

Humanitarian Intervention in Libya and Darfur: The Future of Responsibility to Protect

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By

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ABSTRACT

Since the end of the Cold War and the disintegration of the global political hegemons, the world has seen an influx of deadly intrastate conflicts. The Responsibility to Protect doctrine emerged to address the global challenges raised by these civil wars, stating that humanitarian intervention is both necessary at times and a responsibility of the international community. The R2P doctrine was adopted in 2005, but the UN Security Council has struggled to consistently determine where, when, and how humanitarian interventions should be authorized to take place. The purpose of this research is to identify factors that influence UN Security Council decision making and determine the role of the Responsibility to Protect doctrine for current and future cases of humanitarian crisis.

The methodology for this thesis is primarily a study of two select cases of intrastate conflict. The thesis will compare the UN's responses to the war in Darfur and the conflict in Libya. In addition to the case studies, the study of contemporary literature will help to explain the current state of humanitarian intervention and R2P. The results of the research show that humanitarian intervention is legal under the UN Charter, used and accepted by the international community, and a legitimate tool of the United Nations. There are many political and logistical complications surrounding the use of humanitarian intervention, and UN Security Council decision making in the cases of Darfur and Libya was influenced by terminology and language, national interests, host state consent, other military campaigns, and the anticipated cost. Even though the policy has been difficult to implement, the Responsibility to Protect doctrine has emerged as the only potentially useful international policy for preventing domestic conflicts from escalating and is now an integral part of humanitarian intervention. Further development and integration of the R2P doctrine, based on these results, could help to prevent future humanitarian crises.

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DEDICATION

I dedicate this thesis to my dad, Daryl. Because of you, I didn't give up.

Table of Contents

| | |
|--|-----|
| Permission To Use | i |
| Abstract | ii |
| Acknowledgements | iii |
| Dedication | iv |
| Introduction | |
| A Doctrine in the Interest of All Nations | 1 |
| <i>Method Design and Theory</i> | 6 |
| Chapter One | |
| The Establishment of Humanitarian Intervention | 10 |
| <i>International Legitimacy</i> | |
| <i>and the Rise of R2P</i> | 11 |
| <i>The Evolution of Peacekeeping into</i> | |
| <i>Humanitarian Intervention</i> | 13 |
| <i>R2P and Global Acceptance</i> | 18 |
| <i>International Legality</i> | 23 |
| Chapter Two | |
| Opposition Theory and the Constraints of the Contemporary System | 31 |
| <i>In Opposition to Humanitarian</i> | |
| <i>Intervention and R2P</i> | 31 |
| <i>Systemic Constraints</i> | 38 |
| Chapter Three | |
| Practical Implementation: The Case Studies | 45 |
| <i>Darfur</i> | 45 |
| <i>Libya</i> | 53 |
| Chapter Four | |
| UN Decision-Making: Lessons for the | |
| Implementation of the R2P Doctrine | 62 |
| <i>Darfur Examined</i> | 63 |
| <i>Analysis of Libya</i> | 69 |

| | |
|--|----|
| Conclusion | |
| The Responsibility to Protect Post-Libya and Future Prospects for Humanitarian Intervention | 75 |
| Abbreviations | 83 |
| Bibliography | 85 |

Introduction A Doctrine in the Interest of All Nations

With the disintegration of the USSR in 1991, the Cold War ended and the world was no longer dominated by global hegemony. The US and the USSR lost the ability to control the satellite states within their political bloc and simmering tensions within many of these states surged to the forefront, resulting in a wave of civil wars. A new doctrine emerged to address the global challenges raised by these civil wars - the Responsibility to Protect. The Responsibility to Protect (R2P) doctrine states that humanitarian intervention is both necessary at times and a responsibility of the international community. R2P was first proposed in a report of the International Commission on Intervention and State Sovereignty (ICISS) in December 2001. The main tenet of the report is that "sovereign states have a responsibility to protect their own citizens from avoidable catastrophe...but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states."¹ In 2005, the United Nations (UN) held a World Summit where it reaffirmed its commitment to creating "a more peaceful, prosperous and democratic world and to undertake concrete measures to continue finding ways to implement the outcome of...major United Nations conferences and summits."² R2P was officially adopted at this summit. UN member states have since pledged to work to define an "authoritative framework" that would give "doctrinal, policy and institutional life to the responsibility to protect."³ Humanitarian intervention is legal under the UN Charter, used and accepted by the international community, and a legitimate tool of the United Nations. Even though the policy has been difficult to implement, the Responsibility to Protect doctrine has emerged as the only potentially useful international policy for preventing domestic conflicts from escalating.

This thesis argues that, despite the many complications surrounding its use, the Responsibility to Protect doctrine is now an integral part of humanitarian intervention for the future. These complications will be illustrated by case studies of the war in Darfur and the

¹ International Commission on Intervention and State Sovereignty, "The Responsibility to Protect," Report of the International Commission on Intervention and State Sovereignty (Ottawa: International Development Research Centre, 2001): VIII.

² United Nations General Assembly, "Resolution adopted by the General Assembly: 60/1. 2005 World Summit Outcome," (A/Res/60/1 of the 60th session of the United Nations General Assembly, October 24, 2005): 3.

³ United Nations General Assembly, "Implementing the responsibility to Protect: Report of the Secretary-General," (A/63/677 of the 63rd session of the United Nations General Assembly, January 12, 2009): 4.

conflict in Libya. Over the past thirty years, the United Nations has wrestled with the challenges of determining when and how to intervene in violent intrastate conflicts, settling on the doctrine of the Responsibility to Protect as the cornerstone of its new approach. The Responsibility to Protect doctrine exists beyond military intervention, to include a commitment to both the prevention of conflicts and the rebuilding of communities post-intervention. However, this thesis will focus on the responsibility to intervene in the event that a government is failing to protect its citizens as R2P was primarily created in reaction to extreme humanitarian disasters which received little to no international response. Since the end of the Cold War, support for humanitarian intervention in civil conflicts has increased, and the introduction of the Responsibility to Protect doctrine has been the most significant development on this front. R2P should have a major role in future development, both as a distinct policy and as a guiding principle of humanitarian intervention. Even with its flaws and failures, R2P is a UN policy that can, over time, advance humanitarian intervention. Throughout this thesis, unless otherwise specified, use of 'the Responsibility to Protect' or 'R2P' will generally refer to the Responsibility to Protect doctrine and its conceptual principles, with a specific focus on the responsibility to intervene when a government is manifestly failing to protect its citizens. Use of the term 'humanitarian intervention' will generally refer to the applied practice of military intervention for humanitarian purposes, with a specific focus on the practical application of interventions under the guiding principles of the Responsibility to Protect doctrine.

Protecting civilians suffering atrocities is a clear priority of the United Nations, but the UNSC's authorization of the use of force remains mired with complications. This makes R2P all the more difficult to enact. An examination of two international humanitarian crises will demonstrate the difficulties in implementing humanitarian intervention, including competing national interests, disputed international norms, realistic UN capabilities, and fluid geo-political complexities. The first case study focuses on Sudan and the conflict in Darfur. In 2003, a group of African rebels in the western Darfur region of Sudan rose up against President Omar Bashir, claiming they had been neglected for years in favor of the Arab Sudanese. A government "counterinsurgency"⁴ campaign ensued, characterized by mass killings of ethnic Africans. It was not until 2008, five years after the conflict began, that the United Nations officially intervened on

⁴ Jewish World Watch, "Darfur Genocide," Jewish World Watch, <http://www.jewishworldwatch.org/conflictareas/sudan/overview/sudan-genocide>.

the ground.⁵ The second case study examines the confusing and ongoing situation in Libya. Citizen protests spurred a brutal regime crackdown by Colonel Muammar Gadhafi in February of 2011 which resulted in the deaths of thousands of civilians.⁶ On March 17, 2011, a month after the initial conflict had started, the United Nations Security Council voted on a large military intervention operation, authorizing a NATO-imposed no-fly zone which permitted "all necessary measures to protect civilians."⁷

The UN has been highly criticized over inconsistency when responding to different international crises. Analyzing the realities of cases requiring intervention may help to predict the lasting global impact of the Responsibility to Protect. At the very least, it will highlight some of the obstacles to implementing R2P and streamlining decision making. Several possible explanations for the differing UN responses in Darfur and Libya are proposed. Aside from systemic challenges, like the issue of sovereignty, Security Council disagreement, and UN inefficiency, there are a number of situational obstacles to R2P. These include the language surrounding each crisis, the existence of host-state consent, the proximity to other large scale operations, strategic interests in the region, and cost-benefit analysis. Most recently, the Libyan crisis has had the greatest impact on the Responsibility to Protect. Although the initial resolution to intervene was significant for its reference to R2P, there has been considerable criticism of the aftermath of the Libyan campaign and the country's continuing violence. The Libyan mission has also affected the deadly conflict in Syria. The extended mission in Libya has been described as an overstepping of the original UN mandate and has been cited as a reason for stalemate in the Security Council over action in Syria.⁸ Ultimately, the international system will always be complex and unpredictable, but the Responsibility to Protect doctrine has emerged as a serious attempt to regulate it.

⁵ As will be discussed further in Chapter 3, many UN states lacked the political will to intervene in Darfur and withheld resources and support despite 9 resolutions on the Darfur crisis. See John Prendergast and David Sullivan, "Irresolution: The U.N. Security Council on Darfur," Enough Project (2008), <http://www.enoughproject.org/publications/irresolution-un-security-council-darfur>.

⁶ BBC News Africa, "Libya revolt: Gaddafi in crimes against humanity probe," BBC, accessed April 9, 2014, <http://www.bbc.co.uk/news/world-africa-12636798>.

⁷ Richard Roth, "U.N. Security Council approves no-fly zone in Libya," *CNN*, March 18, 2011, <http://edition.cnn.com/2011/WORLD/africa/03/17/libya.civil.war/index.html?iref=allsearch>.

⁸ Joshua Foust, "Syria and the Pernicious Consequences of Our Libya Intervention," *The Atlantic*, February 6, 2012, <http://www.theatlantic.com/international/archive/2012/02/syria-and-the-pernicious-consequences-of-our-libya-intervention/252631/>.

The term 'humanitarian intervention' can refer to differing UN and international activities, including impartial peacekeeping, peace brokering, the administration of aid, or the response to natural disasters. Daniel Baer defines humanitarian intervention as, “military action by the soldiers of a state or group of states within the borders of another state without its permission and with the immediate aim of preventing or ending massive violations of human rights or widespread human suffering.”⁹ Adam Roberts similarly describes it as, “coercive action by one or more states involving the use of armed force in another state without the consent of its authorities, and with the purpose of preventing widespread suffering or death among the inhabitants.”¹⁰ For this thesis, the focus will be on UN-authorized military responses to situations of humanitarian disaster, involving the explicit use of military force to remedy human rights violations.¹¹

Jennifer Welsh, a former professor of international relations at the University of Oxford, was appointed in June 2013 as a Special Advisor at the UN Assistant Secretary-General level on the Responsibility to Protect.¹² Welsh gives a similar definition as Baer and Roberts, but is less specific about the existence of host state consent, allowing for more manoeuvrability when classifying operations. Based on Welsh's conception, the term 'humanitarian intervention' throughout this thesis will refer to a UN-authorized “coercive interference in the internal affairs of a state, involving the use of armed force, with the purposes of addressing massive human rights violations or preventing widespread human suffering.”¹³ Humanitarian interventions function with or without host state consent and can involve the possible authority to use all means necessary to successfully protect human lives, UN personnel or otherwise. Under this definition, the intervention in Somalia in 1992 is an example of humanitarian intervention. The UN Security Council authorized a military operation on December 3, to be carried out by the United States, in response to the deteriorating political and humanitarian situation caused by a

⁹ Daniel Baer, “The ultimate sacrifice and the ethics of humanitarian intervention,” *Review of International Studies* 37(1) (2011): 302.

¹⁰ Thomas G. Weiss, *Humanitarian Intervention: War and Conflict in the Modern World* (Cambridge: Polity Press, 2012): 6.

¹¹ Francis Kofi Abiew, “Humanitarian Intervention and the Responsibility to Protect: Redefining a Role for the ‘Kind-hearted Gunmen,’” *Criminal Justice Ethics* 29(2) (2010): 95.

¹² Office of the Special Adviser on the Prevention of Genocide, “Secretary-General Appoints Jennifer Welsh of Canada as Special Adviser,” United Nations, <http://www.un.org/en/preventgenocide/adviser/jenniferwelsh.shtml>.

¹³ Jennifer M. Welsh, “The Security Council and Humanitarian Intervention,” in *The United Nations Security Council and War: The Evolution of Thought and Practice 1945*, ed. Vaughan Lowe, Adam Roberts, Jennifer Welsh, and Dominik Zaum (Oxford: Oxford University Press, 2010): 537

civil war. The goal of 'Operation Restore Hope' was to "impose order through military force" and stop the ongoing violence, so that UN humanitarian aid to the area could safely resume.¹⁴

It is evident from the development of R2P that thinking on humanitarian intervention and its use has changed considerably over the past few decades and there is a wide body of literature attempting to explain that change. A good deal of recent academic work on the Responsibility to Protect doctrine praises its emergence and maintains that it could impact the practice of intervention in a positive way.¹⁵ The genocide in Rwanda has been cited as the catalyst which initiated modern thinking on the necessity of humanitarian intervention and R2P.¹⁶ Authors Alex J. Bellamy and Paul D. Williams argue that, after Rwanda, a new "politics of protection," developed, characterized by a renewed commitment to the protection of civilians.¹⁷ Additionally, this new politics of protection is committed to security through the use of force if necessary, but always under the proper authority. Gareth Evans and Ramesh Thakur are principal members of the commission that devised the R2P doctrine. Although they "do not pretend that there is now anything close to unanimous consensus...as to how R2P should be applied in every case where mass atrocity crimes are...occurring," and acknowledge that the Security Council is somewhat paralyzed on the subject since Libya in 2011, they remain optimistic.¹⁸ Evans and Thakur argue that the Responsibility to Protect has evolved since 2001 and is worthwhile because of its focus on the victims of humanitarian abuse rather than nations undertaking an intervention, emphasis on other duties of the international community like the responsibility to rebuild societies after conflicts, and its prudential criteria for the use of force.¹⁹

¹⁴ Mark Amstutz, *International Ethics: Concepts, Theories, and Cases in Global Politics* (New York: Rowman & Littlefield Publishers Inc., 2008), 170.

¹⁵ Despite many flaws, R2P is a "relevant change and can produce a transformation in humanitarian intervention in the long run," based on its ethical perspective and the fact that "at the heart of this conceptual approach is a shift in thinking about the essence of sovereignty, from control to responsibility." Liliana L. Jubiliut, "Has the 'Responsibility to Protect' Been a Real Change in Humanitarian Intervention? An Analysis from the Crisis in Libya," *International Community Law Review* 14(4) (2012): 335. See also Luke Glanville, "In Defense of the Responsibility to Protect," (2013); Jessica Almqvist, "Enforcing the responsibility to protect through solidarity measures," (2015).

¹⁶ See also Jon Western and Joshua S. Goldstein, "Humanitarian Intervention Comes of Age: Lessons from Somalia to Libya," (2011); Chelsea O'Donnell, "The Development of the Responsibility to Protect: An Examination of the Debate Over the Legality of Humanitarian Intervention," (2014).

¹⁷ Alex J. Bellamy and Paul D. Williams, "The New Politics of Protection? Côte d'Ivoire, Libya and the Responsibility to Protect," *International Affairs* 87(4) (2011): 826.

¹⁸ Gareth Evans and Ramesh Thakur, "Humanitarian Intervention and the Responsibility to Protect," *International Security*, 37(4) (2013): 200.

¹⁹ *Ibid*, 202-207.

On the other hand, concerns still exist about how to and when to implement R2P.²⁰ Authors Bellamy and Williams admit that there are still challenges to be worked through for UN intervention, like predicting effective means of protection in advance, engaging with complicated local political dynamics, and managing the longer-term implications of UN actions.²¹ The Security Council is charged with maintaining international peace and security, yet much literature is critical of its intermittent inability to act or agree on controversial issues. The Security Council's commitment to humanitarian intervention is commonly described as mixed or uneven according to Jennifer M. Welsh.²² Although a proponent of R2P, Welsh argues that the UN often lacks the ability to undertake humanitarian interventions and frequently is incapacitated by unsupportive member states and uncooperative governments. Francis Kofi Abiew argues that the R2P doctrine has yet to be implemented fully.²³ Full implementation would include the incorporation of R2P as a clear and detailed principle with the authority and legitimacy to dictate UN intervention decisions. Abiew believes that humanitarian intervention has been theoretically strengthened because of the adoption of R2P, but practical implementation still depends on "the political will of the international community to follow through in extreme cases that require the use of military force."²⁴ R2P could potentially be a framework for UN Security Council decision making, but Abiew would argue that it is still too soon to tell whether the UN will continue to strengthen the doctrine.

Method Design and Theory

The methodology for this thesis is primarily a study of two select cases of intra-state conflict. The thesis will compare the UN's responses to the war in Darfur and the conflict in Libya. In addition to the case studies, the study of contemporary literature will help to explain the current state of humanitarian intervention and R2P. The research method is qualitative analysis of a combination of academic works, United Nations direct source material, and literature in the form of periodicals and online news reports. UN official statements are the

²⁰ See also David Berman and Christopher Michaelsen, "Intervention in Libya: Another Nail in the Coffin for the Responsibility to Protect?" (2012); Conor Foley, "The Evolving Legitimacy of Humanitarian Interventions," (2013).

²¹ Bellamy, "The New Politics of Protection? Côte d'Ivoire, Libya and the Responsibility to Protect," 826.

²² Welsh, "The Security Council and Humanitarian Intervention," 556.

²³ *Ibid.* See also Justin Morris, "Libya and Syria: R2P and the spectre of the swinging pendulum," (2013).

²⁴ Abiew, "Humanitarian Intervention and the Responsibility to Protect," 105.

primary source of data on the differences between the interventions in Libya and Darfur. The conflicts in Darfur and Libya were chosen as case studies for this thesis based on their international notoriety and relevance to the Responsibility to Protect. This thesis will discuss specific characteristics of the two events as well as international relations theory on humanitarian intervention and R2P to explain the discrepancies between the two UNSC responses and evaluate the future potential of the Responsibility to Protect doctrine.

The research and discussion of this thesis fits primarily within the international relations theory of liberalism. Liberalism, and other theories of foreign policy, provide a conceptual framework upon which to analyze the interaction and politics of states. At its core, liberalism assumes that human nature is essentially good. The liberal tradition is rooted in the philosophical works of many great theorists, including John Locke, John Stuart Mill, and Jean-Jacques Rousseau. These theorists believe in legitimate political authority stemming from the consent of the citizenry.²⁵ Government, at its core, should have a limited constitution that provides the foundation for human rights.²⁶ There are several theories of liberalism in international relations, including liberal pacifism, based on a belief that the gradual spread of economic rationalism and democratic will lead to peace, and liberal imperialism, which argues that democratic states should engage in the active exportation and expansion of liberal democratic values.²⁷

Liberal internationalism is the most widely accepted theory today, and it incorporates aspects from all branches of liberalism. This theory of liberalism in global politics is based primarily on the philosophic work of Immanuel Kant. Kant argued that "peace among nation-states is best maintained through an informal federation of republican regimes," and those states must be governed responsibly.²⁸ Based on this notion, liberal internationalists maintain that "mankind will ultimately choose socio-political and economic integration," leading to one global community.²⁹ In addition to this main assumption, liberal internationalism is defined by several other basic principles. According to Knight and Keating,³⁰ individuals are the primary actors in global politics, and they act in a rational and moral manner. Individuals need governments to

²⁵ Amstutz, *International Ethics: Concepts, Theories, and Cases in Global Politics*, 52.

²⁶ *Ibid.*

²⁷ W. Andy Knight and Tom Keating, *Global Politics: Emerging Networks, Trends, and Challenges* (Oxford: Oxford University Press, 2010): 34.

²⁸ Amstutz, *International Ethics: Concepts, Theories, and Cases in Global Politics*, 52.

²⁹ Knight and Keating, *Global Politics: Emerging Networks, Trends, and Challenges*, 34.

³⁰ *Ibid.*, 37.

provide security but governments should not inhibit individual freedoms. Liberal states have democratic governments that are founded on the ideas of freedom, equality, civil liberties, and human rights. These states are less likely to wage war against each other and are further bound together by free trade and commerce. Liberal internationalists maintain that international relations are being transformed over time to promote greater human freedom, peace, equality and justice, driven by global cooperation and democratization.³¹

The Responsibility to Protect doctrine and several of the main concepts discussed in this thesis are products of liberal theory and can be rationalized within the framework of the aforementioned assumptions of liberal internationalism. Discussion in this thesis is primarily based on the liberal assumption that states are interested in creating lasting global peace. The United Nations, a central component to the discussion on legal and legitimate humanitarian intervention, is a prime example of states choosing an economic and political global partnership in the interest of cooperation and peace. Assuming that the UN is a functioning model of global governance, then the existence of the organization reinforces the liberal internationalist premise that states are integrating into a single community. As will be discussed further in Chapter One, the Responsibility to Protect doctrine is based on the liberal idea that individuals have human rights, including the right to live in peace and freedom. Governments serve to protect those freedoms, as reflected in their responsibility to their citizens under R2P. Furthermore, the universality of human rights, the development of humanitarian intervention, and the adoption of the R2P doctrine, are all evidence of the liberal internationalist 'transformation' of international relations towards promoting freedom, peace, and justice.

The thesis will be organized as follows. Chapter one will establish that humanitarian intervention is a legal, accepted, and legitimate tool of the United Nations. Arguments in favour of humanitarian intervention will be presented. The development of peacekeeping into humanitarian intervention and the origins of the Responsibility to Protect doctrine will be discussed in detail. Chapter two discusses the political and logistical obstacles which hinder the practical implementation of humanitarian intervention and R2P, including conceptual arguments against their use. These difficulties need to be understood for R2P to remain relevant. The third chapter will discuss the case studies of Darfur and Libya and the world's responses. A comparison of these crises illustrates further the current obstacles to the practical implementation

³¹ Knight and Keating, *Global Politics: Emerging Networks, Trends, and Challenges*, 37.

of R2P and the permanent realities of the international system that inhibit its utility. The Libyan intervention has proven to be much more complex than anticipated, but R2P remains just as relevant in the post-intervention period.

Chapter four will analyze the UN's responses to the conflicts in Darfur and Libya and discuss the factors that influenced decision making in both cases. There have been many humanitarian crises and UN miscalculations during the past few decades but mistakes are often the drivers of meaningful change in global principles. Although controversy over the fallout from the Libyan intervention has clearly negatively impacted the Responsibility to Protect,³² the doctrine is far from abandoned. The thesis will conclude by commenting on the state of humanitarian intervention in international affairs after the controversial intervention in Libya. The conclusion will also discuss the potential future for the Responsibility to Protect. Since its inception, R2P has enhanced humanitarian intervention norms . It is important for the maintenance of global peace and security that this trend continues. There are challenges that make practical implementation difficult, but despite these, R2P and humanitarian intervention are relevant, valuable, and realistic policies.

³² Evans, "Humanitarian Intervention and the Responsibility to Protect," 200.

