learned while implementing the SDGs (SDGs Knowledge Platform, n.d.).

For better implementation of the SDGs, the Agenda highlights the importance of national development and sustainable development strategies[4] (UNGA, 2015, Para. 78). Although the common ground for all states is that they need a combination of economic, environmental and social development policies for sustainable development, their

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[4] The sustainable development plan of New York City titled "One New York", 12th and 13th "Five-Year Plans" of China, the 10th "Development Plan" of Turkey, the "Energy Strategy 2050" plan of Denmark, and the "Energy Roadmap 2050" plan of the European Union are some of the examples (Sachs, 2015; Sarwar, 2015).

strategies have differences due to local factors (Sachs, 2012). Hence, these plans are good opportunities to integrate the SDGs into regional, national and local development plans. If supported with the will of the governments, the goals that match up with the existing national policies will allow countries to be more successful in the goals where their priorities lie in (Sarwar, 2015).

1.3. SDG 16: "PEACE, JUSTICE AND STRONG INSTITUTIONS"

With its 12 targets and 23 indicators SDG16—which is to "Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels"—is vital to the new agenda (SDGs Knowledge Platform, n.d.). The Resolution asserts the following: "We are determined to foster peaceful, just and inclusive societies which are free from fear and violence. *There can be no sustainable development without peace and no peace without sustainable development*" (emphasis added, UNGA, 2015). As Bolaji-adio (2015) observes, the SDGs caused "a conceptual shift in our understanding of development", and brought to the fore the importance of peace, justice, good governance and accountable institutions for development and also for the other goals accepted internationally. Lack of peace, justice and accountable institutions in a society would prevent development in that society. Without having peaceful and just societies all over the world, it is neither possible to successfully accomplish the SDGs nor meet the goal of "leave no one behind".

"Conflict, insecurity, weak institutions and limited access to justice" are seen as "a great threat to sustainable development" (SDGs Knowledge Platform, n.d.). As Zuber (2016) suggests, "… the success of the 2030 Agenda will depend on our ability to sustain stable, secure and inclusive societies governed by states that are essentially trustworthy, responsive to constituents, free of corruption and committed to eliminating violence, in part by reigning in coercive security institutions" (p. 115). Hence, SDG16 is of vital importance, and in some ways a precondition for the success of most of the other SDGs (Leininger, Lührmann, & Sigman, 2019). When there is a conflict in anywhere in the world, there would always be humans who suffer from lack of health, wealth, education, or development. When we maintain peace, justice and strong institutions in a country or

a region and then across the world, this will allow us to progress in solving most of the problems that the world has today since most of hunger, poverty, health or education related problems derive from conflict, inequality, injustice and corruption. Then we will also be able to focus on the problems that future generations are likely to face.

The success of such agendas depends on their ability to attract the attention of people. The "national progress reports" prepared annually by states are one of the best ways of maintaining the focus on the SDGs and especially on SDG16 (Malik, 2019). Promoting national measurement improves the capacity of national data systems of both developing and developed countries (WHO, 2015). Moreover, having national monitoring systems, especially national SDG16 monitoring systems, is regarded to increase national accountability and help positive change in that country (Laberge & Touihrini, 2019).[5] In other words, promoting to have national progress reports on the SDGs help national data system. When countries achieve to increase this national monitoring, it helps them to increase their national accountability.

Nevertheless, while SDG16 is essential to achieve other SDGs and sustainable development in general, it is also a sensitive issue due to various reasons (Bhattacharya & Khan, 2016). The inclusion of SDG16 in the 2030 Agenda was a painful process (Cling et al., 2016). The first reason behind that is the lack of will of developing countries for reporting their peace, governance, human rights or justice situation to international community since they are generally lower than expected (El Baradei, 2019). Second, the concepts of peace, justice and governance can be problematic or controversial when they are tried to be implemented or measured. While the indicators and targets[6] of SDG16 were being decided, due to lack of a specific measurement of governance in a country, no target or indicator containing the term of governance was included under the Goal, with the exception of the following sentence of Target 16.8: "Broaden and strengthen the

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[5] For instance, Laberge and Touihri (2019) note that Tunisian national SDG implications, Tunisian Governance Goal and their regular SDG16 publications help national accountability and positive change in Tunisia.

[6] For the complete list of the targets and indicators of SDG16, see Appendix 1.

participation of developing countries in the institutions of global governance" (El Baradei, 2019).

Moreover, while the OWG was making the list of the SDGs, there were many oppositions to SDG16 such as the one from the Group of 77 (Cling et al., 2016), and the terms used within the Goal were discussed in detail. While phrases such as inclusive decision-making, accountable institutions, transparent and participatory, which can be considered as characteristics of democracy are used in different targets of the Goal (Leininger, Lührmann & Sigman, 2019), there is no direct occurrence of the term of democracy under SDG16 because of the opposition of China and Cuba (El Baradei, 2019). After achieving a consensus on the scope and terminology of SDG16, the Goal was included in the 2030 Sustainable Development Agenda.

On the other hand, although all of the SDGs are related with the human rights norms, SDG16 is one of those which is in direct relation with human rights and human rights institutions. The involvement of notions such as "peace", "justice" and "strong institutions", especially independent national human rights institutions, to the development agenda was one of the most notable improvement from the MDGs to the SDGs in the case of human rights. Considering that the Goal is threefold, it is important look at each component separately.

1.3.1. Peace

As noted previously, the importance of peace for development is undeniable as they complement each other. Hence, the 2030 Agenda emphasizes the importance of peace for sustainable development in every part of Resolution 70/1. "No poverty", "zero hunger", "good health and well-being", "quality education", "decent work and economic growth", "industry, innovation and infrastructure", "sustainable cities", "responsible consumption and production", all are connected with SDG16 (SDGs Knowledge Platform, n.d.). For instance, as Wesley et al. (2016) observe in the case of Syria, because of the conflict, life expectancy has decreased by 20 years, while poverty rates and economic decline have become dismal. In the case of refugees, for instance, people are escaping from the conflict

in their country in search for (more) peaceful living conditions even though such quest may cost of their lives (Wesley et al., 2016). When there is a conflict in a country, and when there is no peace and security, it is not possible to find other facilities either. During the MDGs period, it was observed that if there is a conflict in country, its growth rate and success of implementation of goals are very low (Bolaji-adio, 2015). Furthermore, among other SDGs, health and economy are the ones that are most easily affected ones from conflict. Therefore, the World Bank considers peace and security as a must for economic development and puts good governance at the core of its agenda (Cling et al., 2016).

1.3.2. Justice

Justice plays a vital role in prevention of conflicts and establishing peaceful societies. People learn about fairness and justice when they are children and they seek to be equal socially, economically and politically (Malik, 2019). The Agenda states the importance of justice as follows: "We envisage a world of universal respect for human rights and human dignity, the rule of law, justice, equality and non-discrimination; of respect for race, ethnicity and cultural diversity; and of equal opportunity permitting the full realization of human potential and contributing to shared prosperity" (UNGA, 2015). Like other SDGs, the activities on justice also require localization. Injustices vary from country to country based on their local circumstances, and each government needs to decide which actions should be taken and which matter should be considered first[7] (Malik, 2019).

1.3.3. Strong Institutions

Since the tasks concerning the SDGs need to be carried out by governments and international, regional and national institutions, without good governance and strong institutions, it is not possible to implement the policies that will help the achievement of

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[7] For instance, in the case of the United States (US), President Obama had expressed his commitment to the implementation of Goal 16, and regarding the justice component, his focus was directed towards the ongoing "access to justice" crisis in the US, which was the result of the desire of most American citizens to deal with "their civil justice problems without a lawyer" and their refusal to admit "their need for a legal assistance" (Jweied, 2019).

the 2030 Development Agenda (Dasandi & Mikhaylov, 2016). As Resolution 70/1 suggests, there is "… need to build peaceful, just and inclusive societies that provide equal access to justice and that are based on respect for human rights (including the right to development), on effective rule of law and good governance at all levels and on transparent, effective and accountable institutions" (UNGA, 2015, para. 35).

Since governments and institutions are the ones to implement other SDG related policies, their quality is crucial too. A failed state cannot focus on environmental, economic or health related problems. A failed state is a state which is "unable to fulfill the administrative and organizational tasks required to control people and resources" and "composed of feeble and flawed institutions" (Barma, 2007). Conversely, when the state and its institutions are effective, they will be ready "to make decisions and implement policies that support their national development goals and protect their citizens" (Bolaji-adio, 2015). Nevertheless, what is even more crucial is their will. In the absence of strong political will, the implementation of the policies that will have positive effect on other goals such as poverty, education, health, etc. is improbable (Cling et al., 2016).

Of the 12 targets of SDG16, target 16.A—which is highly related to the strong institutions component of the goal—aims to "strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime". The only indicator for this target is the "existence of independent national human rights institutions in compliance with the Paris Principles". According to the Report of the Secretary-General dated 28 April 2020, "in 2019, 40 per cent of countries had a national human rights institution that had successfully achieved compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles)" (ECOSOC, 2020, para. 139). In 2015, this percentage was 35 (Özler & Rahmaty, 2019). There is a progress, yet these numbers show that institutions in countries are still (very) weak and more effort is required to achieve strong institutions.

In addition to positive contributions of strong institutions to the success of other goals, the achievement of target 16.A has a positive impact on the works of the HRC and on the responsibility of states to protect their population from mass atrocities. The "existence of

independent national human rights institutions in compliance with the Paris Principles" in a country will mean that there will be an institution which is "vested with competence to promote and protect human rights" and is "given as broad a mandate as possible with a constitutional or legislative text" in that country (UNGA, 1993). At the same time, the Paris Principles require from those institutions "to cooperate with the United Nations and any other organization in the United Nations system" (UNGA, 1993). An institution which is to promote and protect human rights and to cooperate with the HRC is an opportunity for the Council and its mandate. From a human rights perspective, within the UN the HRC is the prominent authority with the knowledge of the most recent human rights developments in any country. Having looked at the aspects of human rights protection under SDG 16, the next chapter focuses on the HRC itself as the body which is globally responsible for the promotion and protection of all human rights.

CHAPTER 2

THE UNITED NATIONS HUMAN RIGHTS COUNCIL

The mutually reinforcing and complementary relationship between human rights, peace, security and sustainable development have been emphasized since the late 1990s. This chapter aims to provide a background on the developments in the human rights mechanisms in the 2000s as a consequence of the initiatives for a better working UN system in humanitarian crises. To this end, the HRC as a reformed body of the UN and its sub-bodies and special procedures are discussed. In addition, the background information necessary to provide an analysis from the R2P point of view is laid out.

2.1. A NECESSARY INNOVATION

After the atrocity crimes during the Second World War, the newly founded UN with its central focus on peace and human rights stated in the Preamble of its Charter that "We the Peoples of the United Nations [are]determined to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small" (UN, 1945). According to Article 68 of the UN Charter, the Economic and Social Council (ECOSOC), one of the principal bodies of the UN, would "set up a commission for the promotion of human rights". Thus, in 1946, the Commission on Human Rights (CHR) was established as a subsidiary body of and by the ECOSOC to have mandate on human rights issues, with representatives from each of the 18 Member States that were elected by the ECOSOC (ECOSOC, 1946).

The first task of the Commission was to create a bill of rights that would set a universal standard for all member nations (Plaine, 1950). For this purpose, the CHR prepared the Universal Declaration of Human Rights, and on 10 December 1948 it was adopted by the UN General Assembly. This Declaration—which set "a common standard of achievement for all peoples and all nations"—was one of the most important contributions of the newly founded Commission (UNGA, 1948). According to Plaine (1950), after drafting the agreed list of fundamental human rights and freedoms, the second task of the Commission

was determined as to prepare international agreements that would bind states to promote and protect the agreed human rights.

In the early years of its mandate, the Commission worked on the standard setting of human right issues and drafted many international agreements to secure human rights (Tistounet, 2010). The "International Covenant on Economic, Social and Cultural Rights" and the "International Covenant on Civil and Political Rights" of 16 December 1966 are two of the most important contributions of the Commission in this regard. During its mandate, the Commission prepared many other important agreements on various issues such as "the rights of the child", "independence of colonial countries and people", "elimination of all forms of racial discrimination", "elimination of discrimination against women", "the suppression and punishment of the crime of apartheid", "torture and other cruel, inhuman or degrading treatment or punishment", "the abolition of the death penalty", "the protection of the rights of all migrant workers and members of their families", as well as "the protection of all persons from enforced disappearance" (Tistounet, 2010).

With some procedural innovations in 1967, the Commission was allowed to review human rights situations in some countries (Tistounet, 2010). Nevertheless, the newly gained powers which allowed the Commission to adopt resolutions for the specific countries which are considered as human rights abusers, caused the accusation of the Commission with selectivity (Ghanea, 2006, p. 697). Moreover, in time, member states of the Commission were criticized for using their position in the Commission to hide their human rights abuses. In the second half of its mandate, the Commission started to be criticized on the grounds of "ideological confrontation, double standards, selectivity and hidden political agendas exercised in addressing human rights issues" (Tistounet, 2010, p. 331).

In the 1990s, there were internal efforts to improve the working mechanisms of the Commission. In 1993, the Office of the High Commissioner for Human Rights (OHCHR) was established as the secretariat of the Commission for supervising the UN's human rights activities (Navoth, 2006). In the last years of the 1990s, there were also efforts that were recommended by the working group concerning the efficiency of the Commission's

mechanisms. However, according to Tistounet (2010), none of these efforts achieved to prevent the politicization of the Commission.

With the Millennium Declaration of 2000, the UN member states once again promised "to promote democracy and strengthen the rule of law, as well as respect for all internationally recognized human rights and fundamental freedoms, including the right to development […and] to respect fully and uphold the Universal Declaration of Human Rights" (UNGA, 2000, para. 25). With the Millennium Declaration, the importance of the promotion of human rights in the UN agenda was highlighted and human rights was carried to the forefront of the agenda.

