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MIXED MOTIVES AND IRREGULARITIES: LIBYA, SYRIA, AND THE RESPONSIBILITY TO PROTECT

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ABSTRACT

**MIXED MOTIVES AND IRREGULARITIES: LIBYA, SYRIA, AND THE
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By Major John D. Summerfield

In 2001, as a response to former United Nations Secretary-General Kofi Annan,
the International Commission on Intervention and State Sovereignty (ICISS) released the
report, "The Responsibility to Protect" (R2P) in order to rebalance the roles of the state
and the international community and provide a framework for basic human security in the
face of mass atrocities and war crimes. Sixteen years later, after being adopted by 150
member states of the United Nations, the Security Council continues to struggle to
effectively and consistently implement R2P. The conflicts in Libya and Syria, which both
have origin in the Arab Spring, provide case studies to evaluate the ICISS's six criteria
for a lawful and legitimate humanitarian intervention. The chief cause of R2P's
ineffective operationalization is directly attributable to the continued primacy of state
sovereignty. Moreover, this paper argues that the overall impact of R2P's irregular
employment is attributable to deadlock in the Security Council, the continued mixed
motives of states, and R2P's uncertain normative status. Furthermore, in evaluating the
impact of R2P's irregular employment using the prominent International Relations
theories of realism, liberal internationalism, and constructivism, it is clear that no single
theory provides a complete explanation of R2P's failed operationalization in Libya and
Syria. Rather, a blending of theories is required for a fulsome analysis.

A sad truth of human nature is that it is hard to care for people when they are abstractions, hard to care when it is not you or somebody close to you. Unless the world community can stop finding ways to dither in the face of this monstrous threat to humanity those words *Never Again* will persist in being one of the most abused phrases in the English language and one of the greatest lies of our time.

- Paul Rusesabagina, *An Ordinary Man: An Autobiography*

CHAPTER I: INTRODUCTION

In the last century, over 203 million people were killed in wars, of which only 33 million were military casualties from interstate conflict.[1] The lion's share was the 170 million civilian deaths attributed to internal conflict. To be more precise, in the last half of the century, beginning with the end of the Second World War (WW II), approximately 250 internal conflicts were responsible for 86 million civilian casualties.[2] The United Nations (UN) was founded by its 51 original members on October 24, 1945 with a purpose to "maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace…"[3] From the beginning of its existence, scholars have mounted continuous criticism and have yet to cease questioning the UN's ability to accomplish its primary *raison d'être*.

Particular criticism has mounted regarding the UN Charter's ability to meet its purpose regarding the protection of human rights; "[t]o achieve international cooperation… in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."[4] Despite the dedication and the commitment of member states, the UN has failed to evolve

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[1] M. Cherif Bassiouni, 1997, "Searching for Peace and Achieving Justice: The Need for Accountability," *Law and Contemporary Problems*, Vol. 59, No. 4, 10.
[2] *Ibid.*, 10.
[3] United Nations, 1945, *Charter of the United Nations*, San Francisco: United Nations Conference on International Organization, Ch 1, Art 1, para 1.
[4] *Ibid.*, Ch 1, Art 1, para 3.

in a way to reach that objective. As the Cold War ended and as the effects of

globalization set in, the world began to pay more attention to human security. Society

became more aware of the impact of genocide, other crimes against humanity, and

intrastate conflict.[5] In turn, support for humanitarian intervention became more culturally

accepted. However, meaningful action by the international community would not yet

respond to popular repugnance, as the re-evaluation of human security laid outside the

interest of states. Scholars and humanitarian experts, and Non-Governmental

Organizations (NGO) would challenge the UN to take a more active role in curbing

violence in order to protect the most vulnerable from their oppressors. The 1990s saw

philosophical leaps forward by scholars and statesmen regarding humanitarian

intervention, more specifically toward "the right to intervene" as Bernard Kouchner, a

French statesman and the co-founder of Médecins Sans Frontières and Médecins du

Monde, offered. Similarly, former British Prime Minister Tony Blair postulated that the