Chapter 1 The Establishment of Humanitarian Intervention

State sovereignty is the foundation of the current international system. This system can be dated back to the Peace of Westphalia, a collection of treaties signed in 1648 which ended the Thirty Years War³³ and introduced a new era of political relations in Europe and the rest of the world. For the next three hundred years, the Westphalian agreement endured as a "pan-European diplomatic system based on the new principles of sovereignty and legal equality, and a balance of power that would prevent drives for hegemony."³⁴ The Peace of Westphalia has been described as "the starting point for the development of modern international law."³⁵ The sovereignty resulting from the Westphalian system promises states independence and security. However, as will be discussed further in Chapter Two, humanitarian intervention is in direct conflict with state sovereignty and it is a clear obstacle for the UN during inter-state humanitarian efforts. Responsibility to Protect is the United Nations' current doctrine of humanitarian intervention and it has the potential to be an essential principle of international affairs. The R2P doctrine lays out a framework to encourage the UN and the Security Council to be more definitive in crisis situations, addressing past complications with UN non-intervention. Although R2P, and humanitarian intervention, continue to be a point of contention for the Security Council, modern international discourse on the issue tends to settle on the view that it is, at times, necessary.

Since the United Nations was created in 1945, threats to international peace and security have changed dramatically. Traditional UN peacekeeping gave way to more militarized strategies, like humanitarian intervention. The end of the Cold War effectively opened up the international system, giving states, which were previously constrained by allegiances to Cold War hegemony, the freedom to govern and interact independently.³⁶ However, this ideological freedom also allowed for the intensification of ethnic rivalries, often resulting in violence.³⁷ The reality of the international community today is that humanitarian crises are a major concern and interventions are discussed and considered on a regular basis. Since 2008 alone, there have been

³³ Kalevi J. Holsti, *Peace and War: Armed Conflicts and International Order 1648-1989* (Cambridge: Cambridge University Press, 1991), 26.

³⁴ *Ibid.*

³⁵ *Ibid.*, 39.

³⁶ Knight and Keating, *Global Politics: Emerging Networks, Trends, and Challenges*, 102.

³⁷ *Ibid.*

eight different cases of possible genocide or ethnic cleansing publicly monitored by the United Nations. These cases include the Democratic of the Congo in 2008, Sri Lanka in 2009, Kyrgyzstan and Guinea in 2010, Côte d'Ivoire and Libya in 2011, Sudan in 2011, and Syria in 2011.³⁸ This chapter will demonstrate that humanitarian intervention is legal under the UN Charter, accepted by the international community, and a legitimate UN tool for conflict resolution, and as such should be an essential principle of international affairs.

International Legitimacy and the Rise of R2P

As stated in the introduction, the Responsibility to Protect doctrine is meant to be a definitive doctrinal statement on global accountability and humanitarian intervention. The doctrine attempts to streamline the decision making process of humanitarian intervention and improve the efficiency of the UNSC. R2P was first proposed in a report created by the International Commission on Intervention and State Sovereignty and was later adopted unanimously by over 150 Heads of State and Government as part of the 2005 UN World Summit Outcome document. The Summit discussions were aimed at solving problems in the areas of development, peace and collective security, human rights and the rule of law, and strengthening the United Nations. The Outcome document outlines measures to implement the results of those discussions, including R2P.

The Responsibility to Protect doctrine contains three foundational pillars which are meant to serve as a guideline for action in situations of humanitarian crisis:

1. The State carries the primary responsibility for protecting populations from genocide, war crimes, crimes against humanity and ethnic cleansing, and their incitement;
2. The international community has a responsibility to encourage and assist States in fulfilling this responsibility;
3. The international community has a responsibility to use appropriate diplomatic, humanitarian and other means to protect populations from these crimes. If a State is manifestly failing to protect its populations, the international community must be prepared to take collective action to protect populations, in accordance with the Charter of the United Nations.³⁹

³⁸ United Nations, "Work of the Office: Country Situations," Office of the Special Adviser on the Prevention of Genocide, http://www.un.org/en/preventgenocide/adviser/country_situations.shtml.

³⁹ Office of the Special Adviser on the Prevention of Genocide, "The Responsibility to Protect," <http://www.un.org/en/preventgenocide/adviser/responsibility.shtml>.

Collective action is defined by the International Commission on Intervention and State Sovereignty as, "appropriate measures...which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention."⁴⁰ In Article 138 of the 2005 outcome document, the United Nations pledged that,

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.⁴¹

The Responsibility to Protect doctrine advocates for humanitarian intervention, in some situations. R2P not only affirms the right of countries to intervene, it mandates that states are obligated to take military action to remedy human rights violations when necessary.

The legitimacy of the Responsibility to Protect doctrine is underscored by its acceptance in the international community. The road to international acceptance of the Responsibility to Protect began in the 1950s and 1960s, when classical peacekeeping proved insufficient for many UN operations. This trend continued after the end of the Cold War and intensified after a series of globally denounced crises in the 1990s, particularly the crises in Somalia, Rwanda, and the former Yugoslavia.⁴² Former Secretary General Kofi Annan's insistence on change to humanitarian strategies was also very influential for the R2P doctrine. Annan encouraged the United Nations to further explore some of its responsibilities as an internationally governing institution and called out to governments and political experts for assistance. Eventually, the International Commission on Intervention and State Sovereignty was created and the Responsibility to Protect was born.

⁴⁰ International Commission on Intervention and State Sovereignty, "The Responsibility to Protect," XI.

⁴¹ United Nations General Assembly, "Resolution adopted by the General Assembly: 60/1. 2005 World Summit Outcome," 30.

⁴² Jennifer M. Welsh, "The Security Council and Humanitarian Intervention," 539-48; Susan L. Woodward, "The Security Council and the Wars in the Former Yugoslavia," in *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945*, ed. Vaughan Lowe et al. (Oxford: Oxford University Press, 2010), 406.

The Evolution of Peacekeeping into Humanitarian Intervention

Peacekeeping is the most identifiable tool for maintaining international peace and security and is widely used by the United Nations. However, military humanitarian intervention is arguably more effective for quelling deadly violence. This type of intervention evolved out of traditional forms of peacekeeping. The very first peacekeeping operations were born of three essential principles: “consent of the parties; impartiality; [and] Non-use of force except in self-defence and defence of the mandate.”⁴³ Peacekeeping operations are used in situations where a conflict has very recently ended and is essentially requiring mediation for ensuring the delicate transition to lasting peace, monitoring the adherence to agreements, and rebuilding society and laws. Peacekeeping can trace its most basic roots back to operations in 1948, with small scale UN deployments to the Middle East, and in 1949 in India and Pakistan. What has been described as the “first peacekeeping force *per se*”⁴⁴ is the premier UN peacekeeping force with armed observers. The first UN Emergency Force to the Middle East (UNEF I) was dispatched in 1956 to quell the Suez crisis after hostilities broke out between Egypt and Israel over operation and control of the Suez Canal. Britain and France also had economic interests in the canal, and the invasion by Israeli forces of Egypt in October 1956 provided an opportunity for external intervention. The observer units of UNEF I were authorized to use their weapons “only in self-defence and even then with utmost restraint.”⁴⁵ Their main function consisted of “[supervising] the withdrawal of the three occupying forces and.....[acting] as a buffer between the Egyptian and Israeli forces to provide impartial supervision of the cease fire.”⁴⁶ Withdrawn in 1967 after Egypt no longer consented to the presence of UN troops in the region, UNEF I was a first stepping stone for later armed peacekeeping forces like UNEF II in the same region in 1973, UNSF and UNTEA forces in West New Guinea in 1962, and the UN Peacekeeping Force in Cyprus (UNFICYP) in 1964.

⁴³ Weiss, *Humanitarian Intervention: War and Conflict in the Modern World*, 9.

⁴⁴ Mats Berdal, “The Security Council and Peacekeeping,” in *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945*, ed, Vaughan Lowe, Adam Roberts, Jennifer Welsh, and Dominik Zaum (Oxford: Oxford University Press, 2010): 179.

⁴⁵ Information Technology Section/Department of Public Information(DPI), “Middle East-UNEF I Background: Summary,” DPI Peace and Security Section in cooperation with the Department of Peacekeeping Operations, United Nations, <http://www.un.org/en/peacekeeping/missions/past/unef1backgr1.html>.

⁴⁶ *Ibid.*

With the evolution of international peace and security concerns since the first peacekeeping operation in 1948 there has also been a change in the strategies necessary to maintain that security. A great deal of this change can also be attributed to later peacekeeping missions whose near or glaring failures illuminated the deficiencies of the traditional tactic. Humanitarian intervention as a concept was in large part born out of the attempted rectification of these failures. A simple, but effective, indicator of situations where peacekeeping is not appropriate is the lack of peace to keep. These situations are generally very volatile. The UN Operation in the Congo (ONUC), beginning in 1960, demonstrates “the risks involved in trying to bring stability to war-torn regions...250 UN personnel died while serving on that mission, including the Secretary-General Dag Hammarskjöld.”⁴⁷ Classical peacekeeping was exposed as inadequate in situations of this magnitude, as UN troops attempted to quell escalating violence after the Congo declared independence. UN troops were eventually authorized to take all necessary measures to prevent civil war,⁴⁸ and thus began the qualitative expansion of peacekeeping into humanitarian intervention.

Another central component to peacekeeping is the consent of governments, or relevant institutions, to the presence of external forces. This approach respects the sovereignty of nations and state institutions while still providing third party assistance and maintaining legitimacy. Included in this component of peacekeeping is impartiality and the refusal to support any one side in the conflict. However, there are countless situations where a humanitarian intervention is desperately needed but the government in question is not willing to give consent. Furthermore, in most conflict areas, the government in question directly participates in violent acts, further complicating a proper UN response. Sovereignty is no longer completely sacrosanct, and overstepping it can be justified on legal and ethical grounds. During interventions where there is no government consent, it may also be impossible to avoid inherently supporting one specific cause or group. The most obvious limitation, and perhaps the most crucial, of peacekeeping is the involvement of military arms and the intention to use whatever force necessary. Significant obstacles for early peacekeeping forces were the inability of UN troops to defend themselves and their failure to physically prevent violence from continuing, because of the lack of military means. The ONUC mission was an early example of the difficulties of peacekeeping, wherein

⁴⁷ United Nations Peacekeeping, “The Early Years,” <http://www.un.org/en/peacekeeping/operations/early.shtml>.

⁴⁸ Berdal, “The Security Council and Peacekeeping,” 182.

even the largest UN force became overwhelmed with violent clashes, unable to defend itself or local citizens.⁴⁹

In a report to the General Assembly in 1991, "secretary-general Javier Perez de Cuellar observed, 'It is now increasingly felt that the principle of non-interference with the essential domestic jurisdiction of States cannot be regarded as a protective barrier behind which human rights could be massively or systematically violated with impunity.'"⁵⁰ One of the first successful humanitarian interventions was operation Desert Storm in 1991, noted for its effectiveness and principled purpose.⁵¹ The goal of Desert Storm was to dispel the Iraqi invasion of Kuwait. Although perhaps not yet recognized under that name, humanitarian intervention became qualitatively different from peacekeeping following the Iraqi invasion in 1991. Then UN Secretary General Boutros Boutros -Ghali published a report in 1992 titled *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping*, which is credited with encouraging the international community to acknowledge the changes that have taken place since the end of the Cold War and adjust practices accordingly. The report said that peacekeeping "might have to expand and develop in qualitatively new ways."⁵² Throughout the rest of the 1990s and entering the 20th Century, it was clear that humanitarian intervention was emerging as a legitimate practice.

As previously mentioned, the ideological thaw that happened around 1991, after the fall of the Soviet Union, contributed greatly to ideal conditions for change. The end of the Cold War "reenergized the United Nations as a major player in international relations."⁵³ More resources were suddenly available to the UN⁵⁴ after the Cold War thaw and peacekeeping operations were able to expand.⁵⁵ Aided by global discussion and increased awareness, legitimacy and acceptance of humanitarian intervention, authorized by the UN, grew. The international community began working to "[align] the security interests of the strong and the weak at the

⁴⁹ Norrie MacQueen, *Humanitarian Intervention and the United Nations* (Edinburgh: Edinburgh University Press, 2011): 25-30.

⁵⁰ Luke Glanville "Darfur and the responsibilities of sovereignty," *International Journal of Human Rights* 15(3) (2011): 464.

⁵¹ See Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (New York: Oxford University Press, 2001).

⁵² Berdal, "The Security Council and Peacekeeping," 187.

⁵³ Donald M. Snow, *Cases in International Relations* (Boston: Pearson Education Inc., 2012), 152.

⁵⁴ *Ibid*, 147.

⁵⁵ See for further research: Chen Kertcher, "From Cold War to a System of Peacekeeping Operations: The Discussions on Peacekeeping Operations in the UN During the 198s up to 1992," *Journal of Contemporary History* 47(3) (2012): 611-637.

global level."⁵⁶ Finding solutions to war and insecurity that were more beneficial for all nations, instead of just the powerful few, became a greater priority of the international community. As states continued to recover from the Cold War years, and more international cooperation seemed possible, new ideas were emerging about humankind⁵⁷ and what a united peoples might mean. There were no clear and immediate demarcations of alliances in the wake of the Cold War and ideas about a shared global society began to grow. Alternatively, deadly humanitarian crises in the Third World, which might have been previously ignored due to Cold War tensions⁵⁸, were now met with a greater potential for meaningful external action.

The maturation of peacekeeping and the expansion of UN activity following the end of the Cold War allowed for humanitarian intervention to become a legitimate practice. Besides the fact that the Responsibility to Protect doctrine evolved out of intervention practices, its roots are also closely intertwined with three different but equally important sources; the globally condemned humanitarian disasters of the 1990s, the advocacy of former Secretary General Annan, and the work in part of the Canadian government and its creation, the International Commission on Intervention and State Sovereignty. Post-Cold War, many nationalist and ethnic conflicts flared in former communist countries, and the African continent has been consistently plagued by famines and instability.⁵⁹ A series of deadly wars and crises brought the issue of humanitarianism to the forefront of global politics during the 1990s. In 1992 and 1993, botched humanitarian efforts to remedy the failing political and social systems in Somalia ended in an embarrassing, bloody exit for the Americans. Eighteen US soldiers were killed in Somalia and one body was dragged through the streets of Mogadishu, resulting in the US and the UN promptly pulling out of the region.⁶⁰ This infamous "Black Hawk Down"⁶¹ incident provided a foundation for a mistrust of intervention and a hesitation to risk lives that proved detrimental to later conflicts in the decade. A prolonged civil war still paralyzes the country. Subsequent

⁵⁶ Jeremy Greenstock, "The Security Council in the Post-Cold War World," In *The United Nations Security Council and War: The Evolution of Thought and Practice 1945*, ed. Vaughan Lowe, Adam Roberts, Jennifer Welsh, and Dominik Zaum (Oxford: Oxford University Press, 2010), 249.

⁵⁷ Snow, *Cases in International Relations*, 147.

⁵⁸ *Ibid.*

⁵⁹ Jon Western and Joshua S. Goldstein, "Humanitarian Intervention Comes of Age: Lessons from Somalia to Libya," *Foreign Affairs* 90 (2011): 49.

⁶⁰ *Ibid.*, 50.

⁶¹ *Ibid.*

conflicts proved to the international community that a re-examination of global humanitarian norms was necessary.

Shortly after Somalia, a brutal campaign of genocide in Rwanda in 1994 horrified the international community and brought the issue of humanitarian intervention to the forefront. Despite early warning signs of coming violence, the United Nations made virtually no attempt to quell the massacre. The world watched as Tutsis were slaughtered by ethnic Hutus in a coordinated campaign to eliminate the Tutsi population.⁶² Fuelled by years of ethnic tension and inequality, the genocide in Rwanda was one of the most universally reviled experiences since the Holocaust, ending with 800,000 dead.⁶³ Almost an entire generation of a cultural group was wiped out and there is a great amount of speculation whether it was preventable, or that at the very least, there could have been a significantly greater effort to quell the genocidal violence. The Rwandan genocide was an unfortunate event which turned out to be of vital importance for the development of humanitarian intervention thought. If the genocide in Rwanda was not enough to force the international community to discuss new ideas about humanitarianism, the brutal wars in the Balkans reinforced the importance of the issue.

After the fall of the Soviet Union, the disintegration of former Yugoslavia resulted in several violent civil wars and ethnicity-fuelled territorial disputes. The reputation of the United Nations was tarnished by its lack of adequate action and ability to quell the fighting. Bosnia-Herzegovina was sharply divided into regions controlled respectively by Croats, Bosnian Muslims, and Serbians. From 1992 to 1993, these groups carried out brutal campaigns of ethnic cleansing of minorities within their respective territories. In 1995, the UN-designated safe haven for Bosnian Muslims of Srebrenica was infiltrated and overrun by Serbian forces, resulting in a massacre of 7,000 people in full view of the inadequate United Nations peacekeeping forces. In the hotly contested region of Kosovo, ethnic tension began in 1993 and intensified in 1998. Serbian forces began a violent crackdown on Kosovo rebels and in 1999 a NATO-led intervention attempted to broker the situation. NATO allies began a relentless bombing campaign that resulted in the destruction of buildings and homes, created countless refugees, and caused hundreds of civilian deaths. The United Nations involvement in the Balkans during this decade has been described as “a spectacular setback” and “collective spinelessness” in a period

⁶² BBC News Africa, "Rwanda profile," BBC, <http://www.bbc.com/news/world-africa-14093238>.

⁶³ Welsh, "The Security Council and Humanitarian Intervention," 539-48.

of “horrendous failures.”⁶⁴ Although these crises were stains on the UN's humanitarian legacy, they illuminated the need for change in international relations. No one was more aware of the change that needed to happen than UN Secretary General of the time, Kofi Annan.

Former Secretary General Annan was the loudest advocate of greater action by the United Nations to prevent humanitarian atrocities, like the ones that occurred during his term. One of Annan's principal concerns was the functioning of the United Nations Security Council and its difficulty coming to timely and appropriate decisions. The Secretary General became very vocal throughout the 1990s and early 2000s about the inhumanity of the genocide and ethnic cleansing that was occurring under his watch. He attempted to engage the Security Council in thoughtful discussion. He challenged the Security Council, as well as the wider international community, to work to avoid “future Kosovos,” in which the UNSC was deadlocked about whether or not to intervene to prevent a crisis from getting worse, and “future Rwandas,” where member states lacked the political will to take decisive action in the face of genocide and other humanitarian atrocities.⁶⁵ In his 2000 Millennium report, Annan addressed the issue of sovereignty directly in his challenge to the UN Security Council: “If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica, to gross and systematic violation of human rights that offend every precept of our common humanity?”⁶⁶ Kofi was later the champion of the R2P doctrine, after it had been developed by the International Committee on Intervention and State Sovereignty.

R2P and Global Acceptance

In response to UN Secretary General Annan's calls for change, the International Commission on Intervention and State Sovereignty was formed. The purpose of the ICISS was to hold a discussion about humanitarian intervention, including when and how to intervene and how to prevent the occurrence of further mass atrocities.⁶⁷ Former Canadian Foreign Affairs Minister Lloyd Axworthy helped the Canadian government establish the ICISS in 2001, and

⁶⁴ Woodward, “The Security Council and the Wars in the Former Yugoslavia,” 406.

⁶⁵ Bellamy, *Global Politics and the Responsibility to Protect*, 162.

⁶⁶ United Nations Department of Public Information, “Background Information on the Responsibility to Protect,” Outreach Programme on the Rwanda Genocide and the United Nations, <http://www.un.org/en/preventgenocide/rwanda/about/bgresponsibility.shtml>.

⁶⁷ Woodward, “The Security Council and the Wars in the Former Yugoslavia,” 491.

served as the chair of the Advisory Board. The three goals of the Commission were to promote comprehensive debate about intervention, foster a new consensus on how to reconcile intervention and sovereignty, and translate consensus into action.⁶⁸ These goals confirm the commitment of the United Nations to continue redefining the parameters of peacekeeping following the rise of intra-state conflicts after the Cold War years. Professionals, academics, intellectuals, and experts on the subject from across the globe, including notable scholars like Ramesh Thakur and Michael Ignatieff, came together to “wrestle with the whole gamut of difficult and complex issues involved in the debate.”⁶⁹ These issues included,

the tension in principle between sovereignty and intervention, the divergent interests and perspectives in political practice...evolving norms and state practice with respect to peace and security... [and] the relationship[s] between force and diplomacy, human rights and international security, national security and human security, [and] the UN and the USA.⁷⁰

The 'right' of intervention, or,

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,⁷¹

was also central to the ICISS discussions. Focusing on the idea of a 'responsibility' to intervene instead of a 'right' would ideally center discussion on the needs of those suffering humanitarian abuse rather than the rights of those considering military action. It was clear that non-interventionism, originating from historical conceptions of statehood, was no longer sufficient for modern global society. Simon Adams argues that today, governments no longer challenge the idea that "the international community has an obligation to assist a state if it is struggling to protect its people."⁷² The R2P doctrine was formed into a concept that would ideally “impose upon the United Nations an obligation to shield people all over the world from genocide and ethnic cleansing at the hands of their own governments.”⁷³

⁶⁸ Council on Foreign Relations, "International Commission on Intervention and State Sovereignty: Responsibility to Protect Report," Council on Foreign Relations, December 2001, <http://www.cfr.org/humanitarian-intervention/international-commission-intervention-state-sovereignty-responsibility-protect-report/p24228>.

⁶⁹ Ramesh Thakur, *The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect*, (Cambridge: Cambridge University Press, 2006), 247.

⁷⁰ *Ibid*, 245.

⁷¹ International Commission on Intervention and State Sovereignty, "The Responsibility to Protect."

⁷² Simon Adams, "The 'Responsibility to Protect' at 10," E-International Relations, March 29, 2015, <http://www.e-ir.info/2015/03/29/r2p-at-10/>.

⁷³ Luiza CH. Savage, "Canada's 'responsibility to protect' Doctrine Gaining Ground at the UN," The Canadian Encyclopedia, <http://www.thecanadianencyclopedia.com/articles/macleans/canadas-responsibility-to-protect-doctrine-gaining-ground-at-the-un>.

The Canadian ambassador to the United Nations at the time R2P was created, Allan Rock, was largely responsible for pushing the newly conceptualized doctrine onto the UN agenda. He urged his colleagues to consider if they would, "rather live in a world in which [the] power [to intervene and stop atrocities] is there but there are no rules to define how it's used? Or [would they prefer a world] where there are clear rules governing its exercise, and [they] can participate in developing those rules?"⁷⁴ Kofi Annan wholeheartedly embraced the idea of international responsibility and championed its becoming official UN policy. Although the R2P doctrine was controversial at first, the international community began to embrace it. Not long after the ICISS published *The Responsibility to Protect* report, Secretary General Annan convened the High Level Panel on Threats, Challenges and Change to report on how the United Nations should confront current and upcoming security threats in the 21st century.⁷⁵ The report it published, entitled *A More Secure World: Our Shared Responsibility*, endorsed the Responsibility to Protect doctrine in its entirety, setting out guidelines for its use. The report recommended that the R2P doctrine be adopted into UN law to serve as a legitimate authorization of force for humanitarian intervention. Kofi Annan confirmed his approval for R2P in an additional report published in 2005 entitled *In Larger Freedom*,⁷⁶ which also served as a basis for the agenda of the UN World Summit that same year, where R2P was unanimously adopted.

There were mixed reviews about the achievements of the World Summit, which has been criticised for failing in its original mandate to address the progress of the Millennium Development Goals.⁷⁷ Many world leaders and state representatives to the United Nations were also disappointed by an overloaded agenda and a lack of tangible progress.⁷⁸ However, the United Nations General Assembly ultimately took a unified stance on all aspects of the outcome document and the adoption of the Responsibility to Protect doctrine was described as definitive, historic,⁷⁹ and a considerable step forward.⁸⁰ The minister for Foreign Affairs of the Czech

⁷⁴ Bellamy, *Global Politics and the Responsibility to Protect*, 163.

⁷⁵ United Nations Department of Public Information, "Background Information on the Responsibility to Protect."

⁷⁶ United Nations General Assembly, "Secretary-General Presents Report 'In Larger Freedom' To General Assembly, Outlining Ambitious Plan for United Nations Reform," United Nations General Assembly Press Release, March 21, 2005, <http://www.un.org/press/en/2005/ga10334.doc.htm>.