Although the CHR "made a very important contribution to human rights standard setting, to the development of the UN institutional capacity to promote and protect human rights and, in many national situations, to significant improvements in the protection of human rights" over 60 years, it started to be criticized in the early years of the 2000s more than ever (Scannella & Splinter, 2007). Especially after "A More Secure World: Our Shared Responsibility, the report of the Secretary-General's High-level Panel on Threats, Challenges and Change" in December 2004 and the 2005 Report of the Secretary-General titled "In larger freedom: towards development, security and human rights for all", the criticisms peaked (Scannella & Splinter, 2007).

The High-level Panel Report recommended certain amendments to cope with the new challenges of the twenty-first century. The report highlighted that 60 years after the establishment of the UN, the world's problems were not the same. Among various issues were "economic and social threats, including poverty, infectious diseases and environmental degradation; inter-State conflict; internal conflict, including civil war, genocide and other large-scale atrocities; nuclear, radiological, chemical and biological weapons; terrorism; and transnational organized crimes" (UNGA, 2004, p. 11).

The Report pointed to the institutional weaknesses to cope with the challenges of the century as well as the repercussions of the legitimacy deficit the CHR causes on the overall reputation of the UN. Considering the reform of the Commission as necessary for protecting human rights and for the fulfilment of the Commission's mandate and

functions, the Report also observed that "in recent years States have sought membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticize others". According to the Report, Commission membership had become a very sensitive and difficult problem "with no positive impact on human rights and a negative impact on the work of the Commission" (UNGA, 2004, para. 285). The report also suggested that

> in the longer term, Member States should consider upgrading the Commission to become a "Human Rights Council" that is no longer subsidiary to the Economic and Social Council but a Charter body standing alongside it and the Security Council and reflecting in the process the weight given to human rights, alongside security and economic issues, in the Preamble of the Charter (UNGA, 2004).

In this regard, the idea of establishing the Human Rights Council became visible in 2004.

In 2005, as a five-year progress report on the implementation of the Millennium Declaration and as an answer to the recommendations of the High-Level Panel, Secretary-General Kofi Annan presented the Report, entitled "In larger freedom: towards development, security and human rights for all" (UN, 2005). In this Report, the Secretary-General remarks "the system for protecting human rights at the international level is today under considerable strain" and despite all of its positive contributions on human rights matters, "the Commission's capacity to perform its tasks has been increasingly undermined by its declining credibility and professionalism" (UNGA, 2005, para. 182). Pointing to the issue of states seeking "membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticize others" and the negative impact of the legitimacy deficit of the Commission on the UN, the report suggested the Member States to "replace the Commission on Human Rights with a smaller standing Human Rights Council" for a better working UN on human rights promotion and protection. Confronting member states with the question of whether "the Human Rights Council to be a principal organ of the United Nations or a subsidiary body of the General Assembly", the Report suggested a member state selection process conducted "directly by the General Assembly by a two-thirds majority of members present and voting" (UNGA, 2005).

Six months later, with the World Summit Outcome Document (Resolution 60/1)—which also adopted the principle of R2P—the HRC was established. According to the Outcome Document, the President of the General Assembly was expected "to conduct open, transparent and inclusive negotiations, to be completed as soon as possible during the sixtieth session, with the aim of establishing the mandate, modalities, functions, size, composition, membership, working methods and procedures of the Council" (UNGA, 2005b, para. 160).

2.2. THE CREATION OF THE HUMAN RIGHTS COUNCIL

With Resolution 60/251 adopted by the General Assembly on 15 March 2006, the HRC was established "in replacement of the Commission on Human Rights, as a subsidiary organ of the General Assembly" by a vote of 170 in favor and 4 against[8] with 3 abstentions in total (UNGA, 2006a). According to the Resolution the status of the Council was to be reviewed by the General Assembly within five years, whether it would be a principal body of the UN like the Security Council or a subsidiary one. Nonetheless, the newly created Council would have a higher status than the old Commission, since it would be reporting directly to the General Assembly (Hug & Lukács, 2014).

It was decided that the new council, "within one year after the holding of its first session, shall undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States" and "shall assume, review and, where necessary improve and rationalize all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights in order to maintain a system of special procedures, expert advice and a complaint procedure" (UNGA, 2006a, paras. 5-6).

The Resolution also established that "the Council shall consist of forty-seven Member States, which shall be elected directly and individually by secret ballot by the majority of the members of the General Assembly; the membership shall be based on equitable

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[8] For more on the negative votes, please see Section 2.2.1.

geographical distribution" (UNGA, 2006a). All UN Member States are eligible to be an elected member of the Council, but while electing the members, their performance in human rights promotion and protection is to be considered. "The General Assembly, by a two-thirds majority of the members present and voting, may suspend the rights of membership in the Council of a member of the Council that commits gross and systematic violations of human rights". It was also stated that elected members "shall uphold the highest standards in the promotion and protection of human rights, shall fully cooperate with the Council and be reviewed under the universal periodic review mechanism during their term of membership". Finally, the resolution requested from ECOSOC to abolish the CHR on 16 June 2006.

2.2.1. Structure and Membership

The HRC as a subsidiary body of the General Assembly held its first session from 19 to 30 June 2006, and a year later, the Council adopted its "Institution-building package". Membership to the Council is one of the most sensitive subjects as it was in the CHR. Before the revolutionary changes that abolished the CHR and established the HRC, the number of members of the Commission changed "from 18 in 1946, to 21 in 1962, 32 in 1967, 43 in 1980 and 53 in 1992" to have a better working human rights body (Ghanea, 2006). Finally, this number changed to 47 Member States with the new Council.

Regional Groups	Seats
Group of African States	13
Group of Asian States	13
Group of Eastern European States	6
Group of Latin American and Caribbean States	8
Group of Western European and other States	7

Table 1. Geographical distribution of Member States in HRC (UNGA, 2006a)

These "47 Member States are elected by the majority of the members of the General Assembly" and it is based on "equitable geographical distribution". "The members of the

Council shall serve for a period of three years and shall not be eligible for immediate re-election after two consecutive terms" (UNGA, 2006a).

Resolution 60/251 was adopted with 4 votes against and 170 in favor (UNGA, 2006a). The US, Israel, Marshall Islands and Palau, voted against the Resolution as they did not believe that the new human rights body would be better than its predecessor without the imposition of meaningful membership criteria (UNGA, 2006b). On behalf of the US, John R. Bolton stated that the text for the new Council was not sufficiently improved. He also criticized the procedure that while the election of members would occur with a majority vote of the Member States of the General Assembly, the suspension of a member from the Council would happen with the two-thirds majority of the members present and voting (UNGA, 2006b). While theoretically achieving the two-thirds majority for the suspension of a member was innovative, in practical terms, this is not easy to achieve. Hence, what Bolton argued for was that the members of the Council should be elected by the two-thirds majority, as it was originally suggested in the report entitled "In larger freedom: towards development, security and human rights for all", and that gross abusers of human rights should be excluded as in the US proposition.

Dan Gillerman, who spoke on behalf of the State of Israel criticized the old Commission on grounds of its attitude towards Israel, accusing it with discrimination, racism, exclusion and double standards (UNGA, 2006b). He stated Israel's concerns about the new Council, and Israel's belief that the Council would not show any significant progress since there was no sufficient benchmark for membership.

While the clear negative stance and criticisms of the US and Israel against the text of the new Council, European Countries were not so effective during the creation of the HRC. Gerhard Pfanzelter from Austria who spoke on behalf of the European Union (EU) stated the Union's desire for election of members of the Council based on two-thirds majority (UNGA, 2006b, p. 9). The EU countries were mostly positive regarding the rest of the text of the resolution. Smith (2010) criticizes the EU countries for having a too weak voice in the creation of the Council while most developing countries were involved more actively in the process. He remarks, although the EU countries supported to the idea of the new council, they did not bring any original ideas about how the new council should

be, or what were the problems of the old one, while the developing countries actively supported the no membership criteria and simple majority of General Assembly (Smith, 2010). The Organization of Islamic Cooperation (OIC) countries such as Yemen, Sudan, Syria, Egypt, Indonesia, Algeria, Morocco, Malaysia, Iran and Pakistan stated their expectations from the new Council about respect for cultural and religious differences. Syria also argued for transferring of the CHR's item that contains the annually adopted resolutions on the "Israeli practices in the occupied Arab territories" to the new Council. Egypt suggested that the suspension of a member should be "limited to cases of gross and systematic violations of human rights stricto senso" (UNGA, 2006b, p. 21). In this regard, as Smith (2010) argues, the OIC surpassed the EU in terms of their impact on the text of the Resolution.

After all, the newly created Council could not escape from the criticisms about the old Commission. Schaefer (2010) argues that the membership of the countries that "fail to observe human rights or actively repress the rights of their citizens" in the HRC such as the membership of China, Cuba, Libya, Angola, Malaysia, Thailand, Uganda, Mauritania, and Qatar, damages the reputation of the Council and its work. He criticizes the membership to the Council for letting human rights violator countries and even sanctioned countries by the UN Security Council to be elected as a member. He blames the Council for having no "meaningful criteria" for membership except for geographical representation. Moreover, the geographical representation criteria of the Council which gives 13 seats to Africa and 13 seats to Asia may directly cause the domination of human rights abusers in the Council's decisions. According to him, from the CHR to the HRC, the number of seats of countries that can actually protect and observe human rights declined. He further argues that because of the geographical criteria, the actual observers and protectors of human rights have become the minority, while "the states hostile to human rights" are dominating the Council (Schaefer, 2010, p. 6).

Freedman (2013) criticizes the members of human rights bodies for using their position for their national or regional interests, since politicization is one of the biggest obstacles for an international body while fulfilling its mandate. He argues that the failure behind the old Commission was its inability to "address many gross and systemic country-specific human rights violations" such as in China since it focused too much on Israel due

to the politicization of the Commission. He states, just like its predecessor, the new Council could not escape from the politicization, selectivity and bias by focusing too much on Israel until the Israel's disengagement with the Council in 2012 (Freedman, 2013).

Like Freedman (2013), Hug (2015) also criticizes the Council about its inability to overcome the shortcomings of the Commission contrary to hopes. Moreover, Hug and Lukács (2014) argue that controversial decisions in the Council cause polarization just like in the old Commission. They have three hypotheses about the voting system and its relation to polarization in the Council. The first one is about the importance of the group that States belong while they are voting in the Council. According to them, being a member of OIC affects the voting behavior of a state concerning human rights issues and this decision even may not be for the sake of human rights. The second one is about the impact of the preferences of a Member State "in the area of human rights records" (Hug & Lukács, 2014, p. 90). They suggest that democratic states tend to respect human rights mostly. So, they suggest, the voting behavior of the member states on human rights issues are likely to be affected by their democratic preferences. Thirdly, if a resolution is submitted by a country with a poor human rights records, it is more likely to cause the polarization in the voting behavior of the Council. They argue that member states of the Council which belong to the EU have different preferences than those countries with blemished human rights records. This is why they suggest that it is also essential to consider the group that states are a part of and the preferences of states besides their human rights records while electing the members of the Council.

2.3. HUMAN RIGHTS COUNCIL BODIES AND PROCEDURE

Despite the fact that the HRC is being criticized in many aspects, the subsidiary bodies of the Council and its Special Procedures have a very critical position with regard to human rights protection issues. Three subsidiary bodies of the Council, namely the "Universal Periodic Review Working Group", "Advisory Committee", and "Complaint Procedures and its Special Procedures", are discussed below separately to emphasize their importance and contributions to the improvement of human rights practices.

2.3.1. Universal Periodic Review Working Group

The Universal Periodic Review (UPR) is the one of the most important contributions of the HRC. According to Resolution 60/251, the HRC would "undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States", and the members elected to the Council would also be reviewed under the UPR mechanism during their term of membership. It was also noted that within a year after the Council was established, the HRC would develop "the modalities and necessary time allocation" for the UPR mechanism.

A year after the establishment of the new Council, with the "Institution Building of the United Nations Human Rights Council" that was adopted by the HRC on 18 June 2007, "the basis of the review", "principles and objectives", "periodicity and order of the review", "process and modalities of the review", "outcome of the review" and "follow-up to the review" of UPR mechanism were defined. According to the institution building resolution, the basis of the review of UPR mechanism would be "the Charter of the United Nations", "the Universal Declaration of Human Rights", "human rights instruments to which a State is party" and "voluntary pledges and commitments made by States, including those undertaken when presenting their candidatures for election to the Human Rights Council" (UNHRC, 2007).

Fundamental principles of the UPR are "promoting the universality", "interdependence, indivisibility and interrelatedness of all human rights"; being "cooperative", "complementary with other human rights mechanisms", "objective", "transparent", "realistic", "proportionate", "non-selective", "constructive", "non-confrontational", "non-politicized"; and "not diminishing the Council's capacity to respond to urgent human rights situations" (UNHRC, 2007).

 As decided in Resolution 60/251, "the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with

consideration given to its capacity-building needs; and such a mechanism shall complement and not duplicate the work of treaty bodies" (UNGA, 2006b, para. 5.e).

The UPR is considered as a very unique process since it provides opportunity for states to consider their human rights progress (OHCHR, n.d.). States are expected to review their own human rights conditions for the evaluation of the HRC (Duran, 2006, p. 10). However, Smith (2010) argues that the UPR "has descended into 'self-congratulation', with states often praising each other's records" (p. 225).

2.3.2. The Human Rights Council Advisory Committee

The Human Rights Council Advisory Committee, which is "composed of 18 experts", functions "as a think-tank for the Council" (UNHRC, 2007). Candidates can be proposed by all Member States of the UN. If they want their candidates to be selected, they need to include the names of supporters of their candidate from "national human rights institutions" and "civil society organizations". To ensure the best possible expertise for the Council, candidates are elected by their "recognized competence", "experience in the field of human rights", "high moral standing", "independence and impartiality" (UNHRC, 2007). "Gender balance and appropriate representation of different civilizations and legal systems" are considered while determining the candidates. Members of the Committee are elected in a secret ballot between candidates in accordance with the geographical distribution: 5 from African States, 5 from Asian States, 2 from Eastern European States, 3 from Latin American and Caribbean States and 3 from Western European and other States (UNHRC, 2007). The elected members "serve for a period of three years". The Committee is for providing expertise to the Council when it is requested by the HRC as well as proposing research-based advice. "In the performance of its mandate, the Advisory Committee is urged to establish interaction with States, national human rights institutions, non-governmental organizations and other civil society entities in accordance with the modalities of the Council" (UNHRC, 2007).