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[5] Although the concept that humans require protection predates the contemporary era, the concept of human security as it is currently applied within international and national policies was introduced in the 1994 United Nations Development Programme (UNDP) *Human Development Report*. The report broadened the scope of security from a territorial focus to that based on humans, specifically freedom from fear and freedom from want, listing seven essential dimensions of human security: economic, food, health, environmental, personal, community, and political. Human security is divergent from other forms of security (such as: global, societal, or cooperative) because it has the potential to conflict with primacy of the state within the Westphalia system. Keith Krause, 2007, "Towards a Practical Human Security Agenda," *Geneva Centre for the Democratic Control of Armed Forces*, 1-4, accessed May 2, 2017, www.dcaf.ch/content/download/35420/526057/file/PP26.pdf; Oscar A. Gomez and Des Gaspar, n.d., "Human Security: A Thematic Guidance Note for Regional and National Human Development Report Teams," *United Nations Development Programme, Human Development Report Office*, 2, accessed May 2, 2017, http://hdr.undp.org/sites/default/files/human_security_guidance_note_r-nhdrs.pdf; United Nations Development Programme, 1994, *Human Development Report 1994*, New York: United Nations Development Programme, 22-46.
Human Security is currently defined as "the combination of threats associated with war, genocide, and the displacement of populations. At a minimum, human security means freedom from violence and from the fear of violence." It emphasizes the security of individuals. It is not delinked by the idea of national security, but recognizes that the two may not be mutually supporting; a secure state does not automatically equate to a security for individuals; Human Security Project, n.d., "Human Security Backgrounder," *hsgroup.org*, accessed February 17, 2017, http://www.hsrgroup.org/press-room/human-security-backgrounder.aspx; see also: Human Security Unit, n.d., "Human Security in Theory and Practice," *un.org*, accessed February 17, 2017, http://www.un.org/humansecurity/sites/www.un.org.humansecurity/files/human_security_in_theory_and_practice_english.pdf.

limits of sovereignty suggested a moral obligation to intervene to uphold fundamental values, and Francis Deng, a South Sudanese Diplomat and former UN Special Adviser on the Prevention of Genocide articulated: "sovereignty as responsibility."[6] In 2000, Kofi Annan, then Secretary-General of the UN, asked the UN General Assembly to challenge the status quo:

> If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica—to gross and systematic violations of human rights that offend every precept of our common humanity?[7]

Human security debates prompted the development of "The Responsibility to Protect" (R2P) by the International Commission on Intervention and State Sovereignty (ICISS).[8] R2P assured the primacy of human security, unavoidably pitting "individual state interest" against the concept of "international obligation." R2P was touted as the landmark argument for state intervention to protect humanity against large-scale loss of life and ethnic cleansing.[9] This essay seeks to address *exactly* this issue by asking two questions: first, how have UN member states reconciled the primacy of their individual interests in the application of the principles of R2P in the conduct of humanitarian intervention as outlined by the ICISS? Second, can these results be explained and be understood by International Relations (IR) theory?

The purpose of this paper is to study the application of R2P in order to draw conclusions regarding the overall effectiveness of the UN mandate to respond with humanitarian interventions. The study will focus on the UN's ability to respond to crises,

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[6] Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for all*, Washington: Brookings Institutional Press, 33-36.
[7] United Nations, 2001, *We the Peoples: The Role of the United Nations in the 21st Century*, New York: United Nations, 48.
[8] The role of the ICISS will be explored in Chapter 2.
[9] ICISS, 2001, *The Responsibility to Protect,* Ottawa: International Development Research Center, 32.

specifically relating to the many "mixed motives" questions and competing factors relating to the primacy of individual sovereignty and the emerging international prominence of human security. This paper argues that, in fact, very little progress has been made with respect to the operationalization or implementation of R2P for two principal reasons. First, the irregular implementation of the policy concerning the Responsibility to Protect is directly attributable to the complexity of mixed state motives. Second, individual state self-interest remains primary within the Westphalian system. Furthermore, additional analysis will highlight the much contested nature and only partial explanatory value of IR theory. However, the uneven application of R2P illustrates why no theory fully explains competing pressures facing states. Only taking into account a blending of theoretical perspectives allows for a fulsome explanation.

A. Methodology and Road Map

In order to explain the ongoing asymmetrical and contradictory application of R2P by members of the United Nations Security Council (UNSC), this paper provides a contextual case study comparison using a qualitative approach. It will study all the known variables related to the mixed motives, or competing pressures, that states face in choosing "how" or "if" to respond to humanitarian crises by conducting two case studies of contemporary conflicts that are related to R2P. The case studies will analyze each conflict in relation to the six criteria for justification of a humanitarian intervention as established by the ICISS (right authority, just cause right intention, last resort, proportional means, and reasonable prospects).