⁷⁷ Richard Black, "UN reforms receive mixed response," *BBC News*, September 17, 2005, <http://news.bbc.co.uk/2/hi/americas/4255106.stm>.

⁷⁸ United Nations General Assembly, "Although World Summit Outcome 'Disappointing,' UN Reform Efforts Must Continue, General Assembly Told During Annual High-Level Debate," United Nations General Assembly Press Release, September 21, 2005, <http://www.un.org/press/en/2005/ga10392.doc.htm>.

⁷⁹ Black, "UN reforms receive mixed response."

Republic stated that the "renewed commitments...to the Responsibility to Protect brought new hope to those facing lawlessness and oppression," while the Australian Minister for Foreign Affairs praised the Summit for having "embodied a historic shift in mindset on human rights and the collective responsibility to protect human beings."⁸¹ Nicola Reindorp, head of Oxfam in New York, congratulated world leaders on the decision to protect civilians: "After each genocide in the past world leaders have said 'never again;' now, at last, the world has agreed that 'never again' should mean 'never again,' and this could help make tragedies like the Rwandan genocide a thing of the past."⁸² Since 2005, the R2P doctrine has been reaffirmed in resolutions 1674 in 2006 and 1894 in 2009. Resolution 1894 also established a Joint Office between the Special Adviser on the Prevention of Genocide and the Special Adviser to the Secretary General with a focus on R2P, with the purposes of "conduct[ing] independent early-warning assessment, build[ing] system-wide capacity related to [R2P], and help[ing] develop common policy on [R2P] situations."⁸³

During the years following the World Summit, global endorsements of the Responsibility to Protect doctrine increased. Despite critiques of the doctrine's practical implementation, as will be examined in Chapter Two, the Responsibility to Protect is largely unquestioned in theory. Maggie Powers used detailed text analysis software to conduct a study of 3,159 UNSC and Human Rights Council (HRC) documents, from 2006 to 2013, to analyze "how often, when, and by whom R2P terminology has been referenced over time at the UN."⁸⁴ The study concludes that even amidst the backlash following the Libyan intervention in 2011, the integration of the Responsibility to Protect into UN discourse has expanded, and "R2P has become further internalised and is increasingly utilised in the Security Council and Human Rights Council".⁸⁵ The analysis shows that post-Libya, official state approval of the R2P principles has grown and references to the doctrine in UN documents increased from under 500 in 2005 to over 1500 in

⁸⁰ Joy Hyvarinen, "The 2005 World Summit: UN Reform, Security, Environment and Development," *Review of European Community & International Environmental Law* 15(1) (2006): 7.

⁸¹ United Nations General Assembly, "Although World Summit Outcome 'Disappointing,' UN Reform Efforts Must Continue."

⁸² Black, "UN reforms receive mixed response."

⁸³ International Coalition for the Responsibility to Protect, "Joint Office of the Special Adviser on the Prevention of Genocide and on the Responsibility to Protect," International Coalition for the Responsibility to Protect, accessed January 9, 2016, <http://www.responsibilitytoprotect.org/index.php/component/content/article/3618>.

⁸⁴ Maggie Powers, "Responsibility to Protect: Dead, Dying, or Thriving," *International Journal of Human Rights* 19(8) (2015): 1257.

⁸⁵ *Ibid*, 1258.

2013.⁸⁶ David Gethings, an international conflict management professor, argues that the Responsibility to Protect has evolved alongside modern cosmopolitanism to redefine and promote civic engagement, giving "human rights and international law a new form of accountability and enforcement."⁸⁷ In their article on the World Summit and the trajectory of the R2P doctrine, Murthy and Kurtz label Responsibility to Protect a 'landmark agreement,' and write that it is as widely accepted by the international community in 2015 as it was in 2005.⁸⁸ Murthy and Kurtz argue that the R2P doctrine has become associated with international solidarity and that has contributed to its increased global acceptance. At the very least, the Responsibility to Protect has encouraged discussion about international humanitarianism. Sassan Gholiagha argues that the adoption of R2P has created an atmosphere in international relations that is conducive to "a politics of protection aimed at individual beings."⁸⁹

Ten years after its official adoption, Simon Adams, the Executive Director for the Global Centre for the Responsibility to Protect, argues that because of the acceptance of R2P since it was created, there is no longer any question as to its legitimacy. He states that, "This is now an uncontroversial idea. The challenge is implementation."⁹⁰ The United Nations is the highest international authority on the use of military force, boasting universal membership and a representative General Assembly.⁹¹ Its adoption of the Responsibility to Protect gives the doctrine international legitimacy and legality. However, the legality of the Responsibility to Protect is fundamentally rooted in international law, based in the United Nations Charter.

⁸⁶ Powers, "Responsibility to Protect: Dead, Dying, or Thriving," 1261.

⁸⁷ David William Gethings, "The Responsibility to Engage: Cosmopolitan Civic Engagement and the Spread of the Responsibility to Protect Doctrine," *International Journal of Human Rights* 19(8) (2015): 1060.

⁸⁸ C.S.R. Murthy and Gerrit Kurtz, "International Responsibility as Solidarity: The Impact of the World Summit Negotiations on the R2P Trajectory," *Global Society: Journal of Interdisciplinary International Relations* 30(1) (2016): 38-53.

⁸⁹ Sassan Gholiagha, "To Prevent Future Kosovos and Future Rwandas.' A Critical Constructivist View of the Responsibility to Protect," *International Journal of Human Rights* 10(8) (2015): 1074.

⁹⁰ Adams, "The Responsibility to Protect: 10 years on."

⁹¹ Liliana L. Jubilit, "Has the 'Responsibility to Protect' Been a Real Change in Humanitarian Intervention? An Analysis from the Crisis in Libya," *International Community Law Review* 14(4) (2012): 311.

International Legality

As will be discussed further in Chapter Two, R2P and humanitarian intervention have been labelled by many scholars as illegitimate in international affairs,⁹² in part because not all countries subscribe to their principles and not all humanitarian norms are shared.⁹³ Many questions about its legality also stem from the Charter of the United Nations, signed on June 26, 1945. According to Article 2(4) of the UN Charter, "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations."⁹⁴ Article 2(4), according to J. E. Linter, is "an agreed cornerstone of customary international law regarding the use of force," that super-cedes any pre-existing international norms.⁹⁵ China has publicly stated its opposition to intervention and the reinvention of state sovereignty.

"[T]he implementation of "R2P" [the responsibility to protect] should not contravene the principle of state sovereignty and the principle of non-interference of internal affairs [of States]. Although the world has undergone complex and profound changes...[t]here must not be any wavering over the principles of respecting state sovereignty and non-interference of internal affairs."⁹⁶

Linter argues that there is currently very little international legislation which supports the legality of humanitarian intervention and that the "principle of sovereignty continues to have universal precedence over human rights."⁹⁷ Milena Sterio, a global expert on international law, also acknowledges that legal restraint on military intervention is a foundation holding up the global system. "The prohibition on the use of force is a basic norm of international law,"⁹⁸ writes Sterio.

⁹² See Alex J. Bellamy, "Humanitarian Intervention and the Three Traditions," 2003; Bhikhu Parekh, "Rethinking Humanitarian Intervention," 1997; Gerrit Kurtz and Philipp Rotmann, "The Evolution of Norms of Protection: Major Powers Debate the Responsibility to Protect," 2016: 14-15.

⁹³ See Alex J. Bellamy, "Humanitarian Intervention and the Three Traditions," 2003.

⁹⁴ United Nations, "Chapter I: Purposes and Principles," Charter of the United Nations, accessed January 29, 2014, <http://www.un.org/en/sections/un-charter/chapter-i/index.html>.

⁹⁵ J. E. Linter is a Wing Commander, RAF. J. E. Linter, "Humanitarian Intervention: Legitimising the Illegal," *Defence Studies* 5(2) (2005): 275.

⁹⁶ Chelsea O'Donnell, "The Development of the Responsibility to Protect: An Examination of the Debate Over the Legality of Humanitarian Intervention," *Duke Journal of Comparative & International Law* 24(3) (2014): 576.

⁹⁷ Linter, "Humanitarian Intervention: Legitimising the Illegal," 277.

⁹⁸ Milena Sterio, "Humanitarian Intervention Post Syria: Legitimate and Legal," *Brooklyn Journal of International Law*, 40(1) (2014): 113.

Under the Charter, nations agreed...to forego the use of external force to change the political status quo. Nations would be assured their fundamental independence, the enjoyment of their territory, their freedom - a kind of right to be let alone.⁹⁹

This prohibition on the use of force internationally, however, comes from a more traditional, possibly outdated, conception of state sovereignty. Linter argues that at the very least, humanitarian intervention can be morally legitimate, under certain ethical conditions (to be discussed further in this chapter), even if it is internationally illegal.¹⁰⁰

There is significant consensus on the illegality of unilateral intervention,¹⁰¹ as Article 2(4) outlaws the use of force on the part of individual states alone. The Charter does instead empower the Security Council to make all decisions on collective measures that involve military force.¹⁰² Ian Hurd, an international law scholar and Director of the International Studies Program at Northwestern University, writes that it is impossible to conclude whether humanitarian intervention is legal or illegal because Article 2(4) of the charter is in direct conflict with modern international norms on intervention. However, because of developments in state practice and norms since 1945, he acknowledges that there is a legal case to be made for humanitarian intervention under certain perceptions of international law and in certain crisis situations.¹⁰³ In fact, there are many elements of current international relations that help define "the legal conditions under which states can use force against others," and the "legal environment in which war is conducted," including treaties like the Genocide Convention and the idea of universal human rights.¹⁰⁴ This idea will be expanded on later in this chapter. A.P.V. Rogers argues that it is possible for the United Nations Charter, and other aspects of international law, to be modified over time by repetitive and persistent state practice. Rogers believes that state actions contrary to traditional international law can over time become legitimate norms, "by the congruent practice of the member states crystallizing as new principles of customary law,"¹⁰⁵ making it possible for humanitarian intervention to eventually become legal.

⁹⁹ Milena Sterio, "Humanitarian Intervention Post Syria: Legitimate and Legal," 113.

¹⁰⁰ Linter, "Humanitarian Intervention: Legitimising the Illegal," 272.

¹⁰¹ See Simon Chesterman, "Leading from Behind," (2011); Nico Krisch, "Review Essay: Legality, Morality and the Dilemma of Humanitarian Intervention after Kosovo," (2002); Chelsea O'Donnell, "The Development of the Responsibility to Protect: An Examination of the Debate Over the Legality of Humanitarian Intervention," (2014).

¹⁰² Sterio, "Humanitarian Intervention Post Syria: Legitimate and Legal," 295.

¹⁰³ Ian Hurd, "Is Humanitarian Intervention Legal? The Rule of Law in an Incoherent World," *Ethics and International Affairs* 25(3) (2011): 294.

¹⁰⁴ *Ibid.*

¹⁰⁵ A.P.V. Rogers, "Humanitarian Intervention and International Law," *Harvard Journal of Law & Public Policy* 27(3) (2004): 729-30.

A.O. Enabulele also writes about the legitimisation of norms through custom. In the *International Journal of Human Rights*, he argues that "Article 38(1) of the Statute of the International Court of Justice (ICJ) clearly itemised the applicable international law to include: customary international law and conventions."¹⁰⁶ Customary international law is,

unwritten and derives from the actual practice of Nations over time. To be accepted as law, the custom must be long standing, widespread and practiced in a consistent and uniform way among Nations...and followed as a matter of legal obligation [under] *opinio juris*.¹⁰⁷ Enabulele doubts the existence of long standing applicable state practice and believes that the majority of 'humanitarian interventions' have been undertaken with self-motivated intent, denoting the absence of true *opinio juris*.¹⁰⁸ However, Rogers argues that UN missions in Somalia, Bosnia, Haiti, Iraq in 1991, and Kosovo in 1999¹⁰⁹ all helped the evolution of international norms and international law by establishing normative state practice. Although these interventions were not necessarily undertaken with a "legal right of humanitarian intervention" they were tolerated by the international community.¹¹⁰

The authors of the Responsibility to Protect doctrine also write about the evolution of international law. The doctrine states that the current debate on humanitarian intervention "takes place in a historical, political and legal context of evolving international standards of conduct for states and individuals, including the development of new and stronger norms and mechanisms for the protection of human rights."¹¹¹ Chelsea O'Donnell writes in the *Duke Journal of Comparative & International Law* that although it is still only in the most extreme circumstances, the Security Council's capacity to authorize humanitarian interventions should be "definitively established in [customary international law]" because of historical state practice of intervention, the international acceptance of human rights, and documented agreement by the United Nations of the Responsibility to Protect doctrine.¹¹² Thus, "the responsibility to protect should act as an effective legal tool to prevent atrocities."¹¹³

¹⁰⁶ A.O. Enabulele, "Humanitarian Intervention and Territorial Sovereignty: The Dilemma of Two Strange Bedfellows," *International Journal of Human Rights* 14(3) (2010): 413.

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*, 414-417.

¹⁰⁹ Rogers, "Humanitarian Intervention and International Law," 729.

¹¹⁰ *Ibid.*

¹¹¹ Edward Newman, "Humanitarian Intervention, Legality and Legitimacy," *The International Journal of Human Rights* 6(4) (2002): 106.

¹¹² O'Donnell, "The Development of the Responsibility to Protect," 578-86.

¹¹³ *Ibid.*, 583.

Ultimately, the legal argument for intervention is based within the UN Charter itself. Sterio writes that, "international law, as enshrined in the United Nations Charter, prohibits states from using force against other states except in two situations: pursuant to the Security Council authorization or in self-defense."¹¹⁴ Under these two conditions, military force can be justified. Furthermore, Article 2 of the Charter outlaws intervening in matters within the "domestic jurisdiction of any state," but adds, "this principle shall not prejudice the application of enforcement measures under Chapter VII."¹¹⁵ Chapter VII, Article 39, states that,

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.¹¹⁶

Sterio argues that there is a "persuasive" case to be made that "severe human rights abuses have destabilising repercussions that are not confined to an individual state," and as such "severe human rights abuse [can constitute] a threat to international peace and security."¹¹⁷ Therefore, Article 41 empowers the Security Council to,

Decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, seas, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.¹¹⁸

Article 42 goes further and clearly states that UN actions to maintain peace and security may include military force if necessary;

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.¹¹⁹

The UN Charter has been a legally binding document to all members of the United Nations since its creation. When authorized by the Security Council, humanitarian intervention has a legal

¹¹⁴ Sterio, "Humanitarian Intervention Post Syria: Legitimate and Legal," 111.

¹¹⁵ United Nations, "Chapter I: Purposes and Principles," Charter of the United Nations <http://www.un.org/en/sections/un-charter/chapter-i/index.html>.

¹¹⁶ United Nations, "Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression," Charter of the United Nations, <http://www.un.org/en/sections/un-charter/chapter-vii/index.html>.

¹¹⁷ Newman, "Humanitarian Intervention, Legality and Legitimacy," 104.

¹¹⁸ United Nations, "Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression."

¹¹⁹ *Ibid.*

basis under Chapter VII. Although there are still contrasting interpretations of which articles take precedence, the evolution of global norms continually point to the fact that, in some situations, Chapter VII of the Charter outweighs the primacy of state sovereignty.

The legitimacy of humanitarian intervention also stems from internationally accepted social norms that support intervention on the basis of morality. Universal human rights, which essentially links all humanity together,¹²⁰ is one of these norms. The Universal Declaration of Human Rights was proclaimed by the United Nations General Assembly in Paris in 1948.¹²¹ This declaration, in effect, "challenged the presumption of sovereign state reason," and instead deemed the human person "in collective and private life...to have rights rooted in inalienable dignity and intrinsic worth that existed prior to the state and were independent of anything conferred in its gift."¹²² Consequently, human rights are, in theory, inviolable and shared by all groups of people across the planet. If a population has a government that is not respecting human rights, then it is an injustice against citizens of the earth, not just citizens of Sierra Leone or Sudan. The mass atrocities that the world has seen, if only in the past two decades, have caused a moral outrage in the international community¹²³ and intervention has become more easily justifiable. During the crisis in Rwanda in 1994, the Security Council and the rest of the international community watched as 800,000 Tutsis were murdered over a four month period. The Rwandan crisis generated support for a standing UN military force,¹²⁴ available for quick response to similar crises. It is also a reminder that if United Nations members are committed to human rights and international peace and security, then they must be prepared to validate that commitment through appropriate action and prevention. The UN Secretary General constantly reminds the international community that the promise of 'never again' following the Rwandan genocide needs to be more purposefully upheld.¹²⁵

¹²⁰ John N Clarke, "Ethics and humanitarian intervention," *Global Society* 13(4) (1999): 492.

¹²¹ United Nations, "The Universal Declaration of Human Rights," Universal Declaration of Human Rights, <http://www.un.org/en/universal-declaration-human-rights/>.

¹²² David Mayers, "Humanity in 1948: The Genocide Convention and the Universal Declaration of Human Rights," *Diplomacy & Statecraft* 26(3) (2015): 447.

¹²³ Clarke, "Ethics and Humanitarian Intervention," 492.

¹²⁴ Adam Roberts, "Proposals for UN Standing Forces: A Critical History," in *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945*, ed. Vaughan Lowe et al. (Oxford: Oxford University Press, 2010), 108.

¹²⁵ United Nations General Assembly, "A vital and enduring commitment: implementing the responsibility to protect," Report of the Secretary-General. A/69/981 of the 69th session of the United Nations General Assembly, July 13, 2015.

Terry Nardin, Head of the Political Science Department at the National University of Singapore, argues that the moral imperative for intervention goes back much farther than modern international law and that the “use of force is justified not only in self-defense but also to punish wrongs and protect the innocent.”¹²⁶ He maintains that there is “natural law,”¹²⁷ understood by all humanity, that is binding without written law. “Natural law,” Nardin writes, “is the most important class of universally enforceable laws...understood as comprising precepts that can be known by reason and are binding on all rational beings.”¹²⁸ The basis of a natural law, with respect to humanitarian intervention, rests on the idea of a common morality between people. This common morality prohibits causing harm to one another and promotes actions to avenge or punish wrongdoing. On a global scale, a natural law would allow punitive actions against communities or states that are abusing citizens or permitting wrongs to be done.¹²⁹ Humanitarian intervention “is a response to grave human rights violations, and the most basic human rights are universal moral rights - rights...that rest on the principles of common morality.”¹³⁰ In theory, there is a higher moral responsibility for nations to intervene than that which is authorized by international law. Although natural law is unquestionably broad and does not adequately account for all the complexities of modern international relations, it demonstrates an inherent ‘rightness’ that often exists for decision making.

According to Michael Walzer, a social contract also exists between governments and their citizens. Walzer argues that the right to self-determination and self-governance are void when a government “turns savagely upon its own people.”¹³¹ Walzer questions the basic existence of a legitimate political community under these circumstances.¹³² In the event that this contract between government and citizens is breached by abuse in the form of a humanitarian disaster, a state relinquishes its right to sovereignty and there are therefore no restraints to intervention. Subsequently, the international community must provide external assistance to maintain the strength and survival of the oppressed group.¹³³ A government holds the legitimate authority in a

¹²⁶ Terry Nardin, “The Moral Basis of Humanitarian Intervention,” in *The Morality of War: A Reader*, ed. David Kinsella and Craig L. Carr (Boulder, CO: Lynne Rienner Publishers, 2007), 196.

¹²⁷ *Ibid.*, 197.

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*, 201.

¹³¹ Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977): 101.

¹³² *Ibid.*

¹³³ *Ibid.*

recognized state and also has the right to be sovereign in the international system, but what upholds that authority is responsibility and accountability to a population. Citizens of every country should have the right to live freely without being oppressed, harmed, or killed by their government. If such a violation of humanity occurs then, according to the existing social contract, a government waives its right to sovereignty.

Fernando R. Tesón (2006) outlines eight principles for humanitarian intervention.¹³⁴ He states that humanitarian intervention is necessary and justifiable when undertaken with these ethical and moral standards in mind. According to these principles, governments derive legitimacy from citizens and forfeit their right to sovereignty when they abuse their authority to govern. The principles also state that universal human rights exist and the international community has an obligation to either uphold them or intervene. The principles further include: a just cause for military action, the respect of negative repercussions and the minimization of casualties during an operation, the requirement of a severe level of violence before intervention, the necessity of targets welcoming intervention, and the importance of the legitimacy of intervention in the international arena.¹³⁵ This list addresses some of the main issues involved in arguments both for and against intervention, including the issue of sovereignty, the problem of casualties, and the abuse of power. The Responsibility to Protect doctrine is also based on similar ethical and moral principles. It focuses on the idea of human rights as internationally binding and redefines how humanitarian intervention should be perceived. The main conclusion from Tesón's work is that intervention is a justifiable undertaking, but should address these principles as guidelines. In all, an ethical and moral case can be made for military humanitarian intervention, under the proper authority of the United Nations, in cases where governments are allowing humanitarian atrocities to be committed.

To summarize, there is a strong case to be made that humanitarian intervention is a legal, ethically legitimate, and internationally accepted practice. The R2P doctrine and humanitarian intervention are legal under the UN Charter, although there are contradictory interpretations of sovereignty in Chapters I and VII. Chapter VII states clearly that the Security Council may authorize any use of military force necessary to maintain international peace and security. The evolution of intervention norms has also helped to legitimize humanitarian intervention.

¹³⁴ Fernando R. Tesón, "Eight Principles for Humanitarian Intervention," *Journal of Military Ethics* 5(2) (2006): 93-113.

¹³⁵ *Ibid.*

Humanitarian intervention has been extensively defended as ethically and morally justifiable and it has been widely accepted by the international community and the United Nations. The Responsibility to Protect doctrine was adopted in 2005 and has been reaffirmed by the United Nations in several resolutions over the past decade. As experts have continually confirmed, the Responsibility to Protect doctrine is no longer a debated concept; the difficulties lie in the practical application of humanitarian intervention.

It is essential for the international community to continue debating the theory and practical application of humanitarian intervention, as even legitimate uses of force can have extreme consequences. Furthermore, human rights become more applicable on a universal scale if humanitarian intervention is internationally legitimate. The western liberal conception of human rights may not be universally accepted, but with the adoption of the Responsibility to Protect, the international community has confirmed that humanitarian atrocities are unacceptable. There has been a shift in favour of humanitarian intervention since the end of the Cold War and the R2P doctrine has become a significant part of that change. Humanitarianism and solidarity are deeply entrenched concepts for the United Nations and the foundational principles of the Responsibility to Protect have been almost universally accepted. However, just because a humanitarian intervention may be necessary does not mean that it will be successful. Furthermore, the Security Council is not always the most efficient international actor, military campaigns do not always stop intrastate violence and UN-authorized interventions are not always received by local citizens as legitimate or benevolent. The Responsibility to Protect doctrine has been adopted by the United Nations, but humanitarian interventions remain very complex and unpredictable. Chapter Two will discuss many of the issues still facing humanitarian intervention and the further implementation of the R2P doctrine.

Chapter 2 Opposition Theory and The Constraints of the Contemporary System

The Responsibility to Protect doctrine is valuable as a concept of change for humanitarian intervention but there are still political and logistical challenges which could prevent its further integration as an international norm by the UN. Numerous scholars, politicians, and international actors oppose humanitarian intervention and the basic principles of R2P on a foundational level. Not only is there theoretical opposition to humanitarian intervention, but difficulties are also evident during practical implementation. Some obstacles are situational. National interests and definitional language change depending on the crisis. Other challenges, like the strong Chinese and Russian support for sovereignty, are permanent fixtures of international relations. Many of the difficulties involved in implementing R2P are permanent fixtures of the international system and can only be partially mitigated. However, analyzing these difficulties could attempt to explain the Security Council's authorization of humanitarian interventions and further evaluate the true potential of R2P.