2.3.3. Complaint Procedures

A complaint procedure addresses "consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances". The Complaint Procedure consists of two working groups: "the Working Group on Communications" and "the Working Group on Situations". The members of the Working Group on Communications are appointed by the Advisory Committee between its own members as one from each regional group for three years. The members of the Working Group on Situations are appointed by each Regional Group for one year (UNHRC, 2007).

2.3.4. Special Procedures

Special Procedures which were established by the CHR and then passed on to the Human Rights Council, with their very important role in promoting and protecting human rights are one of the important contributions of the old Commission to human rights practices (Subedi et. al., 2011). Actually, "they are sometimes the only mechanism that will alert the international community to certain human rights issues, as they can address situations in all parts of the world without the requirement for countries to have had ratified a human rights instrument" (OHCHR, n.d.).

Special Procedures might be an individual or a working group. It is the general name of the mechanism that is composed of independent human rights experts working on country specific or thematic human rights issues. They are appointed by the Human Rights Council to monitor, examine, advise, and report the human rights situations (UNHRC, 2007). The most important criteria for the success of the Special Procedure mechanism are the existence of cooperation and good communication between the State and the mandate holder since the mechanism does not allow for forcing the State to give them access or implement their recommendations (Limon, 2017, p. 143).

While thematic mandates are focusing on subjects which are also related to the SDGs, such as "the right to development", "right to education", "right of everyone to the enjoyment of the highest attainable standard of physical and mental health", "the rights

of persons with disabilities", "the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment", "extrajudicial, summary or arbitrary executions", and "the right to food" vice versa, the country specific mandates are focusing on the countries which cannot or do not protect its citizens, or need assistance to protect the citizens from gross violations of human rights. The mandates on the situation of human rights in the Syrian Arab Republic, Myanmar, the Palestinian territory that has been occupied since 1967 and the Democratic People's Republic of Korea are some of the country specific mandates in 2020.

In the light of this, the HRC and its mechanisms and procedures, provide an opportunity both for the implementation and the monitoring of the SDGs. For example, while the idea to use "UPR recommendations to guide SDG implementation" has lately been gaining strength, SDG16 is the most referred goal in the UPRs according to the distribution of UPR recommendations of SDGs (UPR-info, 2018). Besides the potential contributions of the HRC and its mechanisms and procedures to the achievement of the 2030 Agenda, lately the role the HRC can play in R2P's implementation has also gained significance in the agenda of the Council. Before dwelling on this issue, to give a background, the next chapter will focus on the R2P principle as another development attempt by the UN for a more effective protection of the human rights.

CHAPTER 3

THE RESPONSIBILITY TO PROTECT

To provide a deeper understanding on the development attempts in the human rights field, it helps to explore the development of R2P. Therefore, in this chapter, the transformation of the understanding from the right to intervene under humanitarian intervention to the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity will be studied.

3.1. FROM HUMANITARIAN INTERVENTION TO THE RESPONSIBILITY TO PROTECT

The cases that the world faced in the 1990s in Northern Iraq (1991), Somalia (1992-93), Bosnia-Herzegovina (1991-95), Rwanda (1994), Haiti (1994), Kosovo (1998-99) and East-Timor (1999) made insignificant the question of whether or not the international community should do something about interstate conflicts to protect populations from mass and systematic violations of human rights (Molier, 2006). The 1990s were the peak of the debate on the legality and legitimacy of the humanitarian intervention. These debates and the cases that the world faced in the 1990s led to new expectations from the international community. Molier (2006) calls this avocation of the UN as a "new commitment regarding the will and ability of the United Nations to end human suffering within states" (p. 41).

In that period, the international community was criticized for either acting forcefully or not doing anything in the face of mass atrocities. Rwanda was the case that showed the consequences of doing nothing to prevent mass violations of human rights. The unwillingness of the Security Council and the UN officials to refer to the case as a genocide is argued to be a main reason for the humanitarian disaster experienced (ICISS, 2001, pp. 99-100). On the other hand, Kosovo was the case where the UN failed to take a timely decision about a humanitarian crisis due to a deadlock by veto and were NATO used unauthorized military force. Due to the difference of opinion between permanent members of the Security Council (P5) and NATO's unauthorized intervention, the debate

over humanitarian crises further deepened. As Evans (2008) observes, in the Kosovo case, the legitimacy of the use of military force by NATO was not the problem but there was a legality problem since the Security Council could not decide the action (p. 30). In this regard, humanitarian intervention itself is not a legal concept, and cannot be accepted as legal unless a specific intervention is authorized by the UN Security Council.

Holzgrefe (2003) defines humanitarian intervention as "… the threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied" (p. 18). Following from this, humanitarian intervention can be argued to serve a noble cause. However, the reason behind why humanitarian intervention could not gain acceptance as a universal norm is that, most of the time, it is considered by many people as contradictory with two important principles of the UN Charter which are the prohibition of threat or use of force in international relations under Article 2(4) of the UN Charter and the principle of non-intervention in domestic affairs under Article 2(7).

Both when the Security Council authorized the use of force and could not authorize it (due to a deadlock), it was a problem, which led to further criticisms. On the other hand, when the international community stayed on the side lines with the intent of respecting state sovereignty, that also raised an ethical dilemma. As Deng (2010) suggests "where large numbers of populations suffer extreme deprivation and are threatened with death, the international community—obligated by normative standards of humanitarianism and human rights—cannot be expected to watch passively and not respond" (p. 354).

Due to the criticisms over humanitarian intervention and the experienced consequences of inaction, Kofi Annan asked his often-quoted question: "if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica—to gross and systematic violations of human rights that offend every precept of our common humanity?" (UN, 2000). As a reaction to Annan's question, the ICISS was established to work on this dilemma and to prepare its report on "the question of when, if ever, it is appropriate for states to take coercive – and in particular military – action, against another state for the purpose of protecting people at risk in that other state"

(ICISS, 2001)? With their report entitled "The Responsibility to Protect", R2P was introduced in December 2001.

According to the Report, the basic principles behind R2P were that, first, "state sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself" (ICISS, 2001). Secondly, as the ICISS stated, "where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect" (ICISS, 2001). In this regard, R2P is not only about military action, but more so about prevention. Accordingly, R2P was considered to have three main elements: the "responsibility to prevent", the "responsibility to react" and the "responsibility to rebuild".

The responsibility to prevent, according to the report of the ICISS, "is the single most important dimension of the responsibility to protect. Hence, prevention options should always be exhausted before intervention is initiated, and more commitment and resources must be devoted to it" (ICISS, 2001). Secondly, "when preventive measures fail to resolve or contain the situation and when a state is unable or unwilling to redress the situation, then interventionary measures by other members of the broader community of states may be required" (ICISS, 2001, p. 29). This is where the international community's responsibility to react may come into action, with the option of military action being considered only as a last resort (ICISS, 2001). Accordingly, "[i]f military intervention action is taken – because of a breakdown or abdication of a state's own capacity and authority in discharging its 'responsibility to protect'–there should be a genuine commitment to helping to build a durable peace, and promoting good governance and sustainable development" (ICISS, 2001, p. 39), and this is defined as the responsibility to rebuild.

One of the most significant features of the Report was its terminology. It changed the focus from the "right to intervene" to a "responsibility to protect". The perception of the existence of a right to intervene was the main source of contestation for humanitarian intervention, as most significant criticisms arose from cases where "the humanitarian

justifications were usually a pretext for intervention motivated by strategic, economic, or political interests" (ICISS, 2001, p. 17).

In this regard, the invasion of Iraq in 2003 caused concerns about humanitarian intervention. Though this case was not either an example of R2P implementation nor humanitarian intervention, it affected the reputation of the interventions made for the human protection purposes and showed that they are open to abuse by the interest of the powerful states. Molier (2006) argues that the war on terrorism and the Bush administration's invasion of Iraq with an excuse of pre-emptive strike, caused a decrease in humanitarian intervention implementations which were undertaken primarily for the humanitarian purposes and an increase in the number of states which intervene on the humanitarian ground only if they have "important strategic motives".

In December 2004, "A More Secure World: Our Shared Responsibility, the report of the Secretary-General's High-level Panel on Threats, Challenges and Change", emphasized that the issue is no more humanitarian intervention or "right to intervene" of states. Every States has a responsibility to protect populations from suffering. The report endorsed

> the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other largescale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign Governments have proved powerless or unwilling to prevent (UNGA, 2005a, para. 203).

The next year, Kofi Annan with his report, "In larger freedom: towards development, security and human rights for all", presented R2P to the consideration of governments six months before the 2005 World Summit.

3.2. THE RESPONSIBILITY TO PROTECT UNDER THE UN

With the 2005 World Summit Outcome Document, R2P was adopted unanimously under Paragraphs 138 and 139. While Paragraph 138 emphasized the responsibility of individual states to protect their population from the four mass atrocity crimes, Paragraph 139 refers to the responsibilities of international community in the cases of genocide, war

crimes, ethnic cleansing and crimes against humanity. The two paragraphs read as follows:

> 138. 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.

> 139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out (UNGA, 2005a).

There are key differences of the conceptualization of R2P between the Report of the ICISS and Paragraphs 138 and 139. First of all, Paragraph 139 does not mention the responsibility to rebuild of the international community at all. Secondly, it highlights primarily the prevention responsibility of the international community. Interestingly, when we say "the implementation of R2P" the first thing that comes to our mind is the intervention on domestic affairs of another state. However, the responsibility to protect primarily belongs to the state itself and the primal responsibility of the international community is to prevent the atrocity crimes at the earliest stage possible. If the state is unable or unwilling to uphold its responsibility, taking effective preventive action is the most important part of the responsibilities of international community. When the language of World Summit Outcome Document is compared to the formulation of the ICISS, preventive actions are emphasized even more explicitly (Evans, 2008). Thirdly,

as Gözen Ercan (2015) highlights, the Paragraph 139 takes the Security Council the only authority, and does not say anything about what will happen if the Security Council is at a deadlock or does not take action. While the report of ICISS gives this task to the General Assembly and mentions the possibility of willing states to carry out action (Gözen Ercan, 2015, p. 1109).

While R2P has not turned into a legal norm following its adoption in the World Summit, it can be seen as an ethical norm which sets "a standard of appropriate behavior for states to follow in their internal affairs and for the international community in its conduct" (Gözen Ercan, 2014, p. 45). According to Evans (2008), there are five important misunderstandings about R2P which blocks its success. The first and the most popular one is that R2P is the new name of humanitarian intervention. Evans (2008) argues that there are three main reasons behind this misconception. Firstly, some countries just do not want to see better sides of R2P since they have issues in their internal affairs that they want to hide. Secondly, there is a group of states for which it does not matter if it is R2P or humanitarian intervention, as they are against all forms of "constraints on absolute state sovereignty" (Evans, 2008, p. 58). So, they do not even question if there is any difference between R2P and humanitarian intervention. Lastly, Evans (2008) argues that R2P supporters could not emphasize the difference between humanitarian intervention and R2P, and "the multifaceted character of R2P" effectively during norm emergence. Likewise, Bellamy (2009) argues that there was a bigger voice than the supporters of R2P, whose tendency was "to misrepresent R2P as a way of 'legalizing' humanitarian intervention", and that was very effective (p. 117). Bellamy (2009) also links "the persistent association" of R2P with humanitarian intervention to the previous job of the ICISS. The ICISS was the new name of the Commission which was working on reconceptualizing humanitarian intervention with the name of "International Commission on Humanitarian Intervention" before 2001, and Bellamy (2009) argues that although the Commission "introduced new language and concepts" with its report in 2001, "it did not lose its emphasis on the problem of humanitarian intervention" and focused on prevention and rebuilding parts lesser than it did on intervention (p. 118).

The second misconception is that R2P always leads to the use of force in extreme cases. However, it actually does not as the main goal is to avoid the escalation of the situation

to such gravity. The third one is the understanding that "R2P applies only to weak and friendless countries, never the strong". While the application of R2P to the P5 is not likely, Evans (2008) agrees with the idea that military action against militarily too powerful countries would not provide more good than harm. The fourth misunderstanding is that R2P covers all human protection issues. Nevertheless, as adopted under the UN, it can be applied only in cases of genocide, war crimes, crimes against humanity and ethnic cleansing. The fifth and the last one is to accept/misrepresent the invasion of Iraq in 2003 as an example of R2P application, given that there is no military action authorized by the Security Council. Nonetheless, the reference to R2P as part of the justifications for the military operation rendered R2P open to the criticisms that it can be abused (Molier, 2006).

Since most criticisms against R2P arise in relation to the concept of state sovereignty, and the main focus of this thesis is the HRC's contribution to the implementation of R2P through enabling states to uphold their individual responsibility, the next part of the chapter will focus on the question if R2P poses a threat to the sovereignty of a state. Theni R2P's three-pillar implementation strategy will be studied.

3.2.1. State Sovereignty and R2P

For many years, the concept of state sovereignty which gained its "modern" meaning with the Peace of Westphalia in 1648, was an essential for interstate relations and the world order. It is one of the most fundamental norms for the wellbeing of the international system. Two World Wars showed the consequences of not respecting to this norm and the sovereignty of other states. However, in the 21st century, the intervention of powerful states to weak ones is not the only threat for the international order. Today, sovereignty or at least absolute sovereignty is considered as a contradictory concept with some important moral norms that emerged to provide international peace and security and human dignity.