Although there are many states that could be used for a case study of R2P, the two states of focus for this study will be Libya and Syria. These states represent contemporary

conflicts and humanitarian crises which began *after* R2P was introduced by the UN. Both

states have been at the center of the existing scholarly debate relating to R2P's

implementation. Specifically, due to the complex nature of the two conflicts, coupled

with the irregular international responses, both states have been used by both supporters

and critics of R2P to justify the emergence of R2P as a norm or to uphold arguments for

or against the primacy of state sovereignty.[10] Libya and Syria also find commonality in

the temporal and political origins of their domestic unrest: the Arab Spring movement of

2011.[11] During the Arab Spring, both states had populist movements that called for

democratization, reform, increased rights, and regime change. In both cases, these

populist movements were repugnant to the status quo of their respective leaders, Colonel

Muammar Gaddafi and Bashar al-Assad, who issued threats and used violence to

counteract these movements. In addition, Libya and Syria share many common cultural

features. They share a similar cultural background, in that they are both Muslim, Arabic-

speaking, states. They are also former colonies of European powers with autocratic

governments with a deep history of repression and human rights abuses. What is most

important to this study is the misaligned application of international interventionism as a

reaction to both conflicts. Indeed, the competing interests that prevented, obstructed, or

allowed the humanitarian basis for intervention by UN member states are of issue here.

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[10] This issue will be explored further in Chapters 2, 3 and 4.
[11] For more information regarding the Arab Spring see: Mark L. Haas and David Lesch, 2016, *The Arab Spring: The Hope and Reality of the Uprisings*, Boulder, CO: Westview Press; Peter Jones, 2012, "The Arab Spring," *International Journal*, 1 April; Muriel Asseburg, 2012, "Protest Revolt and Regime Change in the Arab World: Actors, Challenges, Implications and Policy Options," *SWP Research Paper*, Berlin: Stiftung Wissenschaft und Politik German Institute for International and Security Affairs, accessed October 1, 2016, https://www.swp-berlin.org/fileadmin/contents/products/research_papers/2012_RP06_ass.pdf; and James L. Gelvin, 2012, *The Arab Uprisings: What Everyone Needs to Know*, New York: Oxford University Press.

Ultimately, once the challenge of mixed motives has been established as problematic, the lack of progress regarding the adoption of R2P will be more fully elaborated. Irregular implementation is a significant factor in establishing the independent existence of R2P as a variable in state decision-making and directly tied to the continuing legal and political debate over R2P's status as a norm, its enforcement by the international community, as well as the determination of its success or failure among IR scholars. The causes of irregular and inconsistent implementation will be analyzed in accordance with three primary theoretical approaches, realism, liberal internationalism, and constructivism, in order to determine the relevance of each to explain the application of R2P.

This study will utilize primary and secondary open source documents. The principal documentation will include scholarly texts and academic journals, as well as independent and think tank studies. Government and UN documents and publications, as well as speeches and public addresses from state and UN officials, will illustrate both international and state opinion. Due to the contemporary nature of this topic, reputable media sources will also be used. Official state documentation and thorough histories regarding the conflict will not be available for years to come, thus only known and credible sources of data can mitigate this current gap in available information and analysis. Political bias shades political speeches and government publications and scholars are also are known for their contested and even partisan views on this topic. However, the use of fulsome and balanced sources ensures that the case studies and analysis are presented in a historically contextualized, systematic, and detailed manner.

Acknowledging that R2P is a multi-faceted policy, this study is limited to an analysis of humanitarian intervention and does not address prevention or post-conflict development in depth. Other than to signal the widespread debate on this subject in the academic community, the intent is neither to address nor reproduce the larger R2P debate here. Moreover, due to the ongoing conflict in Syria, a final analysis of the overall impact of an intervention, or lack thereof, is not currently possible. The current situation in Syria, as well as international action and inaction over the last five years of the conflict will be used as a baseline. For this reason, this paper will not make any assumptions or predictions regarding the future end state of the conflict. Finally, the goal is not to assess military operational or strategic success or failure as part of the case study analysis of Libya and Syria, but rather the *specific* prospects of success with respect to R2P criteria for intervention. More critical than the relative success of failure of military operations is strategic intent.