In Opposition to Humanitarian Intervention and R2P

One of the first arguments against intervention is that it violates the sovereignty of nation states, when carried out without the consent of the government in question. The modern global system of cooperating states was essentially founded on the principle of respecting sovereignty, and international relations today still depends on it. The UN General Assembly's 1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States affirms that, "No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State."¹³⁶ Despite updates to this principle, there is still a clear basis within the United Nations that prohibits interference in the affairs of other states. Sovereignty has continuously presented challenges to humanitarian intervention since the introduction of peacekeeping. It is one of the main reasons that peacekeeping was originally created to be a neutral and impartial action with the consent of the governing parties in question.

¹³⁶ David Kinsella and Craig L. Carr, "Intervention," in *The Morality of War: A Reader*, ed. David Kinsella and Craig L. Carr (Boulder, CO: Lynne Rienner Publishers, 2007), 187.

Sovereignty is an international concept that is as essential to global cooperation as it is to the discussion of humanitarian intervention. Mark Amstutz writes that sovereignty is “the most fundamental pillar of international society” and states have a duty to respect the political and territorial integrity of other states.¹³⁷ Several countries that hold important positions in the UN Security Council are very persistent in upholding sovereignty as an inviolable principle, and as such the outside interference in another state’s affairs is an inappropriate action. Because in practice sovereignty is not necessarily inviolable anymore, as documented interventions show, comprehensive agreement on the subject is still difficult to achieve. The acceptance of legitimate intervention and the overstepping of sovereignty, even on humanitarian grounds, can arguably lead to a destabilization of the global system or abuse by world powers.

Along similar lines, John Stuart Mill would argue that the right to self-determination should exist for all nations and people, but inherent in that is the right to self determine without external involvement. Mill advocates that members of a particular political community need to “seek their own freedom, just as the individual must cultivate his own virtue. They cannot be set free, as [the individual] cannot be made virtuous, by any external force.”¹³⁸ For Mill, nations must choose their own fate and either live within the existing parameters or collectively and purposefully change them. Along with the inherent right to self defence comes the inherent law that people must create their own society;¹³⁹ peace and good governance imposed on a population is not peace or good governance at all, rather a false blanket of values that are not engrained. Furthermore, when prescribing to these views, it is not the business of the international community what type of government is operating in any other country or even the extent to which atrocities are occurring there. Based on Mill's conception of international relations, both the sanctity of sovereignty and the right of self-determination should prevent a state from interfering in the affairs of another state.

A further argument against humanitarian intervention assumes that it can make a situation worse and aggravate tensions to a more extreme level. Unintended violence, innocent casualties, and feelings of hatred towards the intervener can be created even with a justifiable cause. After Operation Restore Hope commenced in Somalia in 1992 in response to widespread famine and political anarchy, the UN peacekeeping mission UNOSOM II took over. Authorized by the

¹³⁷ Amstutz, *International Ethics: Concepts, Theories, and Cases in Global Politics*, 152.

¹³⁸ Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 87.

¹³⁹ *Ibid.*

Security Council to consolidate and maintain a secure environment throughout Somalia, UNOSOM II eventually became embroiled in a deadly conflict with local forces under the control of warlord General Mohammad Farrah Aideed.¹⁴⁰ The conflict raged for four months, eventually killing eighteen US soldiers, injuring seventy-eight, and killing or injuring between five hundred and one thousand Somalis.¹⁴¹ Many opponents to intervention point to examples like this and even the occupations of Iraq and Afghanistan, although not humanitarian interventions, to illustrate the dangers of a foreign military presence. Indeed, there is a solid case to be made that western interventions in Middle Eastern and North African countries have only exacerbated political unrest and infused anti-American hatred into much of society there.

A final important argument in opposition to humanitarian intervention, although there are many other moral, ethical, and legal considerations, is that it is very costly in monetary and casualty terms. Any military action, whether or not it is just, has an elevated chance of causing civilian and UN casualties. Additionally, the loss of lives from intervening countries is always controversial for UN member states. Cost-benefit analysis of lives lost does not always appear to benefit a state when the outcome is peace in another part of the world. However, national interest is not a morally unjust concept, as every state has a right to use its resources wisely and as it sees fit. Additionally, peacekeeping and peace enforcement operations are expensive. Although each member state of the United Nations has a responsibility to contribute a certain amount to the organization, there are still extra funds required for interventions. Benjamin A. Valentino reveals that the cost of the US intervention in Somalia was more than \$7 billion,¹⁴² and that is only one small example among many interventions by the United States alone. It is expensive for individual countries to undertake intervention operations. In addition, is the fact that the United Nations Security Council holds the only legitimate power to authorize intervention and there is often a lack of funds and forces to intervene. If the United Nations does not have the capabilities or finances to intervene successfully then many would argue against intervention. Not only is it costly in terms of lives, but it is costly monetarily, and economics is a major factor in the stability of the international system.

¹⁴⁰ Amstutz, *International Ethics: Concepts, Theories, and Cases in Global Politics*, 170.

¹⁴¹ *Ibid*, 171.

¹⁴² Benjamin A. Valentino, "The True Costs of Humanitarian Intervention: The Hard Truth about a Noble Notion," *Foreign Affairs* 90 (2011), 67.

Besides the fact that humanitarian intervention is a highly contested concept, the Responsibility to Protect doctrine has drawn separate criticism for its projected and practiced utility in international affairs. Since the Responsibility to Protect was officially adopted in 2005, practical implementation of its principles, including explicit references to the doctrine as grounds for humanitarian intervention, essentially remains limited to the 2011 intervention in Libya. Despite "violent internal conflicts" in both South Sudan and the Central African Republic in 2013, Spencer Zifcak argues that the United Nations "failed in its sincere but flawed endeavours to stop the criminal violence" and "international crimes continued unabated."¹⁴³ The failure of the Security Council to intervene militarily in humanitarian crises following the Libyan intervention is commonly attributed to "buyer's regret."¹⁴⁴ The BRICS nations (Brazil, Russia, India, China, and South Africa) "perceived the military action [undertaken in Libya] as having exceeded the mandate the Security Council had agreed upon...the BRICS nations have since remained firm in their opposition to military intervention."¹⁴⁵ The ongoing unrest in Syria is also a globally recognized humanitarian crisis which remains unresolved after the adoption of the R2P doctrine and the Libyan intervention. In spite of a death toll of over 300,000 people, and evidence of chemical weapons attacks on suburbs in Damascus, there has yet to be any definitive intervention on behalf of the innocent civilians caught in the conflict.¹⁴⁶ Intervention in Syria would be very challenging because of the numerous warring rebel groups and factions, the fact that all parties involved have been accused of war crimes, and the UN's inability to decide on an appropriate group to support.¹⁴⁷ However, the war in Syria is a terrible humanitarian crisis and the Responsibility to Protect doctrine was created to safeguard the international community from crises. Some would argue that after its adoption,

R2P did not become an effective means of mobilising political will or effective action on a case-by-case basis. Essentially, effective instances of mobilisation relied mostly on the notion of genocide itself as well as on parallels to the cases of Rwanda and Srebrenica, while

¹⁴³ Spencer Zifcak, "What Happened to the International Community? R2P and the Conflicts in South Sudan and the Central African Republic," *Melbourne Journal of International Law* 16(1) (2015): 53.

¹⁴⁴ *Ibid*, 68.

¹⁴⁵ *Ibid*, 68-9.

¹⁴⁶ At the time of writing, neither the UN or the USA had made any verbal commitments to an intervention in Syria, and there is still yet to be a physical intervening force besides Russian and American air strikes against targets accused of terrorism.

¹⁴⁷ BBC News Middle East, "Syria: The story of the conflict," BBC, March 11, 2016, <http://www.bbc.com/news/world-middle-east-26116868>.

the discourse of R2P did little to alleviate the political and practical obstacles to effective implementation of the common intent to protect people from mass atrocities.¹⁴⁸

Much of the disparagement of the normative potential of R2P principles stems from unresolved conflicts and perceived inaction.

Another significant criticism of the Responsibility to Protect doctrine is the fact that the R2P report given to the UN by the International Commission on Intervention and State Sovereignty in 2001 was scaled back considerably before it became the actual doctrine that was adopted in 2005. Several key areas of the original ICISS document were significantly changed because of disagreements in the international community and the biases of members of the Security Council. The initial R2P doctrine stated that:

The responsibility to protect transfers to the international community when the state involved is unable or unwilling to look after its citizens' human rights [and that] military intervention will meet the just cause threshold in circumstances of 'serious and irreparable harm occurring to human beings, or imminently likely to occur' and, in particular, actual or apprehended 'large-scale loss of life' or 'large-scale ethnic cleansing' (ICISS, 2001 *a*: XII).¹⁴⁹

It is clear in the original wording of the doctrine that if a serious humanitarian situation is even just likely to occur, or a state is unwilling to perform its duties, the international community – as represented by the United Nations – is obligated to step in. However, in the doctrine accepted at the UN World Summit, the responsibility to protect citizens only transfers to the UN when “national authorities are *manifestly failing* to protect their populations”¹⁵⁰ and military intervention will meet the just cause threshold only in the more limited circumstances of "genocide, war crimes, ethnic cleansing and crimes against humanity."¹⁵¹ Although semantic changes may not seem substantial, minor differences to policy can have a large influence on its practical implementation. This adjustment of the original R2P draft diminishes the ability of the United Nations to effectively prevent imminent crises under the auspices of R2P and instead encourages a more conservative and circumspect role for the UN.

One additional difference between the original draft of the R2P doctrine and the document adopted by the United Nations, is the conception of the legitimate authority to respond to

¹⁴⁸ Gerrit Kurtz and Philipp Rotmann, "The Evolution of Norms of Protection: Major Powers Debate the Responsibility to Protect," *Global Society* 30(1) (2016): 6.

¹⁴⁹ James Pattison, *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?* (Oxford: Oxford University Press, 2010), 14.

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*

humanitarian crises. The ICISS doctrine asserted that the Security Council is the foremost body responsible for responding to humanitarian emergencies but leaves room for “alternative sources of authority (such as the Uniting for Peace procedure).”¹⁵² In the event that the Security Council is failing in its responsibility to uphold international peace and security, the Uniting for Peace Resolution authorizes the General Assembly to instead make recommendations for the use of armed forces. The original version of the Responsibility to Protect was focused on the urgency of responding to humanitarian crises even when the Security Council was unable to agree upon a course of action. The R2P doctrine that has been officially adopted is more conservative and restricts the capabilities of the UN to intervene. The doctrine still emphasizes responding to crises, but clearly states that “any action is to be collective and to be taken through the Security Council [only].”¹⁵³

R2P has also been condemned for its potential to be abused to further national and geopolitical interests. Kurtz and Rotmann claim, “neither do the existing language [of R2P] and its limited weight exert much pressure on countries to enable effective action, nor does the language of R2P sufficiently shield it from abuse for purposes other than protection.”¹⁵⁴ In her article on atrocity prevention under R2P, Deborah Mayersen argues that the language and principles of the Responsibility to Protect are patronizing and imply that the states in question cannot find ways to resolve their own problems. She believes that the R2P doctrine focuses solely on the need for the international community to respond to humanitarian crises, ignoring the capacity for self-determination of individual states. Mayerson argues that if this condescending mindset continues to empower strong states, it will promote international abuse of the R2P doctrine and the imposition of political will by powerful countries.¹⁵⁵ This critique of the Responsibility to Protect doctrine has also been fuelled by the aftermath of the Libyan intervention. As previously mentioned, the BRICS nations have become increasingly distrustful of interventions and the strategic interests of the West. Following the overthrow of the Libyan government, NATO was accused of abusing its power and using the R2P doctrine as a front to pursue national interests in the region. “There was such consensus when the Security Council,

¹⁵² Pattison, *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?* 14.

¹⁵³ *Ibid.*

¹⁵⁴ Kurtz and Rotmann, “The Evolution of Norms of Protection: Major Powers Debate the Responsibility to Protect,” 8.

¹⁵⁵ Deborah Mayersen, “Rethinking Approaches to Prevention under the Responsibility to Protect,” *Global Responsibility to Protect* 6(4) (2014): 483-507.

specifically invoking R2P, authorized military action in Libya in March 2011, but it fell apart later in the year as the BRICS countries charged that the NATO-led forces had exceeded their civilian protection mandate."¹⁵⁶ The original mandate of the Security Council resolution in Libya only authorized a no-fly zone. However, NATO forces became more motivated by a desire for eventual regime change and further violence continued to tear apart Libya, causing major regret and skepticism by many nations. Preventing further abuse of power by Western nations, in the form of illegitimate intervention, has become a top priority for the BRICS. The Responsibility to Protect doctrine was intended to focus humanitarian intervention on the rights of the suffering over the rights of the international community to intervene, but this has been somewhat forgotten amidst the controversy over the Libyan crisis.

Louise Arbour, former Canadian Supreme Court justice and former president of the International Crisis Group, writes that not only is there a possibility of some states abusing the Responsibility to Protect, but that the whole system of international law, human-rights promotion and intervention is detrimentally stalled. Arbour believes that there is a total disconnect in "the promotion of what [the West] believes are universal values,"¹⁵⁷ and how that is translated to the rest of the world. In fact, she writes that "others don't take [the Western promotion of humanitarian values, including Western advocacy for the R2P doctrine] at face value as being a good-faith pursuit of universal goods."¹⁵⁸ Furthermore, Arbour views the Responsibility to Protect as a failure because it ultimately proved ineffective in preventing a humanitarian disaster in Libya. The creators of the Responsibility to Protect intended to prevent UN indecision during humanitarian crises, but the doctrine's use in Libya has resulted in a stalemate in the Security Council over future humanitarian interventions. "[The imposition of R2P] by the UN in Libya, and the resulting chaos, severely crippled the notion of a legal intervention."¹⁵⁹ Louise Fréchette, deputy secretary-general of the UN from 1998 to 2006, also argues that Western optimism over R2P and humanitarianism is misplaced. She writes,

¹⁵⁶ Evans and Thakur, "Humanitarian Intervention and the Responsibility to Protect," 200.

¹⁵⁷ Doug Saunders, "Why Louise Arbour is thinking twice," *The Globe and Mail*, March 28, 2015, <http://www.theglobeandmail.com/globe-debate/why-louise-arbour-is-thinking-twice/article23667013/>.

¹⁵⁸ *Ibid.*

¹⁵⁹ *Ibid.*

R2P is viewed with considerable suspicion in the developing world. It is seen as a one-way street where rich and powerful countries have the right to come to the rescue of people in the south, but are free, themselves, from foreign intervention in their internal affairs.¹⁶⁰

Although both Arbour and Fréchette support the notion that "international relations should be guided by concerns for the welfare of human beings rather than the interests of states,"¹⁶¹ they are not convinced that the adoption of the R2P doctrine, or the evolution of humanitarian norms, have had a real impact in international relations.

Systemic Constraints

In addition to the obstacles stemming from theoretical criticisms of the Responsibility to Protect, there are certain global norms and established facts about international relations that can interfere with how and when to intervene. As previously examined, sovereignty and non-interference in the affairs of other states is a consuming international issue. Amstutz states that, "sovereignty and non-intervention must be honoured if order is to be maintained in global society."¹⁶² Stability, in this case, depends on all states respecting others' boundaries and following the laws inherent in UN documents and the accepted international order. Russia and China have consistently opposed calls for intervention. For example, China abstained on voting for resolutions to authorize interventions in Haiti and Rwanda in 1994¹⁶³ and Russia called the NATO intervention in Yugoslavia a "major mistake in international relations and a violation of the founding principles of international law."¹⁶⁴ Although neither stopped the Responsibility to Protect from being adopted in 2005, state sovereignty and non-intervention in international relations continue to be defining concepts for both countries.¹⁶⁵

China and Russia are two of the biggest constraints in the international system to the Responsibility to Protect and the concept of humanitarian intervention as a whole. These two powerful states regularly advocate for the importance and inviolability of state sovereignty.

¹⁶⁰ Louise Fréchette, "Does International Intervention Have a Future?" *The Globe and Mail*, April 20, 2015, <http://www.theglobeandmail.com/opinion/does-international-intervention-have-a-future/article24027274/>.

¹⁶¹ *Ibid.*

¹⁶² Amstutz, *International Ethics*, 156.

¹⁶³ Jonathan E. Davis, "From Ideology to Pragmatism: China's Position on Humanitarian Intervention in the Post-Cold War Era," *Vanderbilt Journal of Transitional Law* 44(2) (2011): 234.

¹⁶⁴ Gary J. Bass, "Humanitarian Intervention in the 21st Century," *Tocqueville Review* 30(1) (2009): 21.

¹⁶⁵ Aglaya Snetkov and Marc Lanteigne, "The Loud Dissenter and its Cautious Partner" - Russia, China, global governance and humanitarian intervention," *International Relations of the Asia-Pacific* 15(1) (2015): 115.

Russian and Chinese national interests are often at odds with the rest of the Security Council on important issues. This western and non-western divide has been carried over from the Cold War, grew throughout the early 2000s, and was strengthened during the American 'War on Terror.'¹⁶⁶ Several other countries with rotating membership in the Security Council and members of the UN General Assembly also regularly support non-intervention. Most recently, Brazil, India, and Germany joined in abstaining from approving the intervention in Libya. These countries abstained from the resolution because of its indeterminate language and perceived low chance of success,¹⁶⁷ but also because of an underlying mistrust of R2P principles which could severely undermine sovereignty in developing countries.¹⁶⁸ Every member of the United Nations has national interests which can often dilute impartial decision making, even in situations of extreme humanitarian need. Of the UN members that oppose R2P and the intervention in Libya, Russia and China have the loudest objections and the greatest power to affect decision making because of their status as permanent members of the Security Council. The divide over whether and under what circumstances there is a right to intervene was addressed by the ICISS¹⁶⁹ during its discussion of humanitarian intervention. However, legitimate interventions remain a very contentious issue.

The Russian opposition to humanitarian intervention has been at times both defensible and contradictory. Both China and Russia are well known to oppose policies which might legitimize outside interference into their domestic affairs. Reasons for resistance to interventions often include innate fear of an inability to control the use of force by other member states and the objection to anything not well defined, documented, or explicitly legitimized by the UN Charter.¹⁷⁰ In terms of the Responsibility to Protect, Russia has taken a clear stance that adopting a doctrine like the Responsibility to Protect could potentially result in an overstepping of boundaries and a misuse of force. Although Russia itself has referenced the Responsibility to

¹⁶⁶ The 'War on Terror' is considered to have begun during the Presidency of George W. Bush following the September 11 terrorist attacks in 2001, as Bush declared a global war on terrorism and began American military campaigns in the Middle East. See Encyclopaedia Britannica Profiles: The American Presidency, "George W. Bush: Declaration of War on Terrorism," Encyclopaedia Britannica, 2014, <http://www.britannica.com/presidents/article-9398253>.

¹⁶⁷ Tim Dunne and Jess Gifkins, "Libya and the State of Intervention," *Australian Journal of International Affairs* 65 (2011): 523.

¹⁶⁸ See Oliver Stuenkel, "The BRICS and the Future of R2P," 2014.

¹⁶⁹ Andrew Cottey, "Beyond Humanitarian Intervention: The New Politics of Peacekeeping and Intervention," *Contemporary Politics* 14(4) (2008): 436.

¹⁷⁰ Andrei Komarov, "Russia and China Criticize Humanitarian Intervention," *The Current Digest of the Russian Press* 52(11) (2000): 21.

Protect as grounds for intervention in Georgia in 2008,¹⁷¹ a Russian delegate to the General Assembly warned against “taking rash and hasty steps to apply [the idea of R2P] arbitrarily to specific countries and against interpreting it too broadly...[which would be] counterproductive, but also dangerous in terms of harnessing international efforts to promote international peace and security.”¹⁷² In a meeting at the UN World Summit in 2005, where R2P was officially adopted as part of a report by the Secretary General, Russia reiterated its concern and distaste for change in this area. Russian delegates denied that the Responsibility to Protect had widespread international support and stated rigidly that any decisions on intervention, even in cases of massive human rights violations, need to be authorized by the Security Council, establish that a relevant threat to the peace has occurred, and be based on reliable information.¹⁷³ The use of force must never be anything other than a last resort.¹⁷⁴

China also stands beside Russia as one of the biggest constraints on the implementation of the R2P doctrine for the future. Like Russia's, the Chinese government disagrees with the principles of the Responsibility to Protect and humanitarian intervention on a theoretical level, valuing sovereignty, non-intervention, and non-interference¹⁷⁵ above all else. Despite its ever growing interdependence and involvement in the global community, China is still vigilantly cautious about relinquishing too much authority and showing any subservience to the international community, preferring instead to maintain historical standards of practice. Although China officially accepted the need for the Responsibility to Protect in 2005, the Chinese made a point of insisting on keeping the scope of situations necessitating intervention very narrow. As legitimate causes for intervention, under Security Council authority, China only accepts four specific cases of war crimes, crimes against humanity, genocide, and ethnic cleansing.¹⁷⁶ These cases correspond with the Responsibility to Protect principles, but China still holds the belief that intervention is bad, counterproductive, and dangerous,¹⁷⁷ and that the UN Charter, as it was written at the creation of the United Nations, has no room for updated

¹⁷¹ David Berman and Christopher Michaelsen, “Intervention in Libya: Another Nail in the Coffin for the Responsibility to Protect,” *International Community Law Review* 14(4) (2012): 346.

¹⁷² *Ibid.*, 348.

¹⁷³ United Nations, “87th Plenary Meeting of the General Assembly,” (speeches presented at United Nations General Assembly meeting A/59/PV.87, New York, United States of America, April, 2005).

¹⁷⁴ *Ibid.*

¹⁷⁵ Gregory Chin and Ramesh Thakur, “Will China Change the Rules of Global Order?” *The Washington Quarterly* 33(4) (2010): 128.

¹⁷⁶ *Ibid.*, 130.

¹⁷⁷ *Ibid.*

interpretations of policies that will encourage “wrongful interventions.”¹⁷⁸ These constraints on the further evolution of humanitarian intervention and the integration of R2P are not unfamiliar, as there is rarely ever unanimous consensus on an important issue.

The United Nations is a large, multi-faceted, and very complex organization and as such has high operational costs. The organization is made up of 193 member states and has six main organs (the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice, and the UN Secretariat) which are further subdivided into subsidiary organs, funds and programmes, functional and regional commissions, specialized agencies, departments and offices, and other individual organizations and entities. These bodies are tasked with maintaining international peace and security, promoting sustainable development, protecting human rights, delivering humanitarian aid, and upholding international law for the entire global community. The UN's structural apparatus is complex and the practical application of all its operations combined with reaching consensus in the Security Council and passing a resolution can be very difficult. Amassing sufficient funds and personnel also puts an extra strain on UN operations. The UN high commissioner for refugees admits that some global problems today are surpassing the current capabilities of the UN. "The [refugee] budgets cannot be compared with the growth in need. Our income in 2015 will be around 10% less than in 2014. The global humanitarian community is not broken...But we are financially broke."¹⁷⁹ This lack of funding is widespread across many agencies at the United Nations. In humanitarian crisis zones, violence often continues unabated when there is not enough funding to support an intervention.¹⁸⁰ Although the UN has updated its traditionally neutral peacekeeping strategies to properly address current global security concerns, the UN budget may not be able to keep up with the growing need for humanitarian operations.

Not only are funds not always readily available, but the complicated logistics of undertaking a humanitarian intervention can also be divisive and debilitating. The challenges of determining when to intervene, how to intervene, and who will intervene are detrimental to quick and efficient decision-making. As previously stated, according to the adopted principles of the R2P doctrine, for a humanitarian crisis to warrant UN intervention, a government must be

¹⁷⁸ Chin and Thakur, “Will China Change the Rules of Global Order?” 130.