In this respect, there are many arguments in the literature about the relationship between human rights practices and the principle of non-intervention. "The right to intervene"

might be the opposite of the principle of non-intervention or state sovereignty. There are not many arguments which assert the contrary. However, as Molier (2006) suggests, since both humanitarian intervention and R2P serve to a noble cause, it is not true to dogmatize them as a threat to state sovereignty and the international order, and ignore them. Although R2P is the focus of this thesis, since it gained most of its prejudgments from humanitarian intervention, it is also important to understand the tension between humanitarian intervention and the principle of state sovereignty.

The idea of humanitarian intervention was not so preferred in the international arena since it was considered as a breach of the principle of non-intervention and state sovereignty. The atmosphere of the 1990s which strengthened the debate over humanitarian intervention caused the quest of a new understanding of sovereignty. The words of Boutros Boutros-Ghali, UN Secretary-General between 1992 and 1996, in his report, *Empowering the United Nations* emphasizes the necessary innovations that international order required in the last decade of the twentieth century (Deng, 2010, p.363).

> The new era has brought new credibility to the United Nations. Along with it have come rising expectations that the United Nations will take on larger responsibilities and a greater role in overcoming pervasive and interrelated obstacles to peace and development. … While respect for the fundamental sovereignty and integrity of the state remains central, it is undeniable that the centuries old doctrine of absolute and exclusive sovereignty no longer stands, and was in fact never so absolute as it was conceived to be in theory. A major intellectual requirement of our time is to rethink the question of sovereignty - not to weaken its essence, which is crucial to international security and cooperation, but to recognize that it may take more than one form and perform more than one function. This perception could help solve problems both within and among states. And underlying the rights of the individual and the rights of peoples is a dimension of universal sovereignty that resides in all humanity and provides all peoples with legitimate involvement in issues affecting the world as a whole (Boutros-Ghali, 1992, pp. 89-98).

Accordingly, he suggests that sovereignty has never been absolute. Although it was not stated directly, it is not necessarily possible to argue that Westphalian state sovereignty gives unlimited powers to states to do what they want to their people. In the matter of the tension between R2P and sovereignty, Martin (2011) focuses on the legitimacy of sovereignty instead of the legitimacy of the intervention. If legally sovereign states can or do not protect their people from suffering, are their sovereignty legitimate? He suggests

that "sovereignty is contingent upon a state fulfilling its responsibilities to its citizens" (Martin, 2011, p. 154). Martin (2011) also argues that R2P has a history as long as the norm of non-intervention and he bases this argument on how Hobbes, Locke and Rousseau defined the crucial elements of legitimate sovereignty. The point in this argumentation is that there has been never absolute sovereignty, but since the very beginning, sovereignty was always contingent upon the states' will or ability to protect their people.

While the changes in expectations from the UN were forcing the international system to find alternatives for state sovereignty, the alternatives to humanitarian intervention were being considered. Any humanitarian intervention attempt was objected by many states and scholars on the grounds that it is a breach of the principle of non-intervention and state sovereignty. R2P as a principle was created to solve these problems. Actually, R2P was created to bridge the gap between humanitarian intervention and state sovereignty. The reconceptualization of sovereignty lies at the core of R2P, which is based on the notion of "sovereignty as responsibility" as introduced by Francis Deng, the then "Representative of the Secretary-General on internally displaced persons", and his colleagues (UNGA, 2009, Para. 1.7). Accordingly, as part of the R2P understanding, the report of the ICISS places the emphasis on the evolution "from *sovereignty as control* to *sovereignty as responsibility*" (Para. 2.14).

Notwithstanding such emphasis, R2P has also been subjected to criticisms of being a threat to state sovereignty just like humanitarian intervention. In this respect, it is important question the approach to sovereignty. As Reisman (1990) argues, "[a]lthough the venerable term 'sovereignty' continues to be used in international legal practice, its referent in modern international law is quite different. International law still protects sovereignty, but —not surprisingly— it is the people's sovereignty rather than the sovereign's sovereignty". Another question to ask is, does "state sovereignty" mean the sovereignty of people in it or the sovereignty of the ruler? Kofi Annan's remarks hints at the answer:

> State sovereignty, in its most basic sense, is being redefined —not least by the forces of globalization and international co-operation. States are now widely

> understood to be instruments at the service of their peoples, and not vice versa. … When we read the Charter today, we are more than ever conscious that its aim is to protect individual human beings, not to protect those who abuse them (ICISS, 2001, p. 11).

Whether state sovereignty is redefined with globalization and international cooperation, or conveniently misinterpreted by human rights abusers over the years, under R2P.

> … the principle of non-intervention and non- use of force are not meant to protect the rights of the state, but the rights of the citizens of the state, i.e., against violations of these individual rights by other states. In other words, sovereignty as responsibility is a kind of conditional sovereignty from the perspective of the state concerned. When the state is unwilling or unable to act responsibly, i.e., to protect the basic rights of its citizens, it no longer has the rights which derive from its sovereign status (Molier, 2006).

This evaluation of sovereignty from absolute sovereignty to conditional sovereignty was not accepted by many states since they consider it as a threat to themselves and as a limitation to their sovereignty. However, Robert Keohane (2003) argues that states accept many treaties and procedures in spite of the limitations "on their legal freedom of action" that are imposed by them for decades (p. 284). The European Union, in this regard, is a good example. The member states accepted the restrictions on their external sovereignty which are not necessarily compatible with the Westphalian notion of sovereignty. However, they keep their domestic sovereignty and international legal sovereignty. As Keohane suggested:

> … classical notions of sovereignty provide a poor basis for policy with respect to post-intervention political decisions in troubled societies. … For the troubled societies towards which humanitarian intervention is directed, domestic and legal sovereignty may be more appropriate than Westphalian sovereignty. … This is not to say that the state should be abandoned or that sovereignty should be discredited as a concept. On the contrary, the state remains the principal unit of protection and collective action in the contemporary world. … We somehow have to reconceptualize the state as a political unit that can maintain internal order while being able to engage in international cooperation, without claiming the exclusive rights (pp. 276-277).

The Westphalian sovereignty started in Europe in the seventeenth century and then it was accepted by all states and became a universal norm. It was the kind of sovereignty that provided a solution to international conflicts that the world faced in the eighteenth and nineteenth centuries. However, Europe has evolved to the European Union to become

more powerful and so did their understanding of sovereignty. European countries gave up on their Westphalian sovereignty for a better version of sovereignty for their own strength. Arguably, sovereignty as responsibility fits much better to the conditions of the day than Westphalian sovereignty. Beyond being a good example of a supranational organization wherein states have given up willingly from their sovereignty, as a proponent of R2P, the EU has the potential for further evolution and implementation of the R2P norm with its member states in the UN and especially in the UN Security Council, as Gözen Ercan and Günay (2019) suggest. Moreover, "with the membership criteria it imposes on candidate states and the human rights principles and standards it has embraced institutionally, the EU contributes to decreasing the potential for atrocity crimes within its region" (Gözen Ercan & Günay, 2019, p. 499). Following from the example of the EU, contrary to what is asserted by states opposing R2P, the concept of state sovereignty and R2P do not contradict each other, since state sovereignty does not allow states to do whatever they want to their people within the state boundaries. In this vein, pro-sovereignty arguments should not be a way to hide human rights violations.

3.3. THREE PILLARS OF R2P

To address the misconceptions and concerns surrounding R2P, in 2009, Secretary-General Ban Ki-Moon prepared the report titled "Implementing the Responsibility to Protect", which devised a three-pillar implementation strategy. In this report, Ban defined Pillar 1 as the "responsibility of the State to protect its populations, whether nationals or not, from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement"; Pillar 2 as "the commitment of the international community to assist States in meeting those obligations", which refers to the prevention responsibility of international community; and finally, Pillar 3, which refers to the collective reaction "responsibility of international community in a timely and decisive manner" (UNGA, 2009). The report emphasizes the established limits to the scope of R2P and suggests that there is no negative effect of the R2P on sovereignty. The Secretary-General explains this in the following words:

> The responsibility to protect is an ally of sovereignty, not an adversary. It grows
> from the positive and affirmative notion of sovereignty as responsibility, rather

than from the narrower idea of humanitarian intervention. By helping States to meet their core protection responsibilities, the responsibility to protect seeks to strengthen sovereignty, not weaken it. It seeks to help States to succeed, not just to react when they fail … The responsibility derives both from the nature of State sovereignty and from the pre-existing and continuing legal obligations of States, not just from the relatively recent enunciation and acceptance of the responsibility to protect (UNGA, 2009, Para.10a-11a).

It is important to separately look at the three pillars of R2P, in order to make it clear the relation between the R2P and sovereignty, as well as the role the HRC can play in implementing the responsibility to protect.

3.3.1. Pillar 1

Pillar 1 is the key part of the prevention of mass atrocity crimes. It suggests that "the responsibility to protect, first and foremost, is a matter of State responsibility, because prevention begins at home and the protection of populations is a defining attribute of sovereignty and statehood in the twenty-first century" (UNGA, 2009, Para. 14). Strengthening Pillar 1 means increasing the consciousness of the State "regarding its responsibilities to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity". States already have legal "obligations to prevent and punish genocide, war crimes and crimes against humanity" "under conventional and customary international law", while ethnic cleansing can be seen to cover the other three crimes (UNGA, 2009, Para. 3). From this point of view, Pillar 1 of R2P requires States to abide by the laws and their international commitments arising from international treaties and laws.

As the Report aims to introduce a "narrow but deep approach", besides the protection responsibilities of the State, there are some requirements in order to carry out the obligations of Pillar 1 successfully. Just like SDG16 suggests, Pillar 1 emphasizes the importance of strengthening the rule of law in meeting obligations of responsible sovereignty. To include the four specified crimes and violations to the domestic laws and to provide different segments of society to equal access to justice and to judicial redress for violations of their fundamental rights may help to strengthen the rule of law (UNGA, 2009, para. 17). Secondly, the existence of well-trained mechanisms, which are

responsible for law enforcement and judicial processes, and cooperation with the International Criminal Court (ICC) is another highlighted point in the Report. The third suggestion of the Report for the success of Pillar 1 is the localization of principles relating to R2P to provide full effect and sustainability (UNGA, 2009, Para. 20).

On the other hand, the Secretary-General advises States to cooperate with UN human rights mechanisms such as the HRC for assistance relating to the fulfilment of R2P (UNGA, 2009, para. 16). The value of the UPR mechanism of the Council is underlined for protecting and monitoring human rights. While Pillar 1 promotes to have technical assistance from the UN, it also encourages States to have independent national human rights institutions to help them in the implementation of relevant international human rights and humanitarian standards (para. 22). However, as mentioned earlier, only "40 per cent of countries had national human rights institutions that had successfully achieved compliance with the principles relating to the status of national institutions for the promotion and protection of human rights" (UNGA, 2020).

To sum up, Pillar 1 simply requires from the State to respect human rights norms and strengthen the rule of law and the cooperation with the UN and the Member States. As the Report suggested, "the State, by fulfilling fundamental protection obligations and respecting core human rights, would have far less reason to be concerned about unwelcome intervention from abroad" (UNGA, 2009, Para. 7).

3.3.2. Pillar 2

Pillar 2 emphasizes the responsibility of the international community to assist the State while the State is meeting its obligations towards its population. Like Pillar 1, Pillar 2 is a vital part of the prevention of mass atrocity. The responsibilities of the international community are mostly about "encouragement", "capacity building" and "assisting States to protect their populations". However, with the consent of the State, the international community can also provide military assistance if there is "armed non-state actors threatening both the State and its population" (UNGA, 2009, para.29). Although international assistance under Pillar 2 has no negative relation with state sovereignty, the

rightfulness of any military assistance even though with state consent is open to discussion. Gallagher (2015) finds the use of force in international relations complex from this point of view (p. 1266).

According to the Report, "when a State is unable to fully meet its responsibility because of capacity deficits or lack of territorial control, the international community should be prepared to support and assist the State in meeting this core responsibility as needed under pillar two" (UNGA, 2009, para. 13). It is important to remember that Pillar 2 can play vital role when a State is unable which means "national political leadership is weak, divided or uncertain about how to proceed, lacks the capacity to protect its population effectively, or faces an armed opposition that is threatening or committing crimes and violations relating to the responsibility to protect" (UNGA, 2009, Para. 29). On the other hand, if the crimes related to R2P are being committed by the political leadership of the state, the report advises to relate the issue to Pillar 3 (UNGA, 2009, Para. 29).

While Pillar 1 suggests that the State should cooperate with the UN human rights institutions, Pillar 2 suggests that international human rights institutions should cooperate with the state for assistance. Besides the international, regional and sub-regional institutions, under Pillar 2 the significant role of the special procedures of the HRC is emphasized. According to the Report, the analysis and recommendations of the special procedures "can provide a basis for capacity-building, the alleviation of conflicts, and the protection of actual and potential victims of serious human rights violations" (UNGA, 2009, para. 35).

3.3.3. Pillar 3

Pillar 3 is the most contested pillar of R2P due to the inclusion of the method of use of force in the R2P toolkit. This pillar suggests that it is "the responsibility of Member States to respond collectively in a timely and decisive manner when a State is manifestly failing to provide such protection" (UNGA, 2009, Para. 11c). In cases where prevention fails, and if the "peaceful means are inadequate" and "national authorities are manifestly failing to protect their populations from the four specified crimes and violations", then with the

authorization of the Security Council, Member States have responsibility to "be ready to give a timely and decisive response" (UNGA, 2009, Para. 49). Such response may involve coercive measures up to and including the use of force.

In terms of the involvement of the HRC while the first two pillars have direct relevance for this thesis, this does not mean that Pillar 3 is not of importance. The Secretary-General emphasizes that all three pillars are of equal importance and there is no specific "sequence for moving from one pillar to another" (UNGA, 2009, para. 12). From an SDG16 point of view, it is very critical that states carry out their human rights obligations under Pillar 1 while the international community carries out its assistance responsibilities for the state to meet its responsibility to protect its population. However, when such efforts fail, Pillar 1 becomes crucial to reinstate peace in a country and restore human rights and institutions to this end.