¹⁷⁹ Harriet Grant, "UN agencies 'broke and failing' in face of ever-growing refugee crisis," *The Guardian*, September 6, 2015, <http://www.theguardian.com/world/2015/sep/06/refugee-crisis-un-agencies-broke-failing>.

¹⁸⁰ For further details on the difficulties of peacekeeping operations in the Democratic Republic of Congo, See: Cottey, “Beyond Humanitarian Intervention,” 440.

'manifestly failing' to protect its citizens and it must fall under the categories of genocide, war crimes, ethnic cleansing and crimes against humanity. However, the characteristics which deem a crisis severe enough for a humanitarian intervention are still highly debated. As will be discussed further in Chapter Three, unwillingness to intervene during the crisis in Darfur was fuelled in part by the absence of the use of the term 'genocide'. Adrian Gallagher writes that, "little progress has been made over the last 10 years to clarify the ambiguity which surrounds the [R2P] requirement of a 'manifest failing'...this has fuelled recent concerns that pro-interventionist states may manipulate the ambiguity."¹⁸¹

Deciding on the proper military strategy also poses a challenge to implementing humanitarian interventions. Civil wars and internal conflicts can be complicated, with a variety of agents involved, and it is not always clear which strategy will be the most successful. In addition to political complications, the decision of whether or not to establish a no-fly in Syria was stalling UN action there after the conflict began in 2011.¹⁸² Lastly, a humanitarian intervention cannot be successful without a properly trained military personnel. The UN currently does not have a standing military force for interventions, inhibiting quick and effective action during humanitarian crises. Member countries are all obligated to provide troops to carry out global operations. Sometimes countries are unwilling to provide personnel from their own armies for UN operations, and often the most developed countries with the largest military budgets volunteer the least number of personnel.¹⁸³ This gap in contributions is troubling and continues to be a challenge for the UN and future humanitarian interventions.

There is also an ongoing problem with the legitimacy of the UN and this affects through which channels nations are willing to go to have their needs met. The UN "is the only truly global institution of a general purpose which approximates universality," and is "the closest we are able to get to an authentic voice of humanity."¹⁸⁴ In reality, there are sometimes considerable

¹⁸¹ Adrian Gallagher, "What constitutes a 'Manifest Failing'? Ambiguous and inconsistent terminology and the Responsibility to Protect," *International Relations* 28(4) (2014): 429.

¹⁸² Scott Wilson, "What are the pros and cons of intervention in Syria for Obama administration?" *The Washington Post*, April 25, 2013, https://www.washingtonpost.com/politics/what-are-the-pros-and-cons-of-intervention-in-syria-for-obama-administration/2013/04/25/0ad5694a-ade9-11e2-8bf6-e70cb6ae066e_story.html.

¹⁸³ Ashley Kirk, "UN peacekeepers: How many personnel does each country contribute?" *The Telegraph*, September 29, 2015, <http://www.telegraph.co.uk/news/worldnews/asia/china/11898603/UN-peacekeepers-How-many-personnel-does-each-country-contribute.html>.

¹⁸⁴ Ramesh Thakur, "Law, Legitimacy and United Nations," *Melbourne Journal of International Law* 11(1) (2010): 4.

gaps and inconsistencies between the principles and practices of the UN.¹⁸⁵ Many believe that the Security Council is grossly unrepresentative or that it is fundamentally corrupt as it will always cater to the needs of the five permanent members, despite the fact that there is rotating membership that includes all other nations in the General Assembly. Ian Hurd argues that "the mismatch between the existing membership and the increasingly diverse population of states" stands to "delegitimize" the Council.¹⁸⁶ Hurd states that,

The Council's legitimacy is in peril unless the body can be reformed to account for recent changes in world politics. This consensus is driven by a number of developments: geopolitical changes (in the distribution of military and economic power), systemic changes after decolonization (which multiplied the number of UN members), and normative changes (in the value given to diversity, equity, and representation).¹⁸⁷

Ramesh Thakur identifies the problem clearly when he writes that "as legitimacy erodes, capacity to regulate behaviour of member states diminishes."¹⁸⁸ This can be very dangerous, as it can affect the capacity and ability of the Security Council to monitor security, and it could possibly result in states looking for other means to maintain their version of international order. Bypassing the United Nations could become equally as damaging to international peace and security as human rights violations.¹⁸⁹

The Responsibility to Protect is valuable in part because its principles offer defined parameters for when the international community should commit to a humanitarian intervention. Yet the obstacles and constraints, both to intervention generally and to the implementation of R2P, continue to pose a great challenge to change in the international arena. There is, of course, merit to the slow development of norms. There are a great many minds that need to agree and real change takes time to prove worthy of permanence in an internationally governing institution. However, while the UN was formulating a consensus on R2P, and even after its adoption of it in 2005, hundreds of thousands of people in Darfur were being massacred by government troops and government-sponsored militia groups. The Security Council refused to label the crisis as genocide, and was very slow to respond with any intervention force. As the case studies in Chapter Three will show, there are a great many factors involved in UN decision making. As discussed earlier, competing geopolitical interests, the complexities of domestic governing

¹⁸⁵ Thakur, "Law, Legitimacy and United Nations," 4.

¹⁸⁶ Ian Hurd, "Myths of Membership: The Politics of Legitimation in UN Security Council Reform," *Global Governance* 14(2) (2008): 199.

¹⁸⁷ *Ibid.*

¹⁸⁸ Ramesh Thakur, "United Nations Security Council Reform," *African Security Review* 13(3) (2004): 71.

¹⁸⁹ Abiew, "Humanitarian Intervention and the Responsibility to Protect," 98.

structures, and the often insurmountable costs of global military operations are only some of the difficulties involved in humanitarian interventions. The Security Council holds the power to respond to disasters in any fashion that it agrees upon, but often withholds that authority. Because of this, a constant struggle exists between new norms and old strategies.

Chapter 3 Practical Implementation: The Case Studies

The UN's practice of humanitarian intervention is constantly under scrutiny from the international community. It has been very difficult for the Security Council to find definitive answers to the questions of where, when, and how troops should be authorized to protect. The Security Council's decision making can be very inconsistent, demonstrated by the contrasting responses to the crises in Darfur and Libya. Security Council indecision in Darfur will be contrasted against the quick action in Libya. The case studies of Darfur and Libya will illustrate the challenges of humanitarian intervention and the permanent realities of the international system impeding implementation of the R2P principles. Every crisis situation is different, requiring consideration of cultural, political, economic, and moral factors. Examining these components can help to explain why, where, and when interventions are authorized to take place. The case studies will also provide insight into how the Responsibility to Protect can overcome constraints to humanitarian intervention.

Darfur

The case of Darfur exemplifies the risks of a late or hesitant intervention strategy by the United Nations. It is an example of the difficulties associated with intervention and the problems that the authors of R2P sought to mitigate. The Darfur region is situated adjacent to the nation of Chad, on the north western border of Sudan and has an arid desert in the north and a rich savannah with abundant rainfall in the south.¹⁹⁰ The multiple indigenous groups that occupy the region have co-existed for centuries and although there has been plenty of ethnic commingling and intermarriage, there are two primary ethnic and linguistic groups involved in the most current conflict. A history of competition between the primarily Arab-speaking nomadic pastoralists and the non-Arab speaking African sedentary farming communities has characterized Darfur for decades. The two groups are involved in a complex rivalry over water resources in the largely dry and arid region of Sudan and reoccurring drought, desertification, and shrinking

¹⁹⁰ Ahmad Sikainga, "The World's Worst Humanitarian Crisis: Understanding the Darfur Conflict," *Origins: Current Events in Historical Perspective* 2(5) (2009), <http://origins.osu.edu/article/worlds-worst-humanitarian-crisis-understanding-darfur-conflict/page/0/0>.

resources created widespread famine during the 1980s and 90s.¹⁹¹ Furthermore, many farmers and pastoralists were forced to look elsewhere for more arable land, exacerbating long-held disputes over land ownership. A United Nations Environment Programme study concluded that although the "immediate" cause of the Darfur conflict was the regional rebellion, its "true genesis...pre-dates 2003 and is to be found in failing rains and creeping desertification."¹⁹²

A "chronic problem" of bad governance, including weak institutions and political corruption, has existed in Sudan since it declared independence from British colonial rule by a parliamentary vote in 1956.¹⁹³ Sudan's bad governance has been characterized by failed attempts at democracy, political instability, corruption and favoritism, low standards of living, civil wars, and extensive human rights violations. The current dictatorship under Omar al-Bashir only began when Bashir was appointed President in 1993 following a military coup in 1989. Furthermore, the historical competition for resources between the two ethnic groups has been continually exacerbated by the government of Sudan and the Arabic Sudanese elites who have "systematically marginalized the non-Arab and non-Muslim groups in the country's peripheries."¹⁹⁴ The government has been primarily dominated by Arab-speaking elites throughout the past several decades. Following the drought and famine in the 1980s, Arab pastoralists and African farmers disagreed over water and land ownership. Farmers started closing off precious access to traditional lands from the herding pastoralists, who began attacking farming communities out of desperation.¹⁹⁵ Non-Arab farmers began accusing the government of allowing the famine to happen and Arab pastoralists believed farmers were restricting access to land vindictively. This led to an Arab supremacist movement. The Sadiq El Mahdi government, which was formed as a coalition and ruled from 1986-89, began arming Arab militias to carry out attacks against African communities who opposed the government and restricted land access.¹⁹⁶ President Omar al-Bashir continued to favour Arab communities and sponsor militias when he began his dictatorship in 1989.

¹⁹¹ Sikainga, "The World's Worst Humanitarian Crisis': Understanding the Darfur Conflict."

¹⁹² Julian Borger, "Darfur conflict heralds era of wars triggered by climate change, UN report warns," *The Guardian*, June 23, 2007, <http://www.theguardian.com/environment/2007/jun/23/sudan.climatechange>.

¹⁹³ Sikainga, "The World's Worst Humanitarian Crisis': Understanding the Darfur Conflict."

¹⁹⁴ *Ibid.*

¹⁹⁵ Jewish World Watch, "Darfur Genocide."

¹⁹⁶ Kithure Kindiki, "International Law on Trial: The Darfur Crisis and the Responsibility to Protect," *International Community Law Review* 9 (2007): 447.

In 2003, ethnic clashes broke out over land resources and the government's sponsorship of Arab militia attacks. Early in the year, African militants had organized into the Sudanese Liberation Army (SLA) and the Justice and Equality Movement (JEM) and began carrying out attacks on police outposts and government buildings in Darfur, in opposition to President Bashir's abuse and discrimination.¹⁹⁷ In April, protesting against years of mistreatment, government favoritism, and corruption, African militants attacked the airport of Fasher, in the capital of North Darfur.¹⁹⁸ The rebels destroyed several planes and helicopter gunships and killed over 100 soldiers before withdrawing from the area.¹⁹⁹ In response to this attack, President Bashir began a brutal counterinsurgency campaign against all African rebels and ethnic African farmers, which spiralled into civilian massacres and a civil war lasting over ten years. The counterinsurgency was led by ethnically Arab government-sponsored Janjaweed militia groups, coordinated with government air attacks. The Sudanese government supplied the Janjaweed with arms and ammunition. The Janjaweed carried out ground attacks on villages and rebel strongholds by killing, raping, and kidnapping both civilians and militants. The massacres were condemned by the UN and independent humanitarian groups as crimes against humanity.²⁰⁰ According to reports from Human Rights Watch and Amnesty International, the Janjaweed militias engaged in an "ethnically-targeted campaign of mass killings, forced displacement, destruction of property and the use of rape as a weapon of war."²⁰¹ The Janjaweed practiced a scorched earth policy on countless villages in addition to the rape, pillaging, and murder of up to approximately 400,000 civilians in the Darfur region. Of the Darfur civilians and rebels who have not been killed through violence, disease, or starvation, approximately 2.7 million remain in Sudan as internally displaced persons and 250,000 have fled to Chad and the Central African Republic as refugees. The ethnic cleansing and violent struggles for power in this region have dragged on for over ten years.

¹⁹⁷ Kindiki, "International Law on Trial: The Darfur Crisis and the Responsibility to Protect," 447.

¹⁹⁸ James Copnall, "Darfur conflict: Sudan's bloody stalemate," *BBC*, April 29, 2013, <http://www.bbc.com/news/world-africa-22336600>.

¹⁹⁹ Scott Anderson, "How Did Darfur Happen?" *The New York Times Magazine*, October 17, 2004, http://www.nytimes.com/2004/10/17/magazine/how-did-darfur-happen.html?_r=0.

²⁰⁰ International Coalition for the Responsibility to Protect, "The Crisis in Darfur," International Coalition for the Responsibility to Protect, accessed April 23, 2016, <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-darfur>.

²⁰¹ *Ibid.*

The United Nations' response to the Darfur conflict was infamously muted and uninspired, despite its knowledge of the violence as early as 2004. Although numerous UN resolutions were passed throughout the decade, the overall UN strategy was overly cautious, having little success at ending the violence. The UN's response has been described as delayed, "woefully inadequate," and ill-conceived.²⁰² Sharath Srinivasan voiced concerns that the international community dithered over Darfur and that members of the Security Council participated in a "conspiracy not to see,"²⁰³ in which they purposefully ignored the violence in Darfur to avoid having to find a solution. As discussed in Chapter Two, the cost of major military interventions is substantial and can heavily affect UN decision making. However, there often also needs to be some level of national or strategic interests at play to mobilize political will for interventions. The Security Council released its first press statement in April 2004, expressing deep concern and calling on all parties involved to address the humanitarian crisis and stop all violence.²⁰⁴ The Security Council then met in July and September of 2004 to discuss the crisis and during these meetings it was accepted by essentially every state that the unfolding crisis in Darfur was "a legitimate matter of international concern."²⁰⁵ In recognition of the Responsibility to Protect doctrine, many states acknowledged that it was the responsibility of the Sudanese government to protect its people.²⁰⁶ However, there was disagreement over whether this meant the international community should intervene because the government was failing to uphold its responsibility to protect, or the Sudanese needed to resolve the violence internally, free from UN involvement. The Philippines and the United Kingdom both declared in a Security Council meeting that the international community must intervene, while Pakistan and China maintained that intervention in this instance would impinge on Sudan's sovereignty.²⁰⁷

Several resolutions were passed by the Security Council in 2004,²⁰⁸ calling for a ceasefire, disarming of the militias, and missions of inquiry, but little progress in quelling violence was

²⁰² Sharath Srinivasan, "Negotiating violence: Sudan's peacemakers and the war in Darfur," *African Affairs*, 113(45) (2014): 26.

²⁰³ *Ibid.*

²⁰⁴ United Nations Security Council, "Press Statement on Darfur, Sudan, by the Security Council President," United Nations Security Council Press Release, April 2, 2004, <http://www.un.org/press/en/2004/sc8050.doc.htm>.

²⁰⁵ Luke Glanville, "Darfur and the responsibilities of sovereignty," *International Journal of Human Rights*, 15(3) (2011): 467.

²⁰⁶ *Ibid.*

²⁰⁷ *Ibid.*

²⁰⁸ John Prendergast and David Sullivan, "Irresolution: The U.N. Security Council on Darfur," Enough Project (2008), <http://www.enoughproject.org/publications/irresolution-un-security-council-darfur>.

made. The UN resolutions were ignored by both the government and rebel forces, and attacks from both sides continued. A ceasefire between government authorities and rebel groups was brokered by neighbouring country Chad in September of 2003 but it broke down very quickly. A long and disappointing pattern of ineffectual strategies and unenforceable declarations followed this initial attempt at peace. Calls for ceasefires were continually ignored and the UN was unable to enforce compliance without a significant armed force. The Council's first resolution on Darfur was 1556, adopted July 30, 2004. The UNSC did not authorize a military intervention, but instead resolved to send international monitors to Darfur and declared an arms embargo on all non-governmental entities. Resolution 1556 mandated that all states prevent non-government entities operating in Darfur from acquiring military equipment through all sources, including the Sudanese government. The resolution further condemned the violence and demanded the Sudanese government take all appropriate measures to stop it. African Union forces were authorized to protect the international monitors, but according to Luke Glanville, they were "slowly deployed, weakly mandated, and largely ineffective."²⁰⁹

Another resolution, 1564, was passed in September 2004 and increased the size of the AU-led mission to monitor the demanded ceasefire. Resolution 1564 expressed grave concerns about the lack of progress in disarming the Janjaweed and encouraged all member states to support the African Union in its increased monitoring campaign, but the Council still declared that it would only consider, and not yet commit, to taking additional measures.²¹⁰ Despite the UN Security Council consensus that a monitoring mission and declarations of ceasefire were the appropriate courses of action, the Council lacked the will and capability of implementing the 2004 resolutions. According to Prendergast and Sullivan, the resolutions "lacked a robust enforcement mechanism and [were] disregarded on the ground as the situation deteriorated."²¹¹ They argue that subsequent resolutions on Darfur "followed this depressing pattern of inefficacy,"²¹² proving unable to command the adherence of the warring parties. Security Council Resolution 1574, passed in November of 2004, increased the African mission to 3,320 personnel and reiterated the importance of a ceasefire in Darfur. However, peace in Darfur was emphasized as an important part of the greater goal of finding a peace agreement to end the

²⁰⁹ Glanville, "Darfur and the responsibilities of sovereignty," 468.

²¹⁰ *Ibid.*

²¹¹ Prendergast and Sullivan, "Irresolution: The U.N. Security Council on Darfur."

²¹² *Ibid.*

north-south civil war in Sudan. Ending the civil war in Sudan occupied a great deal of the UN Security Council's attention during the crisis in Darfur. The proximity in geography and time to other large-scale UN operations is a third factor of decision making to be discussed in Chapter Four.

Resolutions in early 2005 did little more than extend the mandated time spans of current missions established to monitor the national civil war. Throughout the next few years, the United Nations Security Council continued to devise unsuccessful strategies for quelling the violence in Darfur. The Council's hesitancy over an armed intervention continued and it was unable to get either side to adhere to a ceasefire. Resolution 1590 reiterated concerns of continued violations of ceasefires and the failure of the government to disarm the Janjaweed, "strongly condemning all violations of human rights and international humanitarian law in the Darfur region."²¹³ Resolution 1590 stated that there "can be no military solution to the conflict in Darfur,"²¹⁴ calling upon both the rebels and the government to work to negotiate a peace agreement. It also created the 10,000 strong United Nations Mission in Sudan (UNMIS) to work closely with the current African Union Mission in Sudan (AMIS) in monitoring adherence to ceasefire protocols. UNMIS was further tasked with protecting UN personnel and civilians in immediate danger, but continued to be ineffective. Arab militias continued burning villages, killing civilians, attacking refugee camps, and targeting international aid workers. In September 2005, the United Nations chief aid coordinator stated that violence in Darfur was so serious that UN relief efforts might be forced to end at any time.²¹⁵

Resolution 1591 established a committee of Security Council members to oversee adherence to ceasefires and previous UN resolutions. Resolution 1593, passed in March 2005, referred the Darfur conflict to the International Criminal Court. The referral to the ICC came in the wake of the report of the International Commission of Inquiry, which documented the many violations of international humanitarian law and human rights law occurring in Darfur.²¹⁶ The Security Council concluded, based on the report, that the conflict in Sudan continued to

²¹³ United Nations Security Council, "Resolution 1590 (2005)," Resolution Adopted by the Security Council at its 5151st meeting on 24 March 2005, [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1590\(2005\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1590(2005)).

²¹⁴ *Ibid.*

²¹⁵ BBC News Africa, "Violence threat to Darfur relief," *BBC*, September 30, 2005, <http://news.bbc.co.uk/2/hi/africa/4289924.stm>.

²¹⁶ United Nations Security Council, "Resolution 1593 (2005)," resolution adopted by the Security Council at its 5158th meeting on 31 March 2005, [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1593\(2005\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1593(2005)).

constitute a "threat to international peace and security,"²¹⁷ and its resolution required international legal action. Resolutions 1590, 1591, and 1593 arguably authorized more significant action to end the violence in Darfur than their predecessors, but were just as ineffective and received less support from the Security Council. Neither 1591 nor 1593 passed unanimously, an early indicator that the implementation of both would be weak and incomplete.²¹⁸ Resolution 1591 had three abstentions (Algeria, China, and Russia) and Algeria, Brazil, China, and the United States abstained from voting for Resolution 1593. The message to Khartoum eventually became that "the Council's follow-through would be, at best, inconsistent,"²¹⁹ and that there would be no punishment of humanitarian crimes.

A peace agreement was brokered by the African Union between one faction of the SLA and the government in Abuja, Nigeria, in May 2006, but this quickly fell through.²²⁰ A temporary regional government in Darfur was to be set up and both the rebel factions and government militias were to be disarmed and disbanded. The efforts of the President of Nigeria in leading the Inter-Sudanese Peace Talks and mediating the Darfur Peace Agreement were commended in Security Council Resolution 1679 and later in Resolution 1706 in August 2006. However, the peace envisioned in the 2006 agreement was never realized because neither party trusted the process to create real peace. UNMIS was also strengthened in Resolution 1706 by up to 17,300 military personnel to oversee the implementation of the Darfur Peace Agreement. In similar fashion to the previous several years, President al-Bashir continued with his blatant non-compliance with UN resolutions. Al-Bashir had previously agreed to allow UN peacekeeping troops to enter Sudan to monitor ceasefires. He later abandoned this pledge and declared that 'there will not be any international military intervention in Darfur as long as I am in power.'²²¹ Without approval from the Sudanese government for a UN presence, the political will of the United Nations to enforce its resolutions was considerably lessened.

The consent of the governments of countries that may require a humanitarian intervention is another factor in UN decision making to be discussed in Chapter Four. In October 2006, the Council once again admitted that its resolutions for peace were being ignored and it expressed in Resolution 1714 "grave concern over the continued deterioration of the humanitarian situation in

²¹⁷ United Nations Security Council, "Resolution 1593 (2005)."

²¹⁸ Prendergast and Sullivan, "Irresolution: The U.N. Security Council on Darfur."

²¹⁹ *Ibid.*

²²⁰ Copnall, "Darfur conflict: Sudan's bloody stalemate."

²²¹ Glanville, "Darfur and the responsibilities of sovereignty," 471.

Darfur."²²² A later Resolution in July 2007, Resolution 1769, mandated that a UN/AU hybrid force (UNAMID) of approximately 20,000 military personnel, would take over UN operations in the region, including monitoring the implementation of the Darfur Peace Agreement. Resolution 1769 also mandated that the UNAMID forces would include UN Heavy and Light Support Packages but full deployment of UNAMID was not expected until years later.²²³ President al-Bashir did not consent to the full deployment of UNAMID until July 2008 and it was not until that year that the UN added a full force of armed troops, including air support under Resolution 1828, to join the ineffective AU forces already present. Unfortunately, the hybrid forces once again struggled to quell the ongoing violence, and humanitarian atrocities continued to occur over the next several years.

The UN committee observing the peace process in Darfur released its first report in January of 2006 detailing human rights abuses in Darfur but it was not until after the deployment of UNAMID forces in 2008 that the Security Council began to place blame on President al-Bashir for fuelling the violence in Darfur. The committee report detailed "massive violations of the arms embargo...multiple instances of breaches to the ban on offensive military flights, and...identified a list of 17 individuals impeding the peace process,"²²⁴ but the Security Council continuously failed to hold the Government of Sudan accountable for humanitarian atrocities. Although the situation in Darfur was not initially described as genocide, President Omar al-Bashir was indicted by the ICC in 2009 for "genocide, war crimes and crimes against humanity allegedly committed."²²⁵ President al-Bashir has been largely ignored by the international community and has faced no prosecution despite his indictment in 2009 and further warrants for arrest in 2010.²²⁶ The language and terminology associated with a crisis often dictates in what capacity the international community will respond, and the actions of the Sudanese government were not viewed as genocide until years after the conflict in Darfur began. Language is another factor in UN decision making to be discussed in Chapter Four. In May 2011, the Doha Document for Peace in Darfur was signed in Qatar by the government and several rebel factions.

²²² United Nations Security Council, "Resolution 1714(2006)," Resolution Adopted by the Security Council at its 5545th meeting, on 6 October 2006, [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1714\(2006\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1714(2006)).

²²³ Prendergast and Sullivan, "Irresolution: The U.N. Security Council on Darfur."

²²⁴ *Ibid.*

²²⁵ Copnall, "Darfur conflict: Sudan's bloody stalemate."

²²⁶ *Ibid.*

The Doha Document is the most recent attempt at peace and reconciliation in the region, but violent clashes continue.

As of 2015, ten years after the UN historically referred Darfur to the ICC, the conflict has continued. There are still five unresolved cases at the ICC that are related to Darfur, and four main suspects at large subject to outstanding arrest warrants.²²⁷ Most of the suspects also are still in high positions within the Government of Sudan, where they continue to carry out humanitarian atrocities.²²⁸ The government campaign under President al-Bashir against the African Darfurians has continued with vengeance. The Janjaweed has been "reincarnated as the Rapid Support Force (RSF)," with a renewed commitment to scorched earth campaigns and "ground attacks coordinated with aerial bombardment by the Sudanese air force."²²⁹ In the wake of numerous violations of human rights and countless reports of crimes against humanity, the outgoing prosecutor at the International Criminal Court has expressed extreme concern for the lack of progress and inability to adapt new strategies. The prosecutor, Luis Moreno-Ocampo, urges much tougher action with respect to crimes in Darfur, including possibly seizing individuals with open warrants inside the borders of Sudan. The chief prosecutor said in 2012, "When you review the situation of the last seven years, it's time to do something new in Darfur. Nothing has worked."²³⁰

Libya

In contrast to the international response to the war in Darfur, the UN's action in Libya was swift and definitive. The factors which prevented a major military intervention in Darfur did not present the same obstacles during the Libyan crisis. The author will argue in Chapter Four that the initial intervention is a legitimate use of the principles of R2P, but there are unforeseen

²²⁷ Mariana Rodriguez Pareja, "UNSC: Darfur's Referral Turns 10 Years," *The World Post*, September 3, 2015, http://www.huffingtonpost.com/mariana-rodriguez-pareja/unsc-darfurs-referral-tur_b_6824062.html.

²²⁸ *Ibid.*

²²⁹ Ahmed H. Adam, "Why is the world blind to the fresh threat of genocide in Darfur?" *The Guardian*, January 16, 2015, <http://www.theguardian.com/world/2015/jan/16/why-is-the-world-blind-to-the-fresh-threat-of-genocide-in-darfur>.

²³⁰ Rick Gladstone, "Darfur Crimes Prosecutor Urges Tougher Action Against Sudan President," *The New York Times*, June 5, 2012, <http://www.nytimes.com/2012/06/06/world/africa/darfur-war-crimes-prosecutor-urges-action-against-omar-al-bashir.html>.

ramifications that have come from the UN-authorized mission. The Libyan case study will demonstrate further the complexity of the humanitarian intervention issue.

Before violence erupted in Libya in 2011, the 'Arab Spring' had been sweeping through the Middle East and North Africa, spurring rebellious populations to stand up against dictatorships. Pro-democratic movements emerged in Tunisia, Egypt, Yemen, Bahrain, Syria, Morocco, and Jordan. Although the movement had domestic origins in "unfulfilled socio-economic demands,"²³¹ for many, the Arab Spring is an indicator of the development of more liberal international norms, including the role of the Responsibility to Protect, in previously undemocratic non-liberal areas. Christian Henderson argues in the *Liverpool Law Review* that aspects of state sovereignty have been challenged throughout the Arab Spring, in large part due to the human rights atrocities occurring within sovereign states.²³² According to Sheri Berman, "the year 2011 was the dawn of a promising new era for the region."²³³ She argues that it will be remembered as a "historical watershed" for democracy in the Middle East.²³⁴ Libya's Arab Spring began with the illegitimate arrest of a Libyan human rights lawyer by the regime of Colonel Muammar Gadhafi. The lawyer, Fathi Tarbel, was the representative of relatives of over 1,000 prisoners killed in the 1996 Abu Salim prison massacre - a "bloody landmark in Muammar Gadhafi's 42-year rule."²³⁵ The political prisoners and opponents of the government held at Abu Salim were gunned down in a riot protesting the poor living conditions of the prison. Tarbel was arrested on suspicion of trying to organize protests against the Gadhafi regime. Young people inspired by the uprisings in Tunisia and Egypt began peaceful demonstrations February 5, 2011, in the city of Benghazi. After the four-decade long brutal Gadhafi dictatorship, protesters began calling for Gadhafi to step down and for the regime to release Tarbel and other political

²³¹ El Hassan Bin Talal and Rolf Schwarz, "The Responsibility to Protect and the Arab World: An Emerging International Norm?" *Contemporary Security Policy* 34(1) (2013): 6.

²³² Christian Henderson, "The Arab Spring and the Notion of External State Sovereignty in International Law," *Liverpool Law Review* 35(2) (2014).

²³³ Sheri Berman, "The Promise of the Arab Spring: In Political Development, No Gain Without Pain," *Foreign Affairs* (2013), accessed June 5, 2016, <https://www.foreignaffairs.com/articles/syria/2012-12-03/promise-arab-spring>.

²³⁴ *Ibid.*

²³⁵ Ian Black, "Libya cracks down on protesters after violent clashes in Benghazi," *The Guardian*, February 17, 2011, <http://www.theguardian.com/world/2011/feb/16/libya-clashes-benghazi>.

prisoners.²³⁶ What began as a protest of hundreds grew into a full-scale international humanitarian crisis.

Antigovernment protests were met with regime brutality. Government authorities used water cannons and teargas to break up a group of over 6,000 protestors. It was not long before the government crackdowns turned lethal, and the violent conflict between government forces and protestors resulted in deaths of unarmed protestors. On February 18, 2011, the government's use of heavy weapons, the recruitment of mercenaries, and massacres of up to sixty people had been reported, despite an official news blackout.²³⁷ The revolts intensified and enraged protestors began arming themselves. The militarized rebels were joined by political and civil society leaders who organized into the National Transitional Council (NTC) to represent and promote the rebel cause. The rebels began fighting government forces for control of the country's major cities and they started seizing control of abandoned government arms depots. The city of Benghazi quickly fell under control of the armed rebels, and became a focal point for the crisis as violence spread throughout Libya.

Over the past four decades, Gadhafi's dictatorship had been characterized by a rampant disregard for human rights including restrictions on civil rights and liberties and torture of opponents to the regime.²³⁸ Early on, Gadhafi made clear his intentions to crush the rebellions and threatened that there would be much bloodshed to regain control of the country. Gadhafi's son, Sayf al-Islam, gave a defiant address on state television on February 21, 2011, stating that "further demonstrations could lead to civil war" and that "the regime would fight 'to the last bullet.'"²³⁹ Thousands were killed in clashes with government forces during the early months of the civil conflict, which included attacks by tanks, artillery, warplanes, and helicopter gunships.²⁴⁰ The regime's violent retaliation also included firing live rounds into crowds of civilians, arresting and kidnapping hundreds of suspected protestors, launching mortar-fired cluster munitions into residential areas, and laying thousands of landmines.²⁴¹ Human Rights

²³⁶ Encyclopaedia Britannica, "Libya Revolt of 2011," <http://www.britannica.com/EBchecked/topic/1766291/Libya-Revolt-of-2011>.

²³⁷ Ian Black and Owen Bowcott, "Libya protests: massacres reported as Gaddafi imposes news blackout," *The Guardian*, February 18, 2011, <http://www.theguardian.com/world/2011/feb/18/libya-protests-massacres-reported>.

²³⁸ Daniel Silander, "R2P-Principle and Practice? The UNSC on Libya," *Journal of Applied Security Research* 8(2) (2013): 269.

²³⁹ Encyclopaedia Britannica, "Libya Revolt of 2011."

²⁴⁰ *Ibid.*

²⁴¹ Human Rights Watch, "World Report 2012: Libya," accessed May 7, 2016, <https://www.hrw.org/world-report/2012/country-chapters/libya>.

Watch also documented cases of gang rape and other sexual violence, as well as summary executions.

The United Nations responded very quickly to the violence, condemning Gadhafi's crackdowns on innocent protestors and rebel groups alike only days after the conflict began. On February 22, the Security Council acknowledged that the Government of Libya had a responsibility to protect its population, calling for it to respect humanitarian law.²⁴² The United Nations Human Rights Council condemned the "gross and systematic" violations of human rights in Libya, and called for an official inquiry on February 25.²⁴³ On February 26, the UN Security Council unanimously passed Resolution 1970 with all members present. Resolution 1970 imposed a very detailed arms embargo and sanctions on Gadhafi and his family. The Security Council demanded Gadhafi halt his attacks on civilians, banned international travel by members of the regime, and froze all their financial assets.²⁴⁴ Resolution 1970 also referred the Libyan crisis to the ICC to investigate the humanitarian crimes occurring throughout several major cities. Despite Resolution 1970, violence continued to escalate and heavy artillery attacks resulted in many more deaths. On March 6, Secretary General Ban Ki-moon condemned the escalation in violence, warning of coming "carnage" and calling for "an immediate halt to the government's disproportionate use of force and indiscriminate attacks on civilian targets."²⁴⁵ The international community became increasingly concerned as Gadhafi's forces began to make significant gains in the conflict against rebel-held cities. On March 15, Gadhafi loyalists launched a major attack and took control of the city of Ajdābiyā, a previously held stronghold of protestors en route to Benghazi, Gadhafi's next major target.²⁴⁶ The possibility of an impending government-sponsored massacre in Benghazi spurred the international community into immediate action.

On March 17, 2011, a month after the conflict began, in response to civilian deaths and the possible danger of greater violence, the United Nations Security Council voted with zero against and five abstentions (Brazil, China, Germany, India, and the Russian Federation) on a military intervention operation to protect civilians. The five abstaining members supported ending the

²⁴² United Nations Security Council, "Security Council Press Statement on Libya," United Nations Security Council Press Release, February 11, 2011, <http://www.un.org/press/en/2011/sc10180.doc.htm>.

²⁴³ Human Rights Watch, "World Report 2012: Libya."

²⁴⁴ Encyclopaedia Britannica, "Libya Revolt of 2011."

²⁴⁵ James Meikle, "Libya must stop indiscriminate attacks on civilians, says UN chief," *The Guardian*, March 7, 2011, <http://www.theguardian.com/world/2011/mar/07/libya-must-stop-indiscriminate-attacks>.

²⁴⁶ Encyclopaedia Britannica, "Libya Revolt of 2011."

violence in Libya, but believed that the proposed use of force was a dangerous and excessive overstep. The delegate from Brazil stated that, "the text of resolution 1973(2011) contemplates measures that go far beyond the call" and "such measures may have the unintended effect of...causing more harm than good."²⁴⁷ Despite these reservations, Resolution 1973 was passed with no votes against. The council deplored "the failure of the Libyan authorities to comply with resolution 1970" and expressed "grave concern at the deteriorating situation, the escalation of violence, and the heavy civilian casualties."²⁴⁸ The resolution also referred to the R2P doctrine in the preamble, which states that the Libyan authorities had the responsibility to protect Libya's population.²⁴⁹ Resolution 1973 authorized a NATO-imposed no-fly zone to prevent further government air attacks and permitted "all necessary measures to protect civilians."²⁵⁰ The no-fly zone involved a ban on all Libyan military flights, enforced by periodic NATO flights, and the destruction of Libyan military and air force capabilities. Although the initial resolution excluded foreign occupation of any Libyan territories, the United Nations was deliberate in its decision to take all other necessary actions to "protect civilians and civilian areas targeted by Colonel Muammar [Gadhafi], his allied forces and mercenaries."²⁵¹ In the wake of Resolution 1973, the Libyan Government declared an immediate ceasefire to prevent the implementation of the no-fly zone, but it was largely symbolic and promptly ignored by government and rebel forces.

On March 18, following Resolution 1973, air and naval forces from UN members in North America, Europe and the Middle East began preparations to implement the no-fly zone.²⁵² On the 19th of March, the coalition began attacking targets in Libya, attempting to disable Libya's air force and air defenses so the UN could impose its no-fly zone effectively.²⁵³ Initially, the air raids and missile attacks were very effective, crippling the Libyan air force. Sixteen countries took part in enforcing the no-fly zone, destroying 5,900 targets which included 600 armoured

²⁴⁷ United Nations Security Council, 6498th meeting of the United Nations Security Council, March 17, 2011, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.6498.

²⁴⁸ United Nations Security Council, "Resolution 1973(2011)," Resolution Adopted by the Security Council at its 6498th meeting, on March 17 2011, [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1973\(2011\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1973(2011)).

²⁴⁹ *Ibid.*

²⁵⁰ Richard Roth, "U.N. Security Council approves no-fly zone in Libya."

²⁵¹ Department of Public Information, "Security Council Approves 'No-Fly Zone' Over Libya, Authorizing 'All Necessary Measures' To Protect Civilians, By Vote of 10 In Favour With 5 Abstentions," United Nations, www.un.org/News/Press/docs/2011/sc10200.doc.htm.

²⁵² Robert Booth, "Libya unrest: Allies assemble arsenal for possible strike against Gaddafi," *The Guardian*, March 18, 2011, <http://www.theguardian.com/world/2011/mar/18/libya-us-uk-military-forces>.

²⁵³ Encyclopaedia Britannica, "Libya Revolt of 2011."

vehicles and 400 artillery launchers.²⁵⁴ Despite, the success of the no-fly zone, fighting between armed rebel groups and government forces continued on the ground. Gadhafi was slowly losing his supporters, but the opposition groups were too unorganized to overthrow the dictator.

NATO officially took over the UN-authorized mission as of March 31, and a UN debate over military intervention on the ground began. The original UN mandate for the Libyan mission was 90 days, ending in June of 2011. The NATO mission was eventually extended another 90 days to continue protecting civilians in danger and to support the opposition forces to Gadhafi.²⁵⁵ The mission extension also aimed to send a message to the Libyan rebels trying to overthrow Col Muammar Gadhafi after more than four decades of brutal autocratic rule.²⁵⁶ According to NATO Secretary-General Anders Fogh Rasmussen, the message to the Libyan rebels was to say, "We stand united to make sure that you can shape your own future. And that day is getting closer."²⁵⁷ The regime was eventually overthrown after rebel forces captured the city of Tripoli and Gadhafi was captured and killed in October of the same year. Although not initially an intervention with occupying forces on the ground, the NATO air support and UN pledge to end violence against civilians resulted in the ending of an oppressive dictatorship.

The Responsibility to Protect was already an adopted principle when the crisis in Libya began and was cited in resolution 1973 as a motivating factor for UN action. Initially, the intervention in Libya was hailed as an affirmation of the Responsibility to Protect doctrine. According to Alex Bellamy, the R2P doctrine was influential in the decision to intervene in Libya. This fact indicates that attitudes in the Security Council had changed towards the use of force for human protection purposes and that the doctrine has become a "commonly accepted frame of reference for preventing and responding to mass atrocities."²⁵⁸ There have, however, been major developments following the NATO operation that further complicate the implementation of R2P and epitomize the unknown consequences of military operations, particularly during violent civil conflicts.

²⁵⁴ BBC News Africa, "Libya no-fly zone: Coalition firepower," *BBC*, October 21, 2011, <http://www.bbc.com/news/world-africa-12806112>.

²⁵⁵ BBC News Africa, "Libya conflict: NATO extends mission by 90 days," *BBC*, June 1, 2011, <http://www.bbc.co.uk/news/world-africa-13616794>.

²⁵⁶ *Ibid.*

²⁵⁷ *Ibid.*

²⁵⁸ Alex J. Bellamy, "Libya and the Responsibility to Protect: The Exception and the Norm," *Ethics and International Affairs* 25(3) (2011): 263.

Although initially supportive of the NATO intervention in Libya, the League of Arab states has since taken a critical stance in light of the extended bombing campaigns. It is estimated that up to 30,000 Libyans were killed during the UN authorized air strikes.²⁵⁹ Great Britain and France were instrumental in garnering support for the intervention and, aside from the United States, carried out the majority of the coalition air strikes. The British and French involvement in Libya has led to several accusations of NATO misappropriation of force and contravention of the R2P principles. Weeks after the NATO strikes began, many nations were publicly skeptical about NATO's "bending of the UN resolution."²⁶⁰ Past Arab League secretary-general Amr Moussa said that he "deplored" the bombing campaign: "What happened in Libya is different from the intended aim of imposing the no-fly zone. We want to protect civilians, not the bombing of more civilians."²⁶¹ NATO was also accused of pursuing an intervention in Libya specifically for the purposes of regime change. South Africa, along with other African nations, maintained that the solution to Libya needed to be diplomatic and "continued to criticize the interventions."²⁶² Six months after the intervention, France had been caught airlifting weapons to rebel groups, which was a violation of the terms of the UN resolution.²⁶³

A report from Human Rights Watch acknowledges that NATO took every precaution possible to minimize civilian casualties during the air strikes and that casualties were unusually low, but details the existence of eight different individual cases during which civilians were wrongfully targeted. Faiz Fathi Jfara, a local Libyan, lost five members of his family in a NATO bombing mission and asked, "I just need an answer from NATO: Why did you destroy my home and kill my family?"²⁶⁴ Human Rights Watch documents that up to 72 civilians were wrongfully targeted and killed in the strikes, and none of the deaths have been acknowledged or explained by NATO.²⁶⁵ The worst case of indiscriminate NATO bombing documented by Human Rights Watch happened in the village of Majer, where NATO strikes killed 34 people in a reportedly

²⁵⁹ Mohammed Nuruzzaman, "Revisiting 'Responsibility to Protect' after Libya and Syria," E-International Relations, March 8, 2014, <http://www.e-ir.info/2014/03/08/revisiting-responsibility-to-protect-after-libya-and-syria/>.

²⁶⁰ Lin Noueihed and Alex Warren, *The Battle for the Arab Spring: Revolution, Counter-Revolution and the Making of a New Era* (New Haven: Yale University Press, 2012), 183.

²⁶¹ *Ibid.*

²⁶² *Ibid.*

²⁶³ *Ibid.*, 185.

²⁶⁴ Ishaan Tharoor, "How Many Innocent Civilians Did NATO Kill in Libya?" Time Inc., May 16, 2012, accessed September 4, 2016, <http://world.time.com/2012/05/16/how-many-innocent-civilians-did-nato-kill-in-libya/>.

²⁶⁵ Human Rights Watch, "NATO: Investigate Civilian Deaths in Libya," May 14, 2012, accessed September 3, 2016, <https://www.hrw.org/news/2012/05/14/nato-investigate-civilian-deaths-libya>.

civilian compound.²⁶⁶ Fred Abrahams, a special adviser at Human Rights Watch, states, "Attacks are allowed only on military targets, and serious questions remain in some incidents about what exactly NATO forces were striking."²⁶⁷

Lasting peace and the creation of a legitimate and functioning government post-Gadhafi is proving to be incredibly complicated in Libya. In the years after the intervention, armed clashes and competition for control in the power void following Gadhafi's dictatorship have continued, displacing hundreds of thousands.²⁶⁸ Many argue that the power vacuum has created more violence than would have occurred if the NATO operation had never taken place. David Kirkpatrick argues that, "The collapse of the Qaddafi government and the looting of its armories...left Libyans at the mercy of fractious local militias that emerged in the aftermath."²⁶⁹ According to Mohammed Nuruzzaman, in the period following the intervention, tens of thousands of armed militants have taken over different regions of the country. Nuruzzaman states that "Libya descended into a state of complete chaos where unruly and aggressive militant groups clashed with each other and held the common Libyans hostage."²⁷⁰ The Islamic State, an extremist group known for terror tactics, kidnapping, and mass killings, has gained a foothold in Libya and claimed responsibility for many deadly attacks on civilians.²⁷¹ Libya's current infrastructure and civil society has been half destroyed by air strikes and infighting since February 2011. In direct contradiction of the intended purposes of the R2P doctrine, the current struggle for power between rival ethnic, religious, and political militia groups has the potential to prolong a civil war in Libya for many years.²⁷²

The continuing post-intervention violence in Libya has also spilled into other regions of North Africa. Militant rebel groups and extremist factions who have gained power in Libya began smuggling weapons left from the earlier fighting across the Algerian desert, fuelling a growing insurgency in Mali. The Tuareg rebels, armed by Libyan militants, started a violent

²⁶⁶ Tharoor, "How Many Innocent Civilians Did NATO Kill in Libya?"

²⁶⁷ Human Rights Watch, "NATO Investigate Civilian Deaths in Libya."

²⁶⁸ Human Rights Watch, "Libya," accessed May 7, 2016, <https://www.hrw.org/middle-east/n-africa/libya>.

²⁶⁹ David D. Kirkpatrick, "Libya Asks Arab League Countries to Help Battle Islamic State," *The New York Times*, August 18, 2015, http://www.nytimes.com/2015/08/19/world/middleeast/libya-asks-arab-league-countries-to-help-battle-islamic-state.html?_r=0.

²⁷⁰ Nuruzzaman, "Revisiting 'Responsibility to Protect' after Libya and Syria."

²⁷¹ Rana Jawad, "How strong is Islamic State in Libya?" *BBC*, February 5, 2015, <http://www.bbc.com/news/world-africa-31113659>.

²⁷² Noueihed and Warren, *The Battle for the Arab Spring: Revolution, Counter-Revolution and the Making of a New Era*, 190.

campaign against any opposition, including the government of Mali. The situation grew into full scale civil war, with the Mali government declaring war on the Tuaregs in May of 2014.²⁷³

There have been many consequences following the intervention in Libya, and the uncontrollable spread of weapons across borders is only one. The Arab League's condemnation of the NATO bombing and the ambivalence of many Libyans towards the humanitarian intent of the UN has most certainly called into question the Responsibility to Protect doctrine its alleged success under Resolution 1973. The R2P doctrine was created in 2001 with the intention of guiding decision making and preventing future humanitarian disasters, but as will be examined further in Chapter Four, the controversial intervention in Libya and its many consequences have cast considerable doubt on the effectiveness of R2P and illustrates further dangers of military intervention.

In contrast to the UN Security Council's caution and restraint during the war in Darfur, the international response to the Libyan crisis was remarkably quick and definitive. It took the Security Council almost a year to officially acknowledge the humanitarian crimes occurring in Sudan's western region. A month after unrest began in Libya, the Security Council had authorized an airborne military intervention. There are clear differences between the two cases that help to explain the contrasting strategies chosen by the members of the Security Council, but the existence of humanitarian atrocities is the same in both cases. It has been an ongoing struggle for the international community to rationalize why some humanitarian crises warrant immediate UN military intervention and others do not. There are many factors which influence UN decision making, and Chapter Four will discuss select circumstances of each case study which help to explain the differing UN responses. The Responsibility to Protect was officially adopted by the United Nations in 2005, two years after the war in Darfur had begun. There is evidence that the R2P doctrine played a part in the UN's decision to intervene quickly in Libya. There are many obstacles to humanitarian interventions but the Responsibility to Protect doctrine provides a guideline to start addressing some of these difficulties.

²⁷³ Al Jazeera Politics, "Mali 'at war' with Tuareg rebels," *Al Jazeera English*, May 19, 2014, <http://www.aljazeera.com/news/africa/2014/05/mali-at-war-with-tuareg-rebels-201451815152681548.html>.