All in all, as mentioned in Chapter 1, for the success of the 2030 Agenda, SDG16 is of vital importance. The interrelation between the HRC and R2P's implementation with respect to SDG16, therefore, allows us to consider situations from a systematic point of view within the UN infrastructure. Without the existence of peace, rule of law or independent national human rights institutions in a state, the success of both the 2030 Agenda and R2P is not possible. As one of the main human rights institutions of the UN, the HRC may have a positive impact on their fulfillment. To examine their complementary relations more deeply, the next chapter will focus on three specific situations which are considered as major R2P crises wherein the state authorities have failed to uphold their Pillar 1 responsibilities. While focusing on these cases, the response of the HRC will be studied to determine if as the main human rights institution of the UN, the HRC has any positive impact on states' behavior while they are trying to uphold their responsibility to protect.

CHAPTER 4

CASE STUDIES

This chapter aims to compare three cases, namely that of the Democratic Republic of the Congo (DRC), Libya and the Syrian Arab Republic. In all these cases the states failed to uphold their responsibility to protect their populations, and human rights violations continue to be a problem. Despite such a similarity, these cases also vastly differ from each other. Therefore, providing a general background into these R2P crises is highly important, as the DRC case has a much more different background than the other two. Although Libya and Syria cases arose as an immediate consequence of the Arab uprisings which affected the Middle Eastern and African countries in the 2010s, the reasons behind the conflict in Congo date back to the 1960s. In this regard, first the case of the DRC will be studied. This will be followed by the cases of Libya and Syria.

4.1. DEMOCRATIC REPUBLIC OF THE CONGO

4.1.1. Background of the Case

Since the DRC gained its independence in 1960 from Belgium, the conflict and chaos never settled down due to a multiplicity of reasons such as ethnic conflicts, intervention of other states, massive reserves of gold and diamond, as well as mineral wealth. Since 1960, Congo as one of the most troubled lands in the area has witnessed "the world's most deadly conflict since World War 2" (Vlassenroot & Huggins, 2004, p. 115).

When the DRC became an independent state on 30 June 1960, it could not enjoy its independence. Belgium wanted to send its troops to the DRC for the purpose of protecting its citizens who live in there and a Belgium supported secessionist movement started in the Katanga province in July 1960 (Arieff & Coen, 2014). The Congolese government requested assistance from the UN to have control over the area and asked for the withdrawal of Belgians from the country. With the mandate of the UN Security Council, "the United Nations Operation in the Congo" (ONUC) was established upon the request of the Congolese government. Patrice Lumumba, the first prime minister of the Congo,

desired ONUC to intervene in the ongoing conflict, but his request was denied. Moreover, the emerging disputes between Lumumba and Joseph Kasavubu, who was the first president of the new state, over the use of force against the Katanga crisis, worsened the situation in the Congo (Encyclopaedia Britannica, 2020). When ONUC refused to intervene in the Katanga province, Lumumba's desire to ask for a military assistance from the Soviet Union to control the rebellion in the Katanga province which rebelled against the Congolese government with the influence of Belgium, made it worse (Encyclopaedia Britannica, 2020). Finally, in September 1960, Colonel Joseph Mobutu took over the control with a coup d'état and after a second coup in 1965, Mobutu became the head of the government. In 1971, Mobutu renamed himself as Mobutu Sese Seko and the country as Zaire (Arieff & Coen, 2014, p. 4).

The year of 1994 was another milestone in the history of the Congo and of the World due to the genocide committed in Rwanda. Over one million Hutu refugees who escaped to other countries especially to the eastern part of the DRC, caused an increase in the tension within the country. Rwandan Hutu soldiers who lived in the refugee camps in the eastern Congo started to become militarized in a short time. Rwandan soldiers and the Alliance for Democratic Liberation (AFDL) started a rebellion against Mobutu in 1996 (Vlassenroot & Huggins, 2004, p.148).

Colonel Joseph Mobutu who was the head of the government of the Congo since 1965 coup, was toppled during the rebellion led by Laurent Désiré Kabila with the support of Rwanda, Uganda and Burundi in 1996. Consequently, in 1997, Kabila became the new president after Mobutu and changed the name of the country to the Democratic Republic of the Congo from the Republic of Zaire (Arieff & Coen, 2014, p. 5).

Kabila, under the influence of Rwandan extremists, blocked the UN's works in Congo. Thus, the UN's efforts to monitor and follow up on the Rwandan refugees in Congo was rendered inconclusive (Encyclopaedia Britannica, 2020). After a while, Kabila wanted to break up with his Rwandan allies. In response, Rwanda and Uganda started another rebellion against their former ally Kabila and the Congolese Government (Arieff & Coen, 2014). As a result, another war was reignited in the region. Zimbabwe, Namibia and Angola supported Kabila against the Rwandan and Ugandan armies, while Rwanda and

Uganda had the support of the rebel groups (Encyclopedia Britannica, 2020). The conflicts in the DRC were affecting other countries in the region negatively. Finally, on July 1999, to end the war, DRC, Zimbabwe, Namibia, Angola, Rwanda and Uganda signed a Ceasefire Agreement in Lusaka, Zambia (UNSC, 1999a). For the second time, the UN Security Council established a peacekeeping operation which is known as "the United Nations Organization Mission in the Democratic Republic of the Congo" (MONUC) to monitor if the agreement was implemented by the parties. However, the Lusaka Ceasefire Agreement could not achieve to end the hostilities as intended (Encyclopedia Britannica, 2020).

After President Laurent Kabila was assassinated in 2001 his son Joseph Kabila took the seat. With the aim to end the war, a transitional government was established, and Kabila became the interim president in 2003 (Lemarchand, 2020). Kabila was elected as the president first in the 2006 national elections and again in 2011 (Arieff & Coen, 2014).

However, neither the elections nor the president-elect achieved to bring peace to the country. In 2012, the 23 March Movement (M23) which was formed by an armed rebel group against government forces worsened the security and the humanitarian crisis in eastern the DRC (UNSC, 2012d). With the support of Rwanda, M23 gained power and started to occupy North Kivu (Tull, 2018, p. 173). The occupation of Goma, the capital of North Kivu by M23, led to criticisms against both the government of the DRC and the "United Nations Organization Stabilization Mission in the Democratic Republic of the Congo" (MONUSCO), which replaced MONUC in 2010 with the authorization of the Security Council. In response, the Security Council expanded MONUSCO's mandate to "include an "Intervention Brigade" for neutralizing armed groups through the Intervention Brigade in the eastern DRC" (UNSC, 2013). After a while, the M23 was defeated and MONUSCO did not want to fight on the side of the government powers against other armed groups such as the "Lord's Resistance Army" (LRA) or "*Forces Démocratiques de Libération du Rwanda*" (FDLR) because of the generals appointed by government and accused of serious war crimes and crimes against humanity (Spijkers, 2015, p. 104). Thus, even though the defeat of M23 with the support of MONUSCO raised hopes for the peacekeeping operations in the DRC, since MONUSCO did not

respond to other conflicts between the government and the armed groups, there is still no peace in the country.

According to the latest report of the UN High Commissioner for Human Rights, despite the progress made by the government of the Congo, "the violent suppression of peaceful demonstrations and the use of threats and intimidation against human rights defenders and journalists continued" and "many violations and abuses of human rights and fundamental freedoms were committed during the electoral process" in 2019 (UNGA, 2019b).

4.1.2. The UN Response

The works of the UN peacekeeping operations in the DRC date back to the Katanga crisis in 1960 (Arieff & Coen, 2014, p. 4). Even though the Congo became independent in 1960, Belgium did not want to lose its control over the Congo which has important mineral sources especially in the Katanga and Kasai provinces. Contrary to Belgium's hopes to have privileges in the area, the Congolese Government did not want the Belgians in the country anymore (Aksu, 2018, p. 101). Due to the conflict between Belgium and Congo, with the demand of military assistance of Congolese government from the UN, ONUC was established by the UN Security Council to operate between 1960 and 1964 (Boulden, 2015). While establishing ONUC with Resolution 143, the Council requested "the Government of Belgium to withdraw its troops from the territory of the Republic of the Congo" and decided to provide the military assistance that the Congolese government requested (UNSC, 1960). ONUC's mandate was extended by subsequent Security Council resolutions, namely Resolutions 145, 146, 161 and 169 (Boulden, 2015). Spijkers (2015) suggests that with Resolution 169, traditional peacekeeping evolved to a new kind of peacekeeping which "was now clearly fighting on the side of the Central Government against the Katangese secessionists" and acting against its principle of impartiality (pp. 93-94).

The second international response to the DRC was the creation of MONUC with Resolution 1279 adopted by the UN Security Council in 1999 (UNSC, 1999b). Although

the Security Council has the mandate to intervene in domestic affairs of a state in the case of mass atrocity crimes, MONUC planned to stick by its impartiality principle. Later on, the Security Council adopted new resolutions which authorised the expansion of MONUC's mandate.[9] In the meantime, the Council also authorised sanctions and extended their duration many times. When the problems in the DRC reached a new phase, the UNSC renamed MONUC as MONUSCO and expanded its mandate in 2010 with Resolution 1925 (UNSC, 2010). In 2013, the Council renewed the mandate of MONUSCO to include an "Intervention Brigade" for "neutralizing armed groups" and protecting civilians in the eastern DRC (UNSC, 2013).

Since 2008, the HRC adopted resolutions annually to provide "technical assistance and capacity-building in the field of human rights in the Democratic Republic of the Congo". In one of these technical assistance and capacity-building resolutions dated 23 June 2017, the HRC referred for the first time to the DRC's "primary responsibility to protect all civilians within its territory" (UNGA, 2017b). On 6 July 2018, International Team of Experts on the Kasaï region was established by the HRC resolution 38/20 adopted for providing technical assistance to the DRC government (UNGA, 2018b).

 To date, on 25 June 2020, the Security Council renewed the mandate of the Group of Experts, which was established by Resolution 1533 authorised by the Security Council in 2004 in DRC to examine and analyse the information gathered by MONUC (now by MONUSCO) and to report to the Council, until 1 August 2021 with Resolution 2528 (UNSC, 2020a).

4.2. LIBYA

4.2.1. Background of the Case

Differently from the DRC case, at the backdrop of the Libyan state's failure to protect its population, the role of the ruler was highly effective. Muammar Al-Gaddafi was ruling

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[9] S/RES/1291, S/RES/1445, S/RES/1564, S/RES/1592, S/RES/1693, S/RES/1751, S/RES/1756, S/RES/1794, S/RES/1797, S/RES/1856 and S/RES/1906.

Libya since 1969. When Gaddafi overthrew King Mohammed Idris with a coup and became the ruler of Libya, he transformed the country from a monarchy to a totalitarian regime, although he argued it was 'direct democracy' (Joy, 2011; Schnelzer, 2015). He created a single party system under the Arab Socialist Union by banning all other political parties (Siebens & Case, 2012, p. 7). He declared "the formation or joining parties is a crime punishable by death" in 1972 with the Law of Criminalization of Partisan Activities. Furthermore, he ordered the burning of all the books which opposed his ideology as well as the arrest and execution of many intellectuals from other ideologies (Elaati et al., n.d.). Although he promoted the unification of Third World countries against both capitalist and communist imperialist countries, due to resorting to use of armed forces in the conduct of foreign relations instead of pursuing diplomatic ways, Libya was isolated even from Arab and African countries (Siebens & Case, 2012).

On the other hand, he used the oil wealth of the country for military investments and tried to nationalize everything from healthcare to oil reserves (Siebens & Case, 2012, p.7). This caused the economic distress in Libya. Moreover, as a part of his ideology and oil politics, he prevented the creation of any governance institution, he simply made himself everything of the country (Boduszyñski & Pickard, 2013). Naturally, as Brahimi (2013) states, due to the personalization of the political system in Libya, Gaddafi became the only target for all of the challenges that the Libyan people faced (p. 106). Eventually, the opposition between the ideology of Muammar Al-Gaddafi and will of the people of Libya caused demonstrations and ended up with state failure in Libya.

The Arab uprisings which are commonly known as revolutionary demonstrations and protests against to repressive regimes in the Middle East started in Tunisia on 18 December 2010. Then, it spread to other Arab states like Egypt, Libya, Syria and Yemen. The main reasons behind the uprisings were mostly financial pressures, the repressive and violent nature of the regimes in the Arab countries and mass human rights violations of the regimes against their people (Salih, 2013, p. 187; Brahimi, 2013, p. 102). However, the way of the uprisings and the consequences were different in Libya compared to other Arab countries.

The demonstrations against the rule of Muammar Gaddafi that were organized to start on 17 February, due to the arrest of human rights activist, started two days earlier on 15 February 2011 in Benghazi (Brahimi, 2013, p. 102). However, differently from Tunisia and Egypt, in Libya apolitical protestors were not seeking human rights and democracy, but were planned to overthrow the Gaddafi government (Siebens & Case, 2012, p. 14). Protestors attacked public buildings and police barracks, executed 50 soldiers and Gaddafi supporters at the beginning of the protests (Bandeira, 2017, p. 157).

However, Lacher (2012) cites two turning points in the Libyan conflict. The first is the violent response of government to the protests, which was violent even in comparison to Tunisia and Egypt (Pippan, 2011, p. 159). Accordingly, when the demonstrations started, the government forces used tanks and warplanes against demonstrators (Brahimi, 2013, p. 102). On the other hand, there was the factor of offensive language that Gaddafi used for not only the Libyan, but also the Tunisian and Egyptian protestors (Bhardwaj, 2012, p. 82). He stated his intention to fight until his "last drop of blood" against protestors (Joy, 2011, p. 2). The violent rhetoric and response of Gaddafi against the protestors not only escalated the protests in Libya into conflict but also attracted the attention of the international community. Pattison (2011) argues that Gaddafi's statement about no mercy to the rebels verified the government's will of use of force against its people which meets the test of just cause proposed by the ICISS (p. 272).[10] On 17 March, the Security Council authorized "to take all necessary measures to protect civilians and civilian populated areas under threat" with Resolution 1973 and in a few days, NATO started airstrikes against the army of the Gaddafi regime. Edward Luck, the United Nations Secretary-General's Special Adviser on R2P, correlated the Security Council's decision of authorization of use of force in Libya but not in Syria to the offensive rhetoric of Gaddafi used for the protesters such as "cockroaches," "rats" and "vermin". In this way, with Gaddafi's attitude towards protestors, things became more uncontrollable compared to Tunisia and Egypt and eventually ended up with the death of Gaddafi.

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[10] ICISS states there should be just cause for military intervention. According to the Responsibility to Protect report of the Commission, military intervention is possible only if there is a "(A)large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or (B) large scale 'ethnic cleansing', actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape".

Lacher (2012) argued that the second significant event which caused the escalation of protests to conflict was the formation of the National Transitional Council (NTC) by anti-government forces in Benghazi on 27 February. Members of the NTC were not only people who were against the Gaddafi regime, but they were also senior military officers, technocrats, reformers, people from aristocratic and bourgeois families who were marginalized by the Gaddafi regime, university professors, lawyers, etc. (Lacher, 2012, p. 168). On 2 March, the NTC declared itself as the sole representative of Libya (UNGA, 2012a, p. 25). As a consequence of Gaddafi's rhetoric and violent response to protests, the NTC turned into an armed and trained military with the support of NATO and the conflict turned into a bloody civil war (Bhardwaj, 2012, p. 83).

In time, while the NTC was gaining strength, it also started to be recognized by other states. On 15 July 2011, after a meeting in Istanbul, the recognition process of NTC as the legitimate governing authority in Libya gained speed with references to human rights violations of the Gaddafi regime and its lack of legitimacy (Nesi, 2011, p. 50). Some in the literature argue that the recognition of the NTC as the government of Libya while the conflict was going on and Gaddafi was still assuming control over some parts of Libya, is a contradiction in the foreign policies of the recognizing states (see Nesi, 2011; Talmon, 2011). Finally, after the NTC gained control all over the country and declared liberation, on 20 October 2011, while Gaddafi was in a convoy of 80 jeeps, his vehicle was hit by NATO and Gaddafi was killed by protestors in Sirte, Libya (Karniel et al., 2015).

Although the demonstrations in Libya is argued to be a pursuit for democratization, Hove (2017) argues that

> Libyans had a limited sense of national identity and had no familiarity with democracy. The collapse of Gaddafi opened many fissures of disunity and these could not be stopped by a transitional government that took over leadership without a monopoly on the use of violence. To build a functional state, Libya needs to prevail over the four-decade old Gaddafi-led authoritarian legacy which prevented the development of authentic national institutions. … Accordingly, when Gaddafi was captured and killed, Libya had no security sector institutions. In fact, insecurity increased in the country (p. 273).

Moreover, Boduszyński and Pickard (2013) argue that neither the government and its institutions nor the people achieved to get over the effects of the Gaddafi regime and

enjoy the freedom even after Gaddafi's death (p. 86). Also, they suggest that Gaddafi's logic of deinstitutionalization and non-existence of civil society in Libya before the uprising, made democratic transition problematic and caused the insecurity problem that Libya is facing today (Boduszyński & Pickard, 2013; Boose, 2012). As Lacher (2013) suggests, "the problems in the security sector and justice system represent the most urgent challenges" in Libya (p. 7). Libya is still having problems with its transition due to its security and institutional challenges.

4.2.2. The UN Response

As a consequence of the violent response of the Gaddafi government to the protests, on 21 February 2011, the Libyan Charge d'Affaires, Ibrahim Dabbashi requested an urgent meeting of the Security Council, "to discuss the grave situation in Libya and to take the appropriate actions". On 22 February, the Council held its 6486th meeting (UNSC, 2011a; 2011b) during which the Council heard a statement by the representative of the Libyan Arab Jamahiriya and condemned the Gaddafi regime for "the use of force against civilians", "called on Libya to meet its responsibility to protect civilians and stressed accountability" (UNSC, 2011c). Right after that, the Gaddafi regime was condemned also by the Arab League and the African Union due to the serious violations of human rights (Nesi, 2011, p.46).

On 25 February 2011, the UNHRC also condemned the recent gross and systematic human rights violations committed in Libya, asked "the Government of Libya to meet its responsibility to protect its population", reminded "its commitment as a Member of the Human Rights Council to uphold the highest standards in the promotion and protection of human rights" and asked the UN General Assembly to consider suspending the rights of membership of Libya in the HRC (UNGA, 2011b). The Commission of Inquiry was authorized with this HRC resolution "to investigate all alleged violations of international human rights law in Libya" (UNGA, 2011b). On 1 March 2011, the General Assembly suspended Libya from the HRC with Resolution 65/265 on the grounds of Paragraph 8 of

its resolution 60/251 (UNGA, 2011c).[11] In this way, for the first time, a member state was suspended from the membership of the Council.

On 26 February, with Resolution 1970, the Security Council referred the situation in Libya to the ICC, imposed arms embargo, travel ban for 16 individuals related to regime, and assets freeze for the family members of Muammar Gaddafi (UNSC, 2011d). Finally, on 17 March 2011, the Council adopted the Resolution 1973 with 10 votes in favor and 5 abstentions by Brazil, China, Germany, India, and the Russian Federation. The Resolution authorized "to take all necessary measures to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya" (UNSC, 2011e).

With this, the UNSC authorized the use of military force for the first time against the will of a functioning government and just in 2 days, on 19 March, airstrikes began under the leadership of the United Kingdom (UK), France, and the US (UNGA, 2012a, p. 25). On 31 March, NATO took over the command from them and started Operation Unified Protector (OUP) to enforce Resolution 1973 (Daalder & Stavridis, 2012, p. 3).

When the Commission of Inquiry presented its first report on 1 June 2011, the Commission described the protests against the regime as "peaceful demonstrations aiming at achieving reforms in governance and more particularly seeking to see the regime evolve into a democratic form of government subject to the rule of law and upholding human rights" (UNGA, 2012a). According to the report, there was "sufficient evidence to suggest that Government forces used excessive force against demonstrators, at least in the early days of the protests, leading to significant deaths and injuries" (UNGA, 2012a). Also, the Commission found many other "violations of international human rights law, humanitarian law and criminal law" such as "enforced disappearances", "torture and other forms of cruel", "inhuman or degrading treatment", "denial of access to medical treatment" and many other "serious violations of

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[11] "…the General Assembly, by a two-thirds majority of the members present and voting, may suspend the rights of membership in the Council of a member of the Council that commits gross and systematic violations of human rights" [UNGA, 2006b]

international humanitarian law committed by Government forces amounting to war crimes" (UNGA, 2012a).

After the NTC took the control over the entire country and the death of Gaddafi on 20 October 2011, NATO's OUP was ended and Abdurrahim el-Keib became the country's new interim Prime Minister on 31 October (UNSC, 2011i). This marked the end of the international intervention in the Libyan conflict. However, there still was an ongoing conflict in Libya. Although the NTC took control and there was a new prime minister in the country, there were still armed revolutionary brigades that the NTC had no control over (UNSC, 2011i). On the other hand, there were the NTC's commitments which it made in its Constitutional Declaration of 3 August 2011. According to the declaration, a democratic regime based upon the political multitude and multi-party system would be established and Libya would be ruled by respecting human rights norms. To help the new government to achieve its commitments for Libya, the "United Nations Support Mission for Libya" (UNSMIL) to assist and support Libyan national post-conflict efforts was authorized by the UNSC with Resolution 2009 on 16 September (UNSC, 2011g). Due to the ongoing hostilities in Libya, the mandate of UNSMIL was extended repeatedly. Recently, the mandate of UNSMIL was extended until 15 September 2021.

On the other hand, the Commission on Inquiry, with its second report that was released in March 2012, tried to draw the attention of the international community to the fact that war crimes were continuing in Libya by anti-Gaddafi forces and the newly founded interim Government was having problems in handling the challenges (UNGA, 2014b). Since 2012, besides its resolutions on "technical assistance and capacity-building to improve human rights in Libya", the HRC adopted resolutions on violations and abuses of international human rights law committed in Libya.[12] Although the Working Group's visits to Libya were planned since the transition, they were postponed for security reasons (UNGA, 2014a). However, in 2015, the Working Group reviewed Libya on the UPR and member states generally stated their support to the "ongoing efforts of the Government of Libya to build the capacity of institutions dealing with human rights, transitional justice

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[12] See Resolutions, A/HRC/RES/22/19, A/HRC/23/39/Add.2, A/HRC/25/42, A/HRC/RES/25/37, A/HRC/28/51, A/HRC/RES/28/30, A/HRC/RES/28/30, A/HRC/31/47, A/HRC/RES/31/27, A/HRC/34/42, A/HRC/37/46, A/HRC/RES/37/41, A/HRC/38/39/Add.2 and A/HRC/43/75.

and the rule of law", while they expressed concerns about the ongoing violations and abuses committed by all sides (UNGA, 2015a).

4.3. SYRIAN ARAB REPUBLIC

4.3.1. Background of the Case

As Libya, Syria has been one of the most affected countries from the Arab uprisings. Since March 2011, due to the conflict between Bashar al-Assad's government and the opposition groups, the Syrian population has been suffering from an ongoing humanitarian crisis. The conflict is seen to arisen with the Arab uprisings, against the rule of the family of Assad in Syria since 1970 (Hove & Mutanda, 2015, p.560). Besides the effects of the Arab uprisings which took hold of the region since the first uprising in Tunisia, the tension between the Alawite and Sunni Muslims in Syria and the involvement of rival superpowers to the issue contributed to the Syrian conflict (Hove & Mutanda, 2015). So far, thousands of people including civilians were killed, more than five million people fled to other countries and became refugees, and over six million people have been internally displaced (UNGA, 2018d).

In February 2011, the protests against Bashar al-Assad's rule began with demands related to "rural poverty, corruption, freedom of expression, democratic rights, the release of political prisoners", "human rights, and far-reaching economic, legal and political reforms" (UNGA, 2011e). However, the main trigger became the events that started in the town called Dar'a, with a group of young boys drawing graffiti on the walls against Assad's authoritarian regime (UNGA, 2011e, para. 27). With the use of disproportionate force by the government forces to supress the protests, the opposition gained momentum and the events started to escalate into a civil war. Despite the warnings of the international community, the government did not take a positive action to calm the people down but instead claimed that the "terrorists" and the "gangs" that attacked the government are funded by imperialist forces (UNGA, 2011e, para.30). As President Assad used heavier forces, the protests got bigger, and as the protests got bigger more disproportionate force was used. Consequently, the opposition groups started to take up arms against Assad's

regime. Although President Assad said that he would make some reforms, the violent acts of Syrian military and security forces against the protesters continued. The soldiers who escaped from the military and security forces organised the Free Syrian Army against the members of the Syrian military and security forces (UNGA, 2011e). Thus, the opposition gained more power and visibility. In the summer of 2011, some of the residents started to flee from the country to the neighbouring countries. During these events, the US and European countries criticised and imposed sanctions against the Assad's regime (Turkmani & Haid, 2016) while Russia, China and Iran supported him. The Cold War fashioned rivalry between two sides blocked the any acts of international community to prevent mass violation of human rights (Hove & Mutanda, 2015). In the 6627th meeting of the UN Security Council on 4 October 2011, the Russian Federation and China vetoed draft resolution S/2011/612 prepared by France, Germany, Portugal, the UK and Northern Ireland. Russia voiced its main considerations to take the side of Assad as its distrust to other states intentions in react against the Assad regime and concern about the abuse of the situation as experienced in the case of Libya wherein Western countries used the opportunity to displace Muammar Gaddafi and impose a regime change (Hove & Mutanda, 2015; Bagdonas, 2012; Turkmani & Haid, 2016). Though these were expressed as Russia's main concerns, Russia also had strategic interests in the region such as naval facilities in the port of Tartus in Syria (Williams et al., 2012; Bagdonas, 2012).

Suspected chemical weapon attacks on 21 August 2013, which was confirmed by the "UN Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic" increased the tension. According to the report of the mission "chemical weapons have been used in the ongoing conflict between the parties in the Syrian Arab Republic, also against civilians, including children, on a relatively large scale" and the evidence of use of Sarin has been found (UNGA & UNSC, 2013).

Later on, the Hezbollah Shi'ite movement, which was created by Iran in 1982 in Lebanon against Israel, got involved in the conflict on the side of Assad (Hove & Mutanda, 2015, p. 563). While Shi'ite Muslims were supporting Assad, Sunni Muslims were supporting the opposition. On the other hand, in April 2013, with the declaration of the extremist Sunni Islamic State in Iraq and Syria (ISIS) by Abu Bakr al-Baghdadi who was the leader of Al Qaeda in Iraq with the purpose of creating the Islamic State in Iraq and Syria (Neer

& O'Toole, 2014), escalated the conflict to another dimension. The ISIS also started to commit acts of violence against people in Aleppo and Ar Raqqah, which can be accounted as crimes against humanity (UNGA, 2014d). In 2015, the ISIS was controlling an area with a total population of up to 5 million people in both Iraq and Syria (Kaválek, 2015). However, by 2016, with the contribution of the US-backed Kurdish forces, Iran-backed Shiite militias and Russia-backed government forces, the influence of the ISIS decreased dramatically (Specia, 2019).

According to a press release of the Security Council on 10 September 2020, the regime has been carrying out chemical attacks since 2013 and the UN Joint Investigative Mechanism's latest findings showed that the government was also behind the attacks on Khan Shaykhun in April 2017 (UNSC, 2020c). Whether because of the acts of regime or the acts of foreign backed opposition groups, "civilians continue to bear the brunt of the ongoing hostilities, including in Idlib, northern Hama, Ladhiqiyah and western Aleppo" (UNGA, 2019c).