Chapter 4 UN Decision-Making: Lessons for the Future Implementation of the R2P Doctrine

Despite difficulties and constraints with which the doctrine has been applied, the Responsibility to Protect still has great potential to be a guiding doctrine during humanitarian disasters. There are clear obstacles to humanitarian intervention, as illustrated in Chapter Two and Chapter Three, and many of them are permanent fixtures of international relations. As the case studies have illustrated, the UN Security Council struggles with the questions of when and how to intervene. The practical implementation of the Responsibility to Protect and humanitarian intervention is full of complications. During the crises in Darfur and Libya, there were many factors that influenced decision-making in the Security Council, resulting in drastically different approaches. The list of these factors is not exhaustive but many of them heavily influenced decision-making in the cases of Darfur and Libya. The factors include situational language, strategic interests, host state consent, proximity to other military operations, and the anticipated cost of intervention. It is valuable for the future of humanitarian intervention to discuss these influences, as such a discussion can shed light on past challenges and identify the areas where R2P requires attention.

Humanitarian intervention is a legal and legitimate UN tactic that has been developing over a long period of time in response to the combination of local and global crises. Humanitarian intervention began with the transition from traditional peacekeeping to more militarized interventions and intensified after the end of the Cold War. The Responsibility to Protect is the modern manifestation of that development and provides a guideline for addressing many of the obstacles to decision making at the UN. After the UNSC disagreement over the intervention in Libya and in the context of the ongoing situation in Syria, there are further questions about whether or not the Responsibility to Protect has failed and will fade out of usage. As the case studies of Darfur and Libya have shown, there are clearly more obstacles to be overcome, but recent crises have not undone decades of development of humanitarian intervention. R2P is a valuable doctrine within the context of the humanitarian intervention movement and should not be abandoned so quickly because of continuing global humanitarian concerns.

Darfur Examined

To begin with, terminology can determine how a situation is perceived and can have a big impact on how the international community decides to act. Whether or not a humanitarian disaster qualifies for a UN authorized intervention under the Charter, and under the modified version of the Responsibility to Protect, depends on how it is defined. Under Chapter 7 of the United Nations Charter, the qualifications for UN action are somewhat vague. Anything that is a “threat to the peace, breach of the peace, or act of aggression”²⁷⁴ could potentially qualify for a military response. However, the Security Council ultimately has the power to decide which crisis qualifies as a humanitarian disaster. Herein lies the paradox of definition and language. As general as the Charter is about threats to international security, it is very difficult to make a case that any humanitarian disaster is large or critical enough to warrant the attention of the Security Council.

Narrowing the parameters under the Responsibility to Protect has not necessarily made it easier for the Security Council to make decisions about humanitarian intervention. The principles of the Responsibility to Protect focus on expediting and simplifying decision making in situations of humanitarian emergency. The doctrine was, in part, created to change the language and discussion of humanitarian intervention from being about the rights of nations to intervene in the affairs of other countries to focusing on the rights of people to be protected and the responsibility of nations to provide that protection.²⁷⁵ The final R2P document emphasizes that genocide, war crimes, crimes against humanity and ethnic cleansing are all disasters requiring the attention of the international community, demonstrating that a government has failed to protect its citizens. These specific terms both help to define which crises require UN intervention and complicate the decision making process. Despite the creation of the R2P principles, it is a constant struggle to decide how narrow the qualifications are for each term. What might commonly be perceived as genocide can be debated in terms of the exact number of deaths required or whether or not ethnicity is the true motivation.

During the crisis in Darfur, it was the language that many were not willing to use that partially prevented the conflict from being viewed with more urgency. US Secretary of State at

²⁷⁴ Charter of the United Nations, “Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression.”

²⁷⁵ Cottey, “Beyond Humanitarian Intervention,” 435.

the time, Colin Powell, described the situation in Darfur as genocide in September of 2004, but the UNSC was unwilling to use that term.²⁷⁶ Some argue that abstaining from using the term genocide purposefully avoided the requirement to provide tangible civilian protection while still ensuring that there was diplomatic pressure applied in a safe way.²⁷⁷ This hesitation by so many nations to label Darfur as a genocide contributed to the stagnant response, and has the potential to influence the international community in other cases. The Foreign Policy Centre argues, "All too many case studies confirm that misdiagnosis of the conflict is a major cause of the failure of even the best-intentioned prevention efforts."²⁷⁸ According to Jess Gifkins, the language of the Responsibility to Protect was also an obstacle to UN action during the Darfur crisis. In 2006, the Security Council took six months to negotiate Resolution 1706 and "language on R2P proved to be one of the most difficult aspects."²⁷⁹ In 2007, the Council was once again unable to agree on a reference to the Responsibility to Protect doctrine, and it was removed from an early draft of a Darfur resolution. Gifkins explains that specific language is so integral to Security Council resolutions because it reflects current shared understandings, informs future resolutions, and reaffirms past agreements through repetition.²⁸⁰ The architects of the Responsibility to Protect doctrine intended to establish clearer definitional language to aid decision makers, but manipulation of that language based on national interests also affects the ability of the UN to prevent humanitarian disasters.

National interest is one of the biggest driving forces in the international community. Amstutz writes that humanitarian intervention is justified if it can pass both political and ethical tests. First and foremost,

Humanitarian intervention must be in the interests of the intervening state or states. This condition is satisfied when the intervening state perceives human rights abuses in a foreign country as either a general threat to the order, legitimacy, and morality of global society or, as is most often the case, a particular threat to its own economic prosperity, political influence, and territorial integrity.²⁸¹

²⁷⁶ Touko Piiparinen, "Reconsidering the silence over the ultimate crime: a functional shift in crisis management from the Rwandan genocide to Darfur," *Journal of Genocide Research* 9(1) (2007): 73.

²⁷⁷ *Ibid.*, 74.

²⁷⁸ *Ibid.*, 78.

²⁷⁹ Jess Gifkins, "R2P in the UN Security Council: Darfur, Libya and beyond," *Cooperation & Conflict* 51(2) (2016): 149.

²⁸⁰ *Ibid.*, 150.

²⁸¹ Amstutz, *International Ethics*, 169.

Strategic interests and geopolitics often motivate powerful states to manipulate language and other details to influence UN opinions. When presented with an opportunity for humanitarian intervention, a state will often ask itself if “committing...young service members, at risk of life and limb, for purely ‘humanitarian reasons’ is legitimate national policy.”²⁸² States carry heavy biases and hold certain principles or ventures above others. Renowned classical realist Hans J. Morgenthau has said that national interests, at least for the USA, are derived from specific interests which “protect its physical, political, and cultural identity against encroachments by other nations” and that foreign policy based on impractical, or ‘moral’, principles “relegates the national interest to the background...[and is] a policy of national suicide, actual or potential.”²⁸³ At least from a realist standpoint, it is natural, expected, and legitimate for states to respond to international relations in a way that solves external problems while still benefitting the nation.

In the case of Darfur, a substantial lack of urgency in the Security Council resulted in an uninspired campaign for conflict resolution and a muted interest in human rights violations. Certain members of the Security Council have been accused of purposefully stalling intervention in Sudan because of the economic and political implications. China has strong economic ties with Sudan and buys a majority of the nation's oil.²⁸⁴ As Hilary Andersson wrote, “[China] believes that what Sudan needs is good business partners, help with development and a solid peace process in Darfur, instead of confrontation and sanctions from the West.”²⁸⁵ In fact, China has been accused in the past of assisting the Government of Sudan militarily, going against the arms embargo set in place by the UN, and prolonging the conflict.²⁸⁶ Furthermore, when the United Nations authorizes interventions in response to intra-state humanitarian crises, the practice of interfering in the domestic affairs of sovereign states becomes more legitimate. Both China and Russia, among other member states, have been accused by Human Right Watch of systematically violating the human rights of their citizens.²⁸⁷ As the sanctity of state sovereignty

²⁸² John R. Bolton, “Irresponsible,” *National Review* 63(7) (2011): 34.

²⁸³ Brian C. Schmidt and Michael C. Williams, “The Bush Doctrine and the Iraq War: Neoconservatives versus Realists,” *Security Studies* 17(2) (2008): 202.

²⁸⁴ Hilary Andersson, “China is ‘fuelling war in Darfur,” BBC News, July 13, 2008.
<http://news.bbc.co.uk/2/hi/africa/7503428.stm>.

²⁸⁵ *Ibid.*

²⁸⁶ *Ibid.*

²⁸⁷ Peter James Spielmann, “Noted human rights abusers China, Russia, Saudi Arabia, Cuba all win seats on UN Human Rights Council,” *The Associated Press*, November 12, 2013, accessed June 18, 2016,
<http://news.nationalpost.com/news/noted-human-rights-abusers-china-russia-saudi-arabia-cuba-all-win-seats-on-un-human-rights-council>.

erodes, and the importance of addressing domestic human rights violations increases, the possibility of the international community turning its attention to Chinese and Russian violations increases as well. According to Stewart M. Patrick, China and Russia are worried that support for interventions "could create a precedent for the international community to have a say in how they treat their own, sometimes restive, minority populations."²⁸⁸ In contrast to the UN's response to Darfur, the same year that the crisis began, the United States intervened in Iraq despite strong international opposition. Although the Saddam Hussein regime "was responsible for the murder of at least 400,000 of its own people in the 15 years from 1988 to 2003,"²⁸⁹ the international community did not support any claims of a humanitarian crisis. The USA has often been accused of harbouring strategic interests in foreign oil and illegitimately manipulating facts to intervene and topple Hussein, who was unfriendly to the United States.²⁹⁰ National interests influence every facet of international relations and often inhibit the UN Security Council from focusing solely on the humanitarian needs of populations in other states.

Compatibility with internal governing structures also posed a problem for R2P, as demonstrated through the case studies. Despite the fact that the Responsibility to Protect doctrine dropped the requirement for host state consent in situations of humanitarian atrocity, this issue remains a large obstacle. As previously stated, the adopted R2P doctrine asserts that if a government is manifestly failing to protect its citizens, then the international community is obligated to intervene. This transfer of responsibility signifies that citizen safety becomes the top priority regardless of the existence of the host state's consent. With the legitimacy of R2P, and the authority coming from Chapter 7 of the Charter, the UN cannot legally be stopped from intervening in a domestic case of humanitarian disaster. However offending state regimes or regional leaders that permit humanitarian atrocities to occur often resist external involvement. During the war in Darfur, host state consent was a huge limiting factor for possible UN involvement. The Janjaweed militias were government sponsored, and President al-Bashir was the primary aggressor against civilians and rebel groups alike. The difficulty of disarming the

²⁸⁸ Jayshree Bajoria and Robert McMahon, "The Dilemma of Humanitarian Intervention," *Council on Foreign Relations*, June 12, 2013, accessed June 6, 2016, <http://www.cfr.org/humanitarian-intervention/dilemma-humanitarian-intervention/p16524>.

²⁸⁹ David Fisher and Nigel Biggar, "Was Iraq an unjust war? A debate on the Iraq war and reflections on Libya," *International Affairs* 87(3) (2011): 696.

²⁹⁰ Antonia Juhasz, "Why the war in Iraq was fought for Big Oil," *CNN*, April 15, 2013, <http://edition.cnn.com/2013/03/19/opinion/iraq-war-oil-juhasz/>.

Janjaweed clearly stemmed from the lack of government cooperation,²⁹¹ and the United Nations was largely unwilling in this case to go against such a violent dictator. As discussed in Chapter Three, President al-Bashir initially consented to allow UN staff and peacekeeping troops to enter Sudan. Bashir quickly abandoned this promise, publicly rejecting any foreign occupation in Sudan and effectively stifling the political will of the UN to enforce their resolutions. Despite several resolutions authorizing over 20,000 UN troops to monitor ceasefires in Sudan, the United Nations failed to intervene on the ground in Darfur until after President al-Bashir consented.

Sending UN troops into a hostile area unsupported by the national regime is dangerous. This fact can be a motivating factor to not intervene when it lines up with geopolitical interests of UNSC states. China is one of many states that continually stands by the belief that host state consent is a prerequisite for deployments to protect citizens.²⁹² However, the Chinese did not veto the resolution to intervene in Libya, showing that they reserve the right to pick and choose those situations in which they stand by that principle. Alternatively, when the legitimacy of a government fails, support from regional organizations or neighbouring authorities can sometimes have an impact on decision-making, as happened in the case of Libya. Despite this support, the African Union was unable to procure UN assistance in Darfur for many years. Ultimately, whether it is used as an excuse to mask deeper geopolitical interests, or whether it was out of genuine concern, domestic consent often determines the difficulty and costs of an intervention, and as such is an important situational factor to monitor.

In addition, the geographical and temporal proximity to other large scale military operations can influence decision making in multiple ways. The post 9/11 war on terrorism was a major distraction for several states during the crisis in Darfur. Alex Bellamy argues that although the international community has been increasingly focused on stopping humanitarian crises, many Western states had other interests following 2001. During the war on terror, Western powers were preoccupied with "new strategic priorities of terrorism, the proliferation of weapons of mass destruction (WMD) and 'rogue states.'"²⁹³ Bellamy argues that in this context, states were less willing to intervene for humanitarian purposes and the threat of terrorism overshadowed the humanitarian crimes in Darfur. The long military campaigns in the Middle East during the war on terror, particularly in Iraq and Afghanistan, have commanded not only the

²⁹¹ Piiparinen, "Reconsidering the silence over the ultimate crime," 74.

²⁹² Bellamy, "The New Politics of Protection? Côte d'Ivoire, Libya and the Responsibility to Protect," 828.

²⁹³ Cottey, "Beyond Humanitarian Intervention," 430.

attention, but the resources of many countries as well. There is only a limited amount of energy and forces that any one country can commit. Engaging in new conflicts when overstretched is undesirable and sometimes not possible. The morale of a nation and its leaders can fall very low, particularly following bloody or drawn out campaigns. This often weakens the willingness to risk additional lives in new ones. Described by Andrew Cottey as the "Iraq syndrome,"²⁹⁴ the scale of military engagement shaped the lack of intervention in Darfur and proximate humanitarian conflicts. During the war in Darfur, there was a very clear reluctance to intervene forcefully for humanitarian purposes,²⁹⁵ not only because of resource and morale exhaustion, but also because Middle Eastern and Western relationships had also been severely strained by the war in Iraq. According to Bellamy, the government of Sudan had become a reliable source of intelligence for the war on terror,²⁹⁶ making Western allies in the Security Council reluctant to take a hard stance against al-Bashir for fear of losing valuable information.

The war in Darfur began the same year that the United States invaded Iraq. Much of the international community's attention was focused on the Hussein regime. Momentum was never strong for doing something in the Sudan. The "War on Terror" certainly drained not only the military, but the political capacities of states who previously had advocated for R2P.²⁹⁷ As a result, there was little political will left for any consideration of an intervention in Darfur. Furthermore, the attention that the UN did give to Sudan during the early 2000s was focused on ending a national north-south war. According to Sharath Srinivasan, "[P]eace talks prioritized solving Sudan's 'north-south' war long before Darfur erupted, and it now led peacemakers to create a discursive buffer around this idea for peace by being silent on, downplaying, or depoliticizing Darfur's conflict."²⁹⁸ The civil war between north and south Sudan had raged for decades, and creating lasting peace in the country was a priority for the UN.

Lastly, as previously discussed in conjunction with theoretical arguments against humanitarian intervention, the estimated costs versus the expected outcomes, or probability of success, has had a great affect on the ability and willingness of states to undertake R2P campaigns. The calculation of cost versus outcome, and whether or not the outcome is beneficial

²⁹⁴ Cottey, "Beyond Humanitarian Intervention," 431.

²⁹⁵ *Ibid.*

²⁹⁶ Alex J. Bellamy and Paul D. Williams, "The UN Security Council and the Question of Humanitarian Intervention in Darfur," *Journal of Military Ethics* 5(2) (2006): 154.

²⁹⁷ Piiparinen, "Reconsidering the silence over the ultimate crime," 73.

²⁹⁸ Srinivasan, "Negotiating violence: Sudan's peacemakers and the war in Darfur," 27.

enough to justify the risk of action, happens regularly. The costs of an international operation can be measured in many ways, including monetary value, civilian and military casualties, equipment use, potential physical damage, and the political implications. The humanitarian crises in the 1990s that led to the creation of the Responsibility to Protect doctrine also proved very costly to the nations involved. During the US intervention in Somalia in 1993, at least 500 Somalis were killed in one day.²⁹⁹ Up to 1,500 Somalis were killed during the entirety of the campaign and over half of them were women and children.³⁰⁰ When NATO intervened in Kosovo in 1999, aside from the military deaths more than 500 civilians were killed in the largely indiscriminate air attacks.³⁰¹

As previously discussed, a basic yet major problem for the United Nations is a lack of available military forces and equipment. These difficulties affected the decision-making in the case of Darfur. Based on the reluctance of the government of Sudan to support a UN intervention, few available troops and equipment, and a perceived inability to provide security for peacekeepers on the ground, the Security Council was disinclined to intervene.³⁰² It took several years until stopping humanitarian crimes in Darfur was deemed sufficiently urgent to have a UN peacekeeping presence, and to conclude that the risk to that UN presence was small enough. Although the conflict was stated to be a threat to international peace and security in 2004,³⁰³ quelling the violence was seen as too difficult, and not sufficiently important, to rally a full intervention.

Analysis of Libya

In contrast to the lack of definitive action in Darfur, intervention in Libya was swift and decisive. The most significant ways that language affected the decision to intervene in Libya were the constant public reiterations of human rights violations, Gadhafi's threats of impending massacres, and the international emphasis on collective responsibility. Gadhafi warned early on that he intended to "purge Libya inch by inch, room by room, household by household, alley by

²⁹⁹ Valentino, "The True Costs of Humanitarian Intervention: The Hard Truth about a Noble Notion." 62.

³⁰⁰ *Ibid.*

³⁰¹ *Ibid.*

³⁰² Cottey, "Beyond Humanitarian Intervention," 440.

³⁰³ Ademola Abass, "The United Nations, the African Union and the Darfur Crisis: of Apology and Utopia," *Netherlands International Law Review* 54(3) (2007): 428, doi:10.1017/S0165070X07004159.

alley, and individual by individual until the country [was] purified."³⁰⁴ During the crisis in Darfur, the international community refused to officially label the situation as genocide. In the months before the Libyan intervention, there was less violence than in Darfur but the situation was still considered to be a possible crime against humanity.³⁰⁵ Under the R2P doctrine, crimes against humanity and genocide are humanitarian crises that require the attention of the international community. In this case, the international community acted with much greater urgency over the humanitarian crimes in Libya and the potential for much further blood to be spilled, as Gadhafi warned repeatedly that he would show no mercy to those participating in the rebellion.

In terms of the proximity to other major operations, especially the two largest occupations in the Middle East in recent history, a significant amount of time had passed before the Libyan conflict began. Importantly, and although set within the context of the rising Arab Spring, Resolution 1973 was not enacted during an atmosphere of fatigue and stress from recent military expenditures, as was arguably the case in 2004 in Darfur. The "Iraq Syndrome," which contributed greatly to the reluctance of western states to undergo a more forceful humanitarian intervention in Darfur,³⁰⁶ had lessened considerably since 2004. American troops were being withdrawn from Iraq in 2011, almost 10 years after the original occupation began. Troop commitments from several nations were also being slowly pulled out of Afghanistan, a country in which the most recent conflict had begun in 2001. The fixation of the world on these two regions diminished, allowing for other crisis areas to become more of a focus.

The perceived cost of intervening in Libya versus the anticipated outcome was a significant factor in the UN's authorization of force. The cost of the intervention was considered to be small because there would be no troops on the ground. The possible risk to human life and the approximate cost of enforcing a no-fly zone through NATO was deemed far less of a collective risk than allowing Gadhafi to continue on a largely unopposed pattern of violence in heavily populated areas. As Eckert commented,

[In Libya]...NATO was able to intervene without putting forces on the ground by relying on air power and weapons launched from offshore...The dynamics of the international

³⁰⁴ Amy Eckert, "The Responsibility to Protect in the Anarchical Society: Power, Interest, and the Protection of Civilians in Libya and Syria," *Denver Journal of International Law and Policy* 41(1) (2012): 88.

³⁰⁵ United Nations Security Council, "Resolution 1970(2011)," Resolution Adopted by the Security Council at its 6491st meeting, on 26 February 2011, [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1970\(2011\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1970(2011)).

³⁰⁶ Cottey, "Beyond Humanitarian Intervention," 431.

system mean that state interests permitted intervention in Libya, where intervention could be carried out at a relatively low cost through air power.³⁰⁷

In contrast with the UN response to Darfur, which deemed intervention much too difficult and the landscape too unmanageable to risk a large-scale operation, the Libyan environment fit favourably with the proposed R2P intervention. As previously discussed, the civil and political situation in Libya following the intervention has continued to spiral out of control and the civilian death toll continues to rise. In retrospect, the residual costs of the intervention may seem high. However, during the negotiations for Resolution 1973, there was little perception of risk to the UN member states tasked with carrying out the intervention.

In terms of national interests, power and influence in the turbulent Middle East has been a contentious issue for many years. Although Gadhafi had economically supported many African leaders,³⁰⁸ he was not a current ally of any of the permanent members of the Security Council. Over the years, the Gadhafi regime had "fallen out with both his neighbours and the West...[and] both Western and Arab leaders openly said they wanted [him] to go."³⁰⁹ The League of Arab States (LAS), or the Arab League, has 22 member countries primarily in and around North Africa and Southeast Asia, including Libya. The LAS is an organization of like-minded nations and has obvious vested interests in the stability of the region and its members. The national interests of these vocal UN member states were a prime factor in bringing the Libyan situation to the forefront.³¹⁰ In this case, national security concerns, and the possibility of violence spreading across borders, were as influential as strategic interests. Turkey had voiced concerns that some UN members are "driven by opportunism" in the region and may have been harbouring "secret intentions" before the intervention in Libya.³¹¹ Both Turkey and Russia had publicly indicated, without naming specifics, that members of the coalition forces during the Libyan intervention were selfishly pursuing action to gain power in the region.³¹²

Aral Berdal states that Resolution 1973 could be praised for its goal of civilian protection, but it could also be criticized for "its selectivity, [and] the apparent imperial greed that colored

³⁰⁷ Eckert, "The Responsibility to Protect in the Anarchical Society," 98.

³⁰⁸ BBC News Africa, "Libya conflict: Q&A," BBC, October 20, 2011, <http://www.bbc.com/news/world-africa-14612570>.

³⁰⁹ *Ibid.*

³¹⁰ Bellamy, "The New Politics of Protection? Côte d'Ivoire, Libya and the Responsibility to Protect," 843.

³¹¹ BBC News Europe, "Turkey warns against coalition 'hidden agenda' on Libya," BBC, March 23, 2011, <http://www.bbc.co.uk/news/world-europe-12833196>.

³¹² *Ibid.*

the behaviour of...the US, France, Britain and Italy."³¹³ According to Berdal, the United States and the UK were driven to intervene in Libya by a desire to settle "old scores" with the Gadhafi regime, which had previously been unfriendly to Western interests in the region.³¹⁴ For many members of the United Nations, and the United States in particular, there is a constant struggle in implementing foreign policy. Pierre Atlas argues that there is a tension, specifically in American foreign policy, between "pursuing American 'values' (foreign policy idealism) and protecting American 'interests' (foreign policy realism)."³¹⁵ For decades, this tension has stemmed from an American interest to, on the one hand, "make the world safe for democracy"³¹⁶ and on the other, a need to protect political, security, and economic interests. Protecting these interests sometimes means supporting dictatorships and "nondemocratic regimes."³¹⁷ In the case of Libya, the United States has had long-standing interests in Middle Eastern oil and the protection of its Israeli ally. The Libyan regime under Gadhafi threatened these American interests in the region. For the United Nations, there is an endless struggle between the responsibilities of the organization internationally and the individual needs of its member states.

Although the UN had the consent of the League of Arab States, the Libyan no-fly zone was, understandably, implemented without the support of the Gadhafi regime. Under the principles of the Responsibility to Protect, the consent of the government in question is not required for an intervention to take place. The support of the Arab League indicated regional consent to intervention. In the event that a government is deemed non-functional or incapable of protecting its civilians, an association of familiar neighbours can be a convincing alternative to the consent of the government in question. Regional consent, in the interest of the safety of Libyans and surrounding citizens, influenced the Security Council in a way the African Union alone was unable to achieve in Sudan. The advocacy of the African Union and the Arab League also had an impact on China and Russia, who chose to abstain from voting on Resolution 1973 rather than veto it. According to Berdal, these decisions were made, in part, by a desire to not "rock the boat" and upset regional allies.³¹⁸ The Libyan crisis was also the first time since the

³¹³ Aral Berdal, "Roaring in Libya, Whispering in Others: UN Security Council's Posture During the 'Arab Spring'," *Insight Turkey* 16(1) (2014): 185.

³¹⁴ *Ibid.*

³¹⁵ Pierre M. Atlas, "U.S. Foreign Policy and the Arab Spring: Balancing Values and Interests," *Digest of Middle East Studies* 21(2) (2012): 353.

³¹⁶ *Ibid.*

³¹⁷ *Ibid.*

³¹⁸ Berdal, "Roaring in Libya, Whispering in Others: UN Security Council's Posture During the 'Arab Spring'," 194.

adoption of R2P that the Security Council authorized the use of force for human protection against the will of a functioning state.³¹⁹ The UN took international action in opposition to an existing governing regime for the purposes of protecting civilians. Thus the initial intervention in Libya reinforced the principles of R2P and indicated significant change in intervention norms.

The United Nations Security Council responded in contrasting ways to the crises in Libya and Darfur because of a variety of factors. Support for humanitarian intervention and the Responsibility to Protect was important during the UN's response to the Libyan crisis. Despite obstacles and an inconsistent track record, humanitarian intervention and the R2P doctrine have been gaining international acceptance for many years. The Responsibility to Protect doctrine is the result of a series of humanitarian crises and a decade of developing intervention norms.

After humanitarian intervention grew out of peacekeeping, it was shaped both by challenges and successes throughout the 1990s and 2000s, eventually leading to the introduction of R2P. The Responsibility to Protect doctrine was not officially adopted by the United Nations until 2005, two years after the initial crisis in Darfur began. A simple difference between the two cases is the absence of established principles of the Responsibility to Protect during the outbreak of violence in Darfur.

Alex Bellamy argues that the adoption of R2P signals a trend in international relations that began with massacres in the 1990s like Rwanda and has reached its culmination with the recent intervention in Libya. According to Bellamy, a new "politics of protection"³²⁰ is showing itself in international relations. In conjunction with the evolution of humanitarian intervention, this theoretically new idea has four characteristics: (1) international society is appearing to be overwhelmingly focused on civilian protection; (2) the Security Council has proven to be willing to use military force for human protection; (3) the relationship between the United Nations Security Council and other stakeholders is becoming very crucial to decision-making and the authorization of force; and (4) cautious states are now agreeing to respond to crises through the Security Council.³²¹ In the wake of the ongoing Syrian crisis, it would seem as though this new politics of protection has fallen to the wayside. The intervention track record of the UNSC is still mixed and R2P was only adopted in 2005; not enough time has yet passed for these patterns

³¹⁹ Bellamy, "The New Politics of Protection? Côte d'Ivoire, Libya and the Responsibility to Protect," 825.

³²⁰ *Ibid.*

³²¹ *Ibid.*, 826.

to be proved permanent. However, as the conclusion will show, proponents of the Responsibility to Protect remain optimistic about the potential of the doctrine and its principles.

Conclusion The Responsibility to Protect Post-Libya and Future Prospects for Humanitarian Intervention

The crisis in Libya and the ensuing action by the United Nations demonstrates that humanitarian intervention has gained ground within the international community and that the R2P doctrine is a new platform upon which the concept will be able to grow. The international response to Libya is the first example of the Responsibility to Protect doctrine being partially used as a motivating factor for an actual intervention. It is a key event in R2P's integration into international norms. As previously discussed, much criticism has arisen in the wake of the UN campaign. Violence continues to tear Libya apart despite the military intervention on behalf of the United Nations. In a follow up report to the World Summit Outcome document in 2005, the Secretary General detailed the necessary steps to implement the Responsibility to Protect. The Secretary General concluded the report with six core priorities for implementing the responsibility to protect over the next decade:

- (1) signalling political commitment at the national, regional and global levels to protect populations from atrocity crimes; (2) elevating prevention as a core aspect of the responsibility to protect; (3) clarifying and expanding options for timely and decisive response; (4) addressing the risk of recurrence; (5) enhancing regional action to prevent and respond to atrocity crimes; and (6) strengthening international networks dedicated to genocide prevention and the responsibility to protect.³²²

With the reference to R2P in Resolution 1973 on the Libyan conflict, the Security Council has acknowledged political commitment to protecting populations at the global level, the first priority for implementing the doctrine. Furthermore, the League of Arab States was instrumental in drawing support for an intervention in Libya, which is a limited example of regional action in response to atrocity crimes. The majority of these steps have yet to be applied, but attitudes toward international responsibility during civil conflicts appear to be changing. The case studies in Darfur and Libya are evidence that the Responsibility to Protect is in the process of being implemented, despite the severe limitations on its practical application.

If the intervention in Libya cast considerable doubt on the relevance of R2P, the subsequent crisis in Syria has weakened the credibility of the doctrine. In March of 2011, the

³²² United Nations General Assembly, "A vital and enduring commitment: implementing the responsibility to protect," Report of the Secretary-General, A/69/981 of the 69th session of the United Nations General Assembly, July 13, 2015.

same month that the UN authorized a no-fly zone in Libya, protests began in Syria. The conflict started over the arrest of a few revolutionary teenagers and quickly escalated. Security forces began firing on and killing demonstrators, eventually triggering nationwide protests against the rule of President Bashar al-Assad.³²³ The conflict has been tearing apart the country of Syria since that time and has taken a considerable toll. More than 250,000 have died thus far and more than nine million are homeless. Both the opposition groups to al-Assad and the government forces have been accused of war crimes.³²⁴ Syria has fallen into a deadly civil war.³²⁵ Thus far, the United Nations has refrained from authorized intervention and has responded by attempting peace talks, stating that only a political solution³²⁶ can save Syria.³²⁷

Akin to the crisis in Darfur, recent debates about intervention in Syria have also been stalled by the language being used and the wording of certain agreements. Partially a result of disputes about overstepping the resolution for intervention in Libya – a problem with different conceptions of what actions the wording of Resolution 1973 authorized – there have been major arguments over whether or not the text of a proposed resolution will include ‘terrorism’ as a critical component and how it describes the actions of the Assad regime.³²⁸ Nick Bryant writes that "balanced wording"³²⁹ will continue to be important for finding consensus over the appropriate action in Syria. According to a senior Western diplomat involved in the UN negotiations, "The balance is between getting a text that will make a difference [in Syria]...whilst at the same time getting the Russians on board."³³⁰ The worsening situation in Libya and the ongoing violence in Syria have led many to the conclusion that the Responsibility to Protect is conceptually weak and practically dead.

Besides a seemingly abysmal track record since its adoption, there is heavy criticism stemming from the Libyan crisis that suggest the R2P doctrine has been a failure. Since 2005, the Responsibility to Protect doctrine has had little practical application. In Libya, the political and civil situation in the country has arguably worsened. Alan J Kuperman argues in *Foreign*

³²³ BBC News Middle East, "Syria: The story of the conflict."

³²⁴ *Ibid.*

³²⁵ *Ibid.*

³²⁶ *Ibid.*

³²⁷ At the time of writing, this was the reality of the Syrian conflict. As the conflict unfolds, it is possible that new developments have taken place which have not been accounted for here.

³²⁸ Nick Bryant, "As Syria devours itself, UN dithers on aid," *BBC News*, February 20, 2014, <http://www.bbc.com/news/world-us-canada-26277562>.

³²⁹ *Ibid.*

³³⁰ *Ibid.*

Affairs that the Libyan intervention was not justifiable on any grounds, and especially not under the R2P doctrine. According to Kuperman, the Libyan intervention was an "abject failure," because of Libya's current status as a failed state and a haven for extremist militias, and a better policy option would have been not intervening at all.³³¹ Years after the initial resolution to intervene in Libya, many argue that the doctrine has lost all meaning and authority since "the UN Security Council and NATO failed in every way to effectively implement R2P."³³² States and international bodies have demonstrated that few countries or organizations want the responsibility for human protection.³³³ Some members of the academic community suggest abandoning the already fading concept. Former Supreme Court justice Louise Arbour believes that "[R2P's] imposition by the UN in Libya, and the resulting chaos, severely crippled the notion of a legal intervention."³³⁴ As previously discussed, she argues that the Western notions of human rights and humanitarian interventions, up to and including the Responsibility to Protect, need to be completely rethought to combat serious international disconnects in ability, effectiveness and perceived intentions.

Despite heavy criticism after the Libyan intervention, there is reason to believe that the Responsibility to Protect still has potential for resolving crises in international affairs. To begin with, Resolution 1973 and the reference to the Responsibility to Protect in Libya worked exactly as it should have, in response to need, and under the correct authorities. Bellamy commented that, "Consensus on the use of force against Libya was enabled by several exceptional factors, in particular a putative regional consensus and the poor international standing of Qadhafi's regime, as well as the clarity of the threat and short timeframe for action."³³⁵ The resolution was enacted to impose a no-fly zone in the solid belief that the world had to protect the people of Libya. The government was manifestly failing in its duties and was threatening massacre. Although some argue, in retrospect, that Colonel Gadhafi had had no intentions of killing citizens en masse and that the intervention escalated the violence³³⁶, the history of violence and oppression under the Gadhafi regime speaks to a different social reality. The prison massacre of 1200 people in 1996,

³³¹ Alan J. Kuperman, "Obama's Libya Debacle: How a Well-Meaning Intervention Ended in Failure," *Foreign Affairs* 94(2) (2015): 67.

³³² Robert Murray, "Accepting R2P's Failure," Canadian International Council, November 26, 2013, <http://opencanada.org/features/the-think-tank/comments/accepting-r2ps-failure/>.

³³³ *Ibid.*

³³⁴ Saunders, "Why Louise Arbour is thinking twice."

³³⁵ Bellamy, "The New Politics of Protection? Côte d'Ivoire, Libya and the Responsibility to Protect," 825.

³³⁶ Kuperman, "Obama's Libya Debacle: How a Well-Meaning Intervention Ended in Failure," 67.

the existence of a violent secret police, and the brutal government crackdowns on protesters proves that there was a demonstrated disregard for human life.³³⁷ In the days and months preceding the UN authorization of military intervention, the calls for UN action were numerous and definitive. The decision to intervene was highly praised internationally.³³⁸ The UN had the support of the Arab League in Resolution 1973, and in fact, was being lobbied heavily for some kind of action. Afterwards, it is easy to critique UN action but it is difficult to claim that Libya would have been better off without an intervention. The country was already in civil turmoil before the UN intervened and Gadhafi had vowed to die before he surrendered control.

The most controversial aspect of the Libyan operation was the NATO mission extension and the subsequent toppling of the Gadhafi regime. This "mission creep" is cited as a major cause of UN indecision over Syria and the Russian opposition to any further authorization of intervention under the guise of R2P.³³⁹ However, R2P needs to be viewed in the context of the initial decision to intervene and not in the context of the mission extension. The extended operation and the toppling of the regime was not under the mandate of the Responsibility to Protect and is not an appropriate indicator of the value of the principle. Misapplication of the principles of R2P is the responsibility of UN member states. Russia consistently attempted to validate its involvement in the Ukraine and Georgia under the guise of the Responsibility to Protect, but this should not delegitimize the concept itself.³⁴⁰ There has definitely been "some infection of the whole R2P concept by the perception, accurate or otherwise, that the civilian protection mandate granted by the Council was manifestly exceeded by that military operation."³⁴¹

The implementation of the intervention, the mission extension, and the failure of the international community to support the redevelopment of Libyan society post-intervention may

³³⁷ Ian Black, "Libya violating human rights despite new image, says Amnesty," *The Guardian*, June 23, 2010, <http://www.theguardian.com/world/2010/jun/23/libya-human-rights-image-amnesty>; Ian Black and Owen Bowcott, "Libya protests: massacres reported as Gaddafi imposes news blackout," *The Guardian*, February 18, 2011, <http://www.theguardian.com/world/2011/feb/18/libya-protests-massacres-reported>.

³³⁸ Peter Preston, "Remember Srebrenica? The west's intervention in Libya is a no-brainer," *The Guardian*, May 29, 2011, <http://www.theguardian.com/commentisfree/2011/may/29/srebrenica-libya-intervention-no-brainer>.

³³⁹ Chris Keeler, "The End of the Responsibility to Protect?" *Foreign Policy Journal*, October 12, 2011, <http://www.foreignpolicyjournal.com/2011/10/12/the-end-of-the-responsibility-to-protect/>.

³⁴⁰ Mark Kersten, "Does Russia have a 'responsibility to protect' Ukraine? Don't buy it," *The Globe and Mail*, March 4, 2014, <http://www.theglobeandmail.com/globe-debate/does-russia-have-a-responsibility-to-protect-ukraine-dont-buy-it/article17271450/>.

³⁴¹ Gareth Evans, "The Responsibility to Protect After Libya and Syria," address to Annual Castan Centre for Human Rights Law Conference, Melbourne, July 20, 2012, <http://www.gevans.org/speeches/speech476.html>.

have been unjust but Resolution 1973 was not. It was a unanimous resolution with "no dissenting voices, and expressly invoking the principle of responsibility to protect [to authorize] the use of 'all necessary measures' to protect civilians at imminent risk of massacre in Benghazi and elsewhere in Gaddafi's Libya."³⁴² If UN member states fail to adhere to certain principles, it is not appropriate to abandon the principles. There may be a clear need to further define and consolidate the doctrine, but the Security Council and the rest of the UN membership needs to commit to making the prevention of humanitarian atrocities a collective priority.

The creation of the Responsibility to Protect doctrine was the culmination of the evolution of lengthy debates about humanitarian intervention. The principles of the Responsibility to Protect are meant to improve the practice of protecting populations from humanitarian disaster and change international norms about intervening on a humanitarian basis. For proponents of R2P, the doctrine affirms the right of countries to intervene and mandates that states are obliged to take action when necessary. The R2P principles are also focused on the language of intervention and the rights of nations to intervene associated with the rights of people to be protected. The Responsibility to Protect doctrine changes the terms of humanitarian intervention to concentrate on the rights of people to live in a safe environment, free from chronic war and violence, under the protection of their governments, rather than the rightness of external state intervention. R2P also prioritizes the safeguarding of innocent lives over other constraints to intervention. The doctrine promotes foregoing the necessity of host-state consent, delegitimizes the proximity of other conflicts, and downplays calculations of cost and benefits. R2P is, in geopolitical terms, the high point in the development of humanitarian intervention and remains a legitimate and relevant tool for the UN and independent states in their efforts for international peace and security. For R2P to be successfully integrated into UN doctrine, there need to be alternative ways to thinking about humanitarianism that can overcome systemic constraints and situational obstacles.

Post-Libya, proponents of R2P have not abandoned hope. According to Welsh, Thielking, and MacFarlane, the concepts of sovereignty and intervention should be complementary, not contradictory, and the ICISS made a sufficient step in the direction of reshaping the concept of sovereignty with the debate it created and the introduction of R2P. They argue that "it is acknowledged that sovereignty implies a dual responsibility: externally, to respect the

³⁴² Evans, "The Responsibility to Protect After Libya and Syria."

sovereignty of other states, and internally, to respect the dignity and basic rights of all the people within the state."³⁴³ The acceptance of the R2P principle into international society has not only shed light on the debate surrounding the long-standing issue of sovereignty, but arguably "has made non-intervention in the face of mass atrocity crimes less likely,"³⁴⁴ which was a main goal of Kofi Annan's robust advocacy. As Dunne observed, "The legitimacy accorded to R2P is sufficiently broad and deep to mean that it is more difficult for states to continue with 'business as usual' when mass atrocity crimes are occurring."³⁴⁵ It will take some time to determine if this will truly be a lasting change for humanitarian intervention and the crisis in Syria could disprove this argument. But the Libyan intervention is, for many, an example of where international norms are headed.

Secretary General of the United Nations Ban Ki Moon reinforced the importance of R2P while acknowledging the work still to be done when he said, "Our debates are about how, not whether to implement the Responsibility to Protect. No government questions the principle."³⁴⁶ Even member states that had previously been opposed to violating external sovereignty under any circumstances are becoming more accustomed to changing norms. Even though China continues to support a "strong conception of state sovereignty and noninterference" in its foreign policy, since the end of the Cold War it has shown a "willingness to acquiesce in and even actively support, multilateral humanitarian interventions that obtain both Security Council authorization and target state consent."³⁴⁷ Beijing has also "adopted certain tenets of the concept of "the responsibility to protect," suggesting that China is not as inflexible on sovereignty and intervention as some suppose."³⁴⁸ Jonathan E. Davis observed that China has shown a willingness to consider humanitarian crises as threats to international peace and security and in January 2005, Chinese Ambassador Wang Guangya agreed that the international community has a residual responsibility to protect citizens, secondary to the responsibility of the sovereign state.³⁴⁹

³⁴³ Jennifer Welsh, Carolin Thielking, and S. Neil MacFarlane, "The Responsibility to Protect: Assessing the Report of the International Commission on Intervention and State Sovereignty," *International Journal* 57(4) (2002): 494.

³⁴⁴ Dunne, "Libya and the State of Intervention," 520.

³⁴⁵ *Ibid.*

³⁴⁶ Evans, "The Responsibility to Protect After Libya and Syria."

³⁴⁷ Davis, "From Ideology to Pragmatism: China's Position on Humanitarian Intervention in the Post-Cold War Era," 220.

³⁴⁸ *Ibid.*

³⁴⁹ *Ibid.*, 260.

The Libyan intervention may not be an ideal example of the peace-enforcing capabilities of the UN, but international examples continue to show that humanitarian intervention remains a legitimate tactic. As Thomas Weiss observed,

In December 2013...the UN Security Council (UNSC) authorized military action to counter the Central African Republic's (CAR) genocidal chaos. Subsequently France, the ex-colonial power, joined forces with the post-colonial African Union (AU) to deploy troops to protect civilians. The UNSC also imposed an arms embargo on the country and warned the UN of the need for a possible peacekeeping mission. In another example, the UNSC in April 2013 approved action in Mali, led by France and the 15-nation Economic Community of West African States (ECOWAS), to counter Islamist extremists.³⁵⁰

Both the African-led International Support Mission in Central Africa (MISCA), established by Resolution 2127, and the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), established by Resolution 2100, were authorized by the UN Security Council to take all necessary measures to protect civilians and stabilize the conflicts in CAR and Mali. Furthermore, the Security Council made reference to the R2P doctrine in both cases. Resolutions 2127 and 2100 acknowledged that the transitional government authorities in each country had a responsibility to protect their populations.³⁵¹

Gareth Evans is also optimistic about the Responsibility to Protect, even after Libya, and continues to promote its value amidst heavy opposition. As one of the creators of the doctrine, he understood the difficulties that lie ahead for international consensus and gives suggestions for supplementary principles to further define R2P for practical use. The alternative to working within the adopted framework of R2P, he argues, is not an option;

I don't think there is any policymaker in the world who fails to understand that if the Security Council does *not* find a way of genuinely cooperating to resolve these cases, working within the nuanced and multidimensional framework of the R2P principle, the alternative is a return to the bad old days of Rwanda, Srebrenica and Kosovo. That means either total, disastrous inaction in the face of mass atrocity crimes, or action being taken to stop them without authorization by the Security Council, in defiance of the UN Charter and every principle of a rule based international order. After all that has been achieved over the last decade, that would be heartbreaking.³⁵²

Before the United Nations became a legitimate global governance organization, it went through a complex creation period. The Responsibility to Protect has entered a similarly difficult phase

³⁵⁰ Thomas G. Weiss, "Military Humanitarianism: Syria Hasn't Killed It," *Washington Quarterly* 37(1) (2013): 7.

³⁵¹ United Nations Security Council, "Resolution 2100 (2013)," resolution adopted by the Security Council at its 6952nd meeting, on 25 April 2013, [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2100\(2013\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2100(2013)); United Nations Security Council, "Resolution 2127 (2013)," resolution adopted by the Security Council at its 7072nd meeting, on 5 December 2013, [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2127\(2013\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2127(2013)).

³⁵² Weiss, "Military Humanitarianism: Syria Hasn't Killed It," 7.

post-Libyan intervention. Despite this, the Responsibility to Protect has the potential to endure current crises if the international community renews its commitment to stop atrocities before they happen and step in if governments allow them to happen.

For international political norms to develop, a great amount of time and persistent energy must be expended. Democracy took hundreds of years to become the dominant system of governance on the planet, and is still being developed and implemented in different parts of the modern world. Illustrated by the historical political development of countries like France, Italy, and Germany, "stable liberal democracy usually emerges only at the end of long, often violent struggles, with many twists, turns, false starts, and detours."³⁵³ With respect to the case of Libya, whose peace and democratic success seems, at present, to be partially linked to the survival of the Responsibility to Protect doctrine, Sheri Berman states that, "History tells us that societies cannot overcome their problems unless and until they face them squarely. The toppling of a long-standing authoritarian regime is not the end of a process of democratization but the beginning of it."³⁵⁴ The development of democracy, in comparison to the implementation of the R2P doctrine, is a disproportionate example of change in international relations. However, it demonstrates the difficulty of updating traditional norms about sovereignty and human rights, which are central to R2P. The Responsibility to Protect has not been unequivocally adopted but it has not been a complete failure either. Incremental gains throughout the past several years are evidence of its partial adoption. The Responsibility to Protect has, for some, reached an impasse within the context of recent international developments. In the fresh aftermath of crises where mistakes may have been made and criticism is convenient, it is easy to condemn ideas that are conceptually at an early stage in their development. However, humanitarian intervention remains a necessary tool of the UN. To give up on progress because of setbacks would be counter-productive. The mixed situational priorities of UN member states should not overshadow years of discussion and intellectual innovation.

³⁵³ Berman, "The Promise of the Arab Spring: In Political Development, No Gain Without Pain."

³⁵⁴ *Ibid.*

Abbreviations

AMIS - African Union Mission in Sudan

AU - African Union

BRICS - Association of Brazil, Russia, India, China, and South Africa

HRC - Human Rights Council

ICISS - International Commission on Intervention and State Sovereignty

ICC - International Criminal Court

JEM - Justice and Equality Movement

LAS - League of Arab States

MINUSMA - United Nations Multidimensional Integrated Stabilization Mission in Mali

MISCA - International Support Mission in Central Africa

NAM - Non-Aligned Movement

NATO - North Atlantic Treaty Organization

NTC - National Transitional Council (Libya)

ONUC - United Nations Operation in the Congo

R2P - The Responsibility to Protect (Doctrine)

SLA - Sudanese Liberation Army

UK - United Kingdom

UNAMID - United Nations-African Union Mission in Darfur

UNMIS - United Nations Mission in Sudan

UNMOGIP - United Nations Military Observer Group in India and Pakistan

UN - United Nations

UNEF I - First United Nations Emergency Force (Middle East)

UNEF II - Second United Nations Emergency Force (Middle East)

UNFICYP - United Nations Peacekeeping Force in Cyprus

UNOSOM II - United Nations Operation in Somalia II

UNSC - United Nations Security Council

UNSF - United Nations Special Force (West New Guinea)

UNTAET - United Nations Transitional Administration in East Timor

UNTAG - United Nations Transition Assistance Group (Namibia)

UNTEA - United Nations Temporary Executive Authority (West New Guinea)

UNTSO - United Nations Truce Supervision Organization

USA, US - United States of America

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