4.3.2. The UN Response

The first response of the UN Security Council to the Syrian conflict was in a presidential statement on 3 August 2011 at its 6598th meeting (UNSC, 2011f). The Council condemned "the widespread violations of human rights and the use of force against civilians by the Syrian authorities" and called on the Syrian authorities "to fully respect human rights", "to comply with their obligations under applicable international law" and to "cooperate fully with the Office of the High Commissioner for Human Rights" (UNSC, 2011f). However, neither the Syrian government nor the Council took an act to materialize the demands of the presidential statement. Firstly, on 4 October 2011, draft resolution S/2011/612 which condemned the Syrian government for its acts against the protestors and recalled "the Syrian Government's primary responsibility to protect its population", and then, on 4 February 2012, draft resolution S/2012/77, which demanded from Syria "to stop all violence and reprisals", and "to cooperate with the League of Arab States for political transition to a democratic, plural political system" were vetoed by Russia and China (UNSC, 2011h; 2012a).

On 14 April 2012, with Resolution 2042, the UN Security Council "authorized an advance team of up to 30 unarmed military observers" to Syria and requested the Syrian government to abide by its "commitment on 25 March 2012 to implement the six-point proposal of the Joint Special Envoy of the United Nations and the League of Arab States" (UNSC, 2012b). With Resolution 2043, the Council established the "United Nations Supervision Mission in Syria" (UNSMIS) "to monitor a cessation of armed violence in all its forms by all parties and to monitor and support the full implementation of the Envoy's six-point proposal" (UNSC, 2012c). France presented to the Security Council draft resolution S/2014/348 referring Syria to the ICC on 22 May 2014. However, this resolution too was vetoed by Russia and China. Since 2011, the 26 resolutions adopted in the case of Syria were about observation and monitoring. They also demanded from the Syrian government to allow humanitarian access, while condemning terrorist groups like the ISIS, as well as the use of chemical weapons, and asked for taking all the necessary measures to prevent terrorist acts committed by the ISIS and other Al-Qaida affiliates as well as the cessation of hostilities. In other words, none of the resolutions that were not vetoed by Russia imposed any decisions on the Syrian government itself to end the violence against protestors and its people, or allowed for the involvement of the Council in the conflict (Marauhn, 2013).

On 22 August 2011, a Commission of Inquiry (CoI) was established in Syria by the UN HRC to investigate "the continued grave and systematic human rights violations by the Syrian authorities, such as arbitrary executions, excessive use of force and the killing and persecution of protesters and human rights defenders, arbitrary detention, enforced disappearances, torture and ill-treatment of detainees, including of children" (UNHRC, 2011). In its first report, the CoI indicated that there have been great violations of human rights since the protests started in March 2011 (UNGA, 2011e). The report emphasized that "the Syrian Arab Republic has failed its obligations under international human rights law" and the state is "responsible for wrongful acts, including crimes against humanity, committed by members of its military and security forces" (Para. 109). The mandate of the Commission was extended many times since then by the HRC. The most recent extension if its mandate was in the 46th meeting of the HRC on 22 June 2020 for a period of one year (UNGA, 2020b). In its reports, the CoI has frequently noted of "a widespread

and systematic pattern of gross violations committed by State forces" and also "gross abuses committed by anti-Government armed groups". However, disagreements between the P5 prevented the Council from framing or addressing the crisis (UNGA, 2012b). In August 2012, in its third report, the Commission emphasized the presence of reasonable grounds to believe that war crimes were committed by both the Syrian government and anti-government armed groups. On 18 January 2013, the United Nations High Commissioner for Human Rights requested from the UN Security Council the referral of the situation in Syria to the ICC. On February 2014, the Commission stated that evidence of the use of chemical weapons several times during the conflict was present (UNGA, 2014c). Many other chemical weapons uses by the government to the civilians were recorded by the CoI in Syria with their proofs and were reported on September 2017.[13]

On 21 December 2016, with Resolution 71/248, the General Assembly decided to establish the "International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011" (UNGA, 2017a). The General Assembly requested the Mechanism "to cooperate with the Independent International Commission of Inquiry on the Syrian Arab Republic" which was established by the UN Human Rights Council with Resolution S-17/1 in 2011 (UNGA, 2017a).

4.4. A COMPARISON

When we look at these three different cases with their unique backgrounds, we see that all three are among the least peaceful 10 countries in the world according to the 2020 Global Peace Index (IEP, 2020). In 2015, while Syria was the least peaceful country in the world, the DRC had the eighth and Libya had the fourteenth place (IEP, 2015). Due to the ongoing conflict and the government's inability to control it, Libya became less peaceful from 2015 to 2020 and became the seventh least peaceful country in 2020 (IEP, 2020). Moreover, the worsening conflicts in Syria and Libya also affected the Arab

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[13] For a map of "Chemical Weapons Attacks Documented by the Independent International Commission on Inquiry on the Syrian Arab Republic", see https://www.ohchr.org/SiteCollectionImages/Bodies/HRCouncil/IICISyria/COISyria_ChemicalWeapons.jpg.

region's rank making it the least peaceful part of the world in 2015 and in 2020 Global Peace Indices. The 2019 Arab Region SDG Index and Dashboards Report stated that the conflict affected Arab states are the ones which are far from achieving most of the SDGs (Luomi et al., 2019). Similarly, the DRC with Venezuela and Zimbabwe are the three countries that have declined the most since 2010 in terms of their SDG Index scores due to the conflicts and civil war, according to the Sustainable Development Report of 2020 (Sachs et al., 2020).

Hence, it is not a coincidence that these three countries have been considered as R2P crises for over 10 years, and they are far from achieving the targets of the SDGs. From an R2P perspective, taking action under Pillar 3 of R2P has never been considered as an option regarding the situation in the DRC, despite the clear inability of the government to uphold its responsibility towards its population. Different from the other two, the DRC is case is the one wherein the government has requested assistance from the international community since the very beginning. Firstly, ONUC was mandated due to the military assistance request of the government in 1960, then MONUC in 1999 and MONUSCO in 2010. Recently, the mandate of MONUSCO was extended until 20 December 2021 by the UN Security Council due to the "recurring and evolving cycles of conflict and persistent violence by foreign and domestic armed groups, which exacerbate a deeply concerning security, human rights and humanitarian crisis" (S/RES/2556, 2020).

Since its establishment in 2006, the HRC adopted 15 resolutions for the DRC. Although the mandate of MONUSCO was extended again and again since 2010 due to the ongoing conflict in the DRC, the HRC did not refer to R2P in the DRC case until June 2017, that is in its 35th session (UNGA, 2017b). The second R2P referral was in September 2017 in its 36th session, wherein it reminded that the DRC "bears the primary responsibility to protect all civilians within its territory, and urges it to exercise maximum restraint and proportionate lawful use of force in its efforts to restore order, in accordance with international law" (UNGA, 2017c). The third and last HRC Resolution on the DRC explicitly referring to R2P was adopted in September 2018 in its 39th session. Despite the fact that neither before 2017 nor after 2018 the government of the DRC has been able to uphold its responsibility to protect, the HRC did not refer to the implementation of R2P in its other resolutions.

During the peer reviews of the DRC in July 2019, the DRC stated its struggle to implement the recommendations adopted during the previous universal periodic review because of the attacks of armed groups (UNGA, 2019a). Although the government achieved some progress in implementing the recommendations of the mechanisms and procedures of the HRC, according to the report of the UN Joint Human Rights Office in the DRC in 2020, there was an "increasing number of human rights violations and abuses" from 2019 to 2020 (UNGA, 2020e). However, as noted previously, the HRC did not recall R2P in the case of the DRC after 2018 despite the fact that it was known that government has been unable to control various armed groups in its territory and stop their attacks against civilians.

In the case of Libya where it is possible to talk about a Pillar 3 implementation of R2P through the use of force that was authorized against the will of a functioning government, we see that there was no HRC resolution related to Libya prior to 2011. Thus, it can be argued that until the emergence of the uprisings, the human rights violations in the region and early warnings of the conflict were ignored by the HRC. During the peer review of Libya in November 2010, according to the Report of the Working Group on the Universal Periodic Review, states made many recommendations to Libya regarding its need for improvement in some human rights areas such as discrimination against women, death penalty, the independent judiciary system, human rights training, the arrests of journalists, freedom of expression, practices of torture and so on. The Libyan delegation responded to the recommendations arguing that

> the judiciary system in the Libyan Arab Jamahiriya was independent … the policy of the Libyan Arab Jamahiriya was based on equality and non-discrimination … the death penalty was applied in aggravating crimes … also punishable under Shariah law … the journalists, all those who had published news that was untrue had been released … any citizen could freely express his or her views … the Libyan Arab Jamahiriya was a party to the Convention against Torture, and the Convention took precedence over national legislation (UNGA, 2011a, pp. 10-14).

However, 42 days after the Working Group released this report, on 4 January 2011, the uprisings which then evolved into a bloody civil war started in Libya against the Libyan government.

Considering that the early warning signs presented in the review did not initiate early action on the part of the international community, the application of R2P through Pillar 3 also signalled that the international community failed to prevent the humanitarian crisis in Libya under Pillar 2. In this regard, the HRC could have done something before the uprisings in February 2011 for promotion and protection of human rights as it had already collected the early warning signs of potential atrocities. While it failed to initiate an early response, the first resolution adopted by the HRC on Libya referred to R2P (UNGA, 2011d). Moreover, at the time, Libya was a Member State of the HRC which supposedly committed "to uphold the highest standards in the promotion and protection of human rights" (UNGA, 2006b). Such controversy reminded the criticisms against the former Commission on Human Rights as to the admittance of human rights violators as members to the Commission.

On the other hand, with the breakup of the conflict, the HRC's response was rather quick. Unlike in the DRC, just ten days after the uprising against the Libyan government started, the HRC adopted a resolution that called "the Libyan Government to meet its responsibility to protect its population, to immediately put an end to all human rights violations, to stop any attacks against civilians and to respect fully all human rights and fundamental freedoms, including freedom of expression and freedom of assembly" (UNGA, 2011d).

In the case of Libya, another important observation is that despite the fact the conflict and human rights violations have been continuing in different ways, the HRC has not referred to R2P in its resolutions on Libya after the military intervention that was authorized by the Security Council. In its later resolutions[14] the Council requested the support of the international community and international human rights institutions to provide "technical assistance and capacity-building to improve human rights in Libya" without any reference to R2P despite the continuing failure of the Libyan authorities to protect the Libyan population.

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[14] A/HRC/RES/19/39; A/HRC/RES/22/19, A/HRC/RES/25/37, A/HRC/RES/28/30, A/HRC/RES/31/27, A/HRC/RES/34/38, A/HRC/RES/37/41, A/HRC/RES/40/27, A/HRC/RES/43/39

However, on 22 June 2020, the HRC established the Fact Finding Mission in Libya with the mandate "to establish the facts and circumstances of the situation of human rights throughout Libya, and to collect and review relevant information, to document alleged violations and abuses of international human rights law and international humanitarian law by all parties in Libya since the beginning of 2016" (UNGA, 2020c). Considering the contributions[15] of the Independent International Fact-Finding Mission on Myanmar that was established by the HRC, the establishment of the Mission in Libya may provide favourable outcomes. The report of the mission which was scheduled to be presented to the Council at its 46th session, due to the global pandemic is rescheduled for the 48th session (UNGA, 2020f).

Syria reflects another dimension of the international response in relation to R2P. The response of the HRC to the conflict in Syria was not as quick as its response to Libya. Although the HRC adopted its resolution on 29 April 2011 which decided to "dispatch an independent, international commission of inquiry to investigate all alleged violations of international human rights law in the Syrian Arab Republic", it did not refer to R2P in this specific case until December 2011. Parallel to the dynamics of the Security Council, the HRC's resolutions on Syria faced the negative votes of Russia and China, which were then members of the HRC. Nevertheless, until May 2021 the HRC has adopted 28 resolutions on Syria, which also made a reference to R2P and specifically referred to Pillar 1 responsibility of the Syrian authorities.

During the last UPR of Syria in October 2016, the Syrian government was accused with many violations such as "crimes against humanity", "war crimes", "use of chemical weapons", etc. (UNGA, 2016). Compared to the former two states' reviews, the language used in the review of Syria was not very diplomatic and was criticized by Syria for being offensive. For instance, while Germany stated that it finds it "*awkward* holding a '*standard*' universal periodic review session on the Syrian Arab Republic given that the gravest of human rights violations were currently taking place in that country…", the Netherlands stated that "the Government of the Syrian Arab Republic had succeeded, in just a few years, in destroying the entire meaning of Syrian civilization, which had

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[15] For more information, see Pramendorfer, 2020 p. 241.

developed over millenniums" (emphasis added, UNGA, 2016c). Although it was important to draw attention to the violations, the manner of the reviews was problematic. In this regard, alienating a state during its peer-reviews does not provide any benefits but rather hampers the potential for cooperation on human rights. Moreover, such attitude is contradictory to the fundamental principles of the UPRs such as being "cooperative", "proportionate" and "non politicized" (UNHRC, 2007).

From an R2P perspective, when the case of Syria is compared to that of the DRC and Libya, it can be seen that the HRC has been focused on Syria the most. So far, the HRC out of the 31 resolutions it has adopted on Syria, 28 refer to Pillar 1 of R2P, whereas this number is 3 out of 15 in the case of the DRC and 2 out of 11 in the case of Libya. While the humanitarian crisis in the DRC dates way back compared to the other two cases, the HRC has started to focus on the former with much delay, and arguably it has not received enough attention. Also, in the case of Libya, what is noteworthy is that despite the ongoing critical humanitarian situation, the HRC has not made any direct references to R2P in the post-intervention period although it has focused on the promotion and protection of human rights, technical assistance and capacity building in Libya. On the other hand, despite the Russian and Chinese negative votes on its various resolutions, the HRC has made frequent references to R2P in its resolutions. Resolution S-18/1 and many other resolutions which urges Syrian government to meet its responsibility to protect were adopted despite the fact that member states such Russia, China and Cuba voted against them. Achieving what could not be achieved in the UN Security Council due to the deadlocks by veto, the HRC has been persistently pursuing the situation in Syria. Moreover, in spite of the amendment requests of Russia, Resolution S-25/1 on "the deteriorating situation of human rights in the Syrian Arab Republic, and the recent situation in Aleppo" was adopted with the same working as of its draft Resolution S-25/L.1 (UNGA, 2016b). More specifically, dismissing the request of Russia, the Council adopted the resolution without deleting revising phrases such as "ending all bombardments of and military flights over Aleppo city", "in particular Syrian authorities and its allies" or "in particular Syrian authorities and its supporters" (UNGA, 2016a).

Moreover, the Syrian case arguably shows that if the government is not consenting to international assistance, the international community and the HRC focus more on the

crisis aspect rather than assistance and providing a solution. In the DRC and Libya cases, the local authorities have consented to international assistance, and both countries reflected on their struggle to obtain control over the territory during their peer reviews. Hence, the HRC has often referred to international assistance to support the ongoing national processes without referring to Pillar 1 responsibilities of two states.

It is also noteworthy that, in all three cases, in none of its resolutions the HRC has invoked the international community's responsibility to protect the concerned populations in an explicit manner despite the clear failure of the national authorities to protect their populations either due to unwillingness or inability. Nevertheless, different from Syria—wherein the failure to protect is perceived to arise from the unwillingness of the state authorities—in the cases of the DRC and Libya, with the calls that it made to the international community in terms of providing assistance to national authorities to improve their ongoing efforts, a connection with the implementation of R2P can be observed at the level of Pillar 2.

Notwithstanding the ongoing considerations of the three cases, due to continuing clashes and attacks by armed groups, in all three countries people continue to suffer from human rights violations, and the governments are failing to restore peace and stability. As seen in the case of Syria, while the HRC seems capable of adopting resolutions on situations which are at a deadlock in the Security Council, still lack of sufficient focus (as in the case of the DRC) on various issues undermines its potential contribution to the implementation of the responsibility to protect at the national and international levels. This reminds us of the importance of the mandate of the HRC that the Resolution 60/251 has provided for, that is: the HRC "should address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon" (UNGA, 2006b).

CONCLUSION

This thesis has examined the contributions of the HRC to the implementation of Pillars 1 and 2 of R2P within the common framework provided under SDG16. So far, in the literature the relationship between R2P and HRC, and the potential contributions of the HRC to the principle's implementation has been overlooked. However, as the UN High Commissioner for Human Rights Michelle Bachelet suggested during the "Intersessional Panel Discussion on the 15th Anniversary of the Responsibility to Protect" on 11 May 2021, "protecting people from genocide, war crimes, ethnic cleansing and crimes against humanity, is first and foremost, about making sure that these atrocity crimes do not happen in the first place" (UNHRC, 2021b). In this regard, this thesis argues that from an SDG16 point of view, with its mechanisms such as UPR, and its special focus on human rights behavior of states, the HRC is of importance for early implementations of R2P, unlike the Security Council, which comes into the picture after the escalation of humanitarian crises.

After establishing the linkages between SDG16, the HRC and R2P, this thesis analyzed the potential role of the HRC through comparative case studies. Three humanitarian crises, namely the cases of the DRC, Libya and the Syrian Arab Republic were chosen for analysis not only because of their representative characteristics, but also because they are reflective of the political balances within the HRC, which has been subject to criticisms for electing member states with negative human rights records.[16] In the case of the DRC, there is a willing state authority which has been unable to uphold its responsibility to protect its populations for years. Despite the manifest and prolonged failure of the state authorities, the DRC's responsibilities under Pillar 1 were reminded only three times in the HRC's resolutions in 2017 and 2018. Interestingly, the DRC after it was elected as a Member State of the HRC to serve for a period of three years in October 2017, did not vote against Resolution 39/20, which recalled its "primary responsibility to protect all civilians within its territory" (UNGA, 2018e). Moreover, during its peer reviews, the DRC noted "difficulties and obstacles encountered in the implementation of the recommendations adopted" in previous reviews. Although there are human rights

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[16] For instance, in 2020, Libya was reelected to the HRC.

developments with the support of human rights mechanisms and procedures with the authorization of the HRC such as the establishment of National Human Rights Commission in compliance with the Paris Principles in the DRC, according to the report of the Joint Office, the number of documented human rights violations and abuses still increased by 12 per cent in 2020 (UNGA, 2020e). Yet, despite such negative increase, it is still possible to talk about the HRC's positive contribution in helping the DRC to uphold its responsibilities under Pillar 1, as well as SDG16 in relation to the indicator of "existence of independent national human rights institutions in compliance with the Paris Principles". However, since the HRC's role is not so effective in terms of the implementation of responsibilities of the international community under Pillar 2, the human rights violations continue to be an important matter in the DRC.

Likewise, Libya is another case requiring more attention of the HRC. Although the HRC's response to the conflict was one of the quickest responses of the UN, the HRC has never again referred to R2P in its resolutions on Libya after 2011. Notwithstanding, considering "the important role that technical cooperation and capacity-building can play in building States' capacities to implement the Sustainable Development Goals in a way that is consistent with their respective obligations under international human rights law", with the annual technical assistance and capacity-building resolutions it has adopted on Libya, the Council has been indirectly contributing to the realization of R2P under Pillar 2 (UNGA, 2020a). On the other hand, the annual reports of the OHCHR for Libya that was prepared upon the request of the HRC, with the recommendations not only to the government but also to the international community, it can be said that the OHCHR contributes to Pillar 2.

On the other hand, different from the first two, the case of Syria has been a recurring agenda item in the HRC. While due to deadlocks by veto (or threat of veto), the Security Council has not been able adopt a single resolution reminding the Syrian authorities to uphold their responsibility until 2014, the HRC has adopted many resolutions urging the Syrian government to uphold its responsibilities under Paragraph of 138 of the 2005 World Summit Outcome as early as 2011. As of March 2021, in the resolutions of the HRC, those on Syria have the highest number of references to R2P, and more specifically 28 references to Pillar 1. Nevertheless, despite the continuing attention it is not possible

argue that the HRC has been every effective in terms of the realization of the responsibility to protect. An important factor for this is that different from the former two, the Syrian government is not consenting to the international community's assistance either under Pillar 2 or separately from R2P. Thereby, within the three cases, the Syrian case is the only one wherein the HRC did not refer to technical assistance and/or capacity-building, which could be considered as measures under Pillar 2.

As for the former criticisms against the HRC regarding the membership, it can be observed that the election of countries with poor human rights records as member states still continues as evinced with the re-election of Libya despite the ongoing mass problems. Moreover, the language used in Syria's peer reviews, as well as the discrepancy between the attention given to the three grave cases arguably signify that politicization is still an issue.

it may show that, unlike in the case of an uncooperative government in Syria, given the consent of the DRC and Libya, the HRC's focus may have shifted from Pillar 1 responsibilities of the two states. Following from this, it can be suggested that the realization of the state authorities' responsibility is much more of a concern when the government is uncooperative.

Nevertheless, despite its shortcomings as well as the discrepancy between its practices on a case-by-case basis, this thesis argues that the HRC can contribute to the state-level implementations of R2P. As evinced by the resolutions adopted on Syria, the HRC is capable of adopting decisions and putting them into practice unlike the Security Council when its encounters the deadlocks caused by veto or the threat of veto. In this vein, in terms of R2P implementations, it can be said that the HRC plays a complementary role and provides more focus on Pillar 1, while every contribution of the HRC to Pillar 1 and 2 also contributes to the targets of the 2030 Agenda, especially under SDG16.

These positive aspects point to the potential contributions of the HRC, although there still exists an effectiveness deficit. Considering such deficit, despite its high potential in terms of achieving the goals of R2P and the 2030 Agenda, it can be observed that the HRC is yet far from realizing its potential. Hence, there is need to place more emphasis on the

complementary relationship between R2P, HRC and the SDGs. That said, the developments that have been taking place in the recent years may help to improve the HRC's ability to realize its mandate. Since 2016, the HRC has been organizing intersessional activities on prevention responsibilities and capabilities of the Council which are closely related with both R2P and the SDGs. Although the HRC did not relate its first intersessional meeting which is on "promoting international cooperation to support national human rights follow-up systems and processes" on 9 November 2016 to the SDGs, the subject of the meeting was directly contributing to SDG16. Yet, on 14 June 2018, in the "intersessional meeting on the right to peace", there were direct references to the SDGs due to the interrelation between peace and development (UNGA, 2018c).

However, one of the most promising developments was the adoption of Resolution 37/24, which recognized "the contribution of international human rights mechanisms, including the treaty bodies, the special procedures of the Human Rights Council and the universal periodic review, in promoting the implementation of the 2030 Agenda in accordance with States' human rights obligations" and "the important role that technical cooperation and capacity-building can play in building States' capacities to implement the Sustainable Development Goals in a way that is consistent with their respective obligations under international human rights law" in March 2018 (UNGA, 2018a). Moreover, the Council decided "to organize two one-day intersessional meetings for dialogue and cooperation on human rights and the 2030 Agenda for Sustainable Development" (UNGA, 2018a). Arguably, this constitutes the beginning of a new processes.

The first "intersessional meeting on human rights and the 2030 Agenda" took place on 16 January 2019. During the meeting, the importance of the integration of the SDGs in the UPR, and the human rights treaty bodies and special procedure was highlighted. After the second intersessional meeting took place on 3 December 2019, the Council decided to organize three more "intersessional meetings for dialogue and cooperation on human rights and the 2030 Agenda for Sustainable Development" in advance of the high-level political forums on sustainable development (UNGA, 2020a). As a conclusion of the "third intersessional meetings for dialogue and cooperation on human rights and the 2030 Agenda for Sustainable Development" on 14 January 2021, the need of more engagement

between the HRC and the high-level political forum on sustainable development was emphasized (UNGA, 2021).

Moreover, on 17 July 2020, the UNHRC adopted "the first stand-alone thematic resolution entirely on the principle of the Responsibility to Protect" and recognized "the important contribution of the United Nations human rights system to efforts towards addressing situations in which genocide, war crimes, ethnic cleansing and crimes against humanity could be committed" (GCR2P, 2020b; UNGA, 2020d). The Council also decided to

> convene, before its forty-seventh session, an intersessional panel discussion to mark the fifteenth anniversary of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity, as enshrined in the 2005 World Summit Outcome, on the exchange of best practices on strengthening national policies and strategies to implement the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity through national mechanisms and other stakeholders (UNGA, 2020d).

During the intersessional panel, Secretary-General's Special Adviser on the Responsibility to Protect Karen Smith highlighted the "appropriateness and privilege of HRC to discuss on R2P matters" and recommended to use of the Framework of Analysis for Atrocity Crimes[17] in the UPR processes of states to determine early-stage risk factors of atrocity crimes and to prevent them (UNHRC, 2021a). As she stated, these new attempts of the HRC might be the beginning of something positive for the future of human rights. In this vein, future works focusing on the functioning of the HRC in relation to the implementation of R2P as well as achieving the targets of the SDGs, especially SDG16, seems to be of importance.

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[17] The Framework of Analysis for Atrocity Crimes is "an analytical tool for assessing the risk of atrocity crimes" with "a list of 14 risk factors for atrocity crimes" and "indicators for each of the risk factors" (UN, 2014).

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APPENDICES

APPENDIX 1

TARGETS OF SDG16

16.1 Significantly reduce all forms of violence and related death rates everywhere	16.1.1 Number of victims of intentional homicide per 100,000 population, by sex and age
	16.1.2 Conflict-related deaths per 100,000 population, by sex, age and cause
	16.1.3 Proportion of population subjected to physical, psychological or sexual violence in the previous 12 months
	16.1.4 Proportion of population that feel safe walking alone around the area they live
16.2 End abuse, exploitation, trafficking and all forms of violence against and torture of children	16.2.1 Proportion of children aged 1-17 years who experienced any physical punishment and/or psychological aggression by caregivers in the past month
	16.2.2 Number of victims of human trafficking per 100,000 population, by sex, age and form of exploitation
	16.2.3 Proportion of young women and men aged 18-29 years who experienced sexual violence by age 18
16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all	16.3.1 Proportion of victims of violence in the previous 12 months who reported their victimization to competent authorities or other officially recognized conflict resolution mechanisms
	16.3.2 Unsentenced detainees as a proportion of overall prison population
16.4 By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime	16.4.1 Total value of inward and outward illicit financial flows (in current United States dollars)
	16.4.2 Proportion of seized, found or surrendered arms whose illicit origin or context has been traced or established by a competent authority in line with international instruments
16.5 Substantially reduce corruption and bribery in all their forms	16.5.1 Proportion of persons who had at least one contact with a public official and who paid a bribe to a public official, or were asked for a bribe by those public officials, during the previous 12 months
	16.5.2 Proportion of businesses that had at least one contact with a public official and that paid a bribe to a public official, or were asked for a bribe by those public officials during the previous 12 months

16.6 Develop effective, accountable and transparent institutions at all levels	16.6.1 Primary government expenditures as a proportion of original approved budget, by sector (or by budget codes or similar)
	16.6.2 Proportion of the population satisfied with their last experience of public services
16.7 Ensure responsive, inclusive, participatory and representative decision-making at all levels	16.7.1 Proportions of positions (by sex, age, persons with disabilities and population groups) in public institutions (national and local legislatures, public service, and judiciary) compared to national distributions
	16.7.2 Proportion of population who believe decision-making is inclusive and responsive, by sex, age, disability and population group
16.8 Broaden and strengthen the participation of developing countries in the institutions of global governance	16.8.1 Proportion of members and voting rights of developing countries in international organizations
16.9 By 2030, provide legal identity for all, including birth registration	16.9.1 Proportion of children under 5 years of age whose births have been registered with a civil authority, by age
16.10 Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements	16.10.1 Number of verified cases of killing, kidnapping, enforced disappearance, arbitrary detention and torture of journalists, associated media personnel, trade unionists and human rights advocates in the previous 12 months
	16.10.2 Number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information
16.A Strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime	16.A.1 Existence of independent national human rights institutions in compliance with the Paris Principles
16.B Promote and enforce non-discriminatory laws and policies for sustainable development	16.B.1 Proportion of population reporting having personally felt discriminated against or harassed in the previous 12 months on the basis of a ground of discrimination prohibited under international human rights law

Table 2. Targets of SDG16 (Source: SDGs Knowledge Platform)