This paper will be divided into six chapters. Chapter 2, a literature review, provides a historical synopsis of the evolution of international humanitarian intervention into the 21st century, an analysis of the foundational examination of R2P, the ICISS's criteria for the conduct of a legitimate humanitarian intervention, and concludes with a discussion of the recent scholarly debate central to R2P, with respect to norms and the primacy of sovereignty. Chapter 3 proceeds with a case study analysis of the conflicts in Libya and Syria as they relate to the ICISS's six legitimacy criteria for humanitarian intervention in order to understand the issues of mixed motives and the irregular employment of R2P. Chapter 4 builds on this analysis by studying the impact of irregular employment on the effectiveness of R2P's operationalization by focusing on the UNSC,

mixed motives, and R2P's normative status. Chapter 5 shifts focus from the effectiveness

of R2P, exploring the major IR theories of realism, liberal internationalism, and

constructivism, in order to determine the relevance of each as a fulsome or partial

explanation to the irregular implementation of R2P. Finally, Chapter 6 will provide

conclusions and recommendations for further research.

CHAPTER II: LITERATURE REVIEW

The idea of establishing basic rights for human security which supersede the power of a state was not one that was new or revolutionary to the 2001 ICISS panel in creating the framework for R2P. Although the direct foundation lay in contemporary history, both philosophical and practical examples of the principles of R2P can be found to date as far back as the 17th Century. In 1625, Hugo Grotius, a Dutch philosopher exiled to France because of his religious beliefs, laid the foundation for the philosophic argument for human security and state intervention in his work *On the Laws of War and Peace*. Grotius' term "natural justice" established a moral argument for the justification of war by a state as a means to protect people in another state from tyranny.[12] In more practical terms, the British were the first to project human security and advocate for human rights outside of their territory. On March 25, 1807, the Parliament of the United Kingdom passed the *Abolition of the Slave Trade Act*, making the trade of slaves illegal between the British colonies.[13] Britain projected its domestic law externally, establishing a series of international treaties to ban the slave trade among European states.[14] In order to coerce states to comply, the British Navy established the West African anti-slavery squadron with the mandate to "[enforce] human rights beyond its shores."[15] In all, although it is estimated that the Navy stopped less than 10% of the trade, 1,600 ships involved in the slave trade were seized and 150,000 Africans were freed between 1807

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[12] Hugo Grotius and Stephen C. Neff, 2012, *Hugo Grotius on the Laws of War and Peace*, Cambridge; New York: Cambridge University Press.
[13] The National Archives, n.d., "Abolition of the Slave Trade," *The National Archives of the United Kingdom.*
[14] Huw Lewis-Jones, "The Royal Navy and the Battle to End Slavery," *bbc.co.uk,* accessed October 9, 2016, http://www.nationalarchives.gov.uk/pathways/blackhistory/rights/abolition.htm.
[15] Charles Homans, 2011, "The Responsibility to Protect: A short history," *foreignpolicy.com*, 11 October, accessed October 10, 2016, http://foreignpolicy.com/2011/10/11/responsibility-to-protect-a-short-history/.

and 1860.[16] The Slave Trade Act became the first documented instance where "the

systematic mobilization of public opinion across the class spectrum" rallied against state

sponsored cruelty though the popular abolitionist movement, leading to "significant

changes in international relations and human rights."[17]

A. 20th Century Conflict

Conflict in the 20th Century evolved in a manner that awoke societies to the

fragility of humanity in two principal ways. The first is directly attributable to the

devastation of WW II, the first major war where civilian death would outnumber military

death: 35-40 million civilians to 20 million soldiers.[18] Within the evolution of tactics and

operational planning, the killing of civilians and the destruction of civil and private

infrastructure became legitimate military targets. If one considers the 800 bomber strong

Allied raid of Dresden in February1945, where it was estimated that between 25,000 and

35,000, mostly women and children, died over a period of three days, or the atomic bomb

that was dropped on Hiroshima that killed an estimated 66,000 civilians and injured

69,000 others, society emerged from the war with a realization of their common

vulnerability.[19]

Second, WW II provided the mechanism allowing Nazi Germany to conduct the

genocide of an estimated 13 million people in an attempt to purify the state from various

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[16] BBC, n.d., "Abolition," *bbc.co.uk*, accessed October 9, 2016,
http://www.bbc.co.uk/devon/content/articles/2007/03/20/abolition_navy_feature.shtml.
[17] Adam Hochschild, 2005, *Bury the Chains: Prophets and Rebels in the Fight to Free an Empire's Slaves*,
Boston: Houghton Mifflin Company, 138; Derrick M. Nault, Shawn L. England, 2011, *Globalization and
Human Rights in the Developing World*, New York: Palgrave Macmillan, 12.
[18] Paul R. Bartrop and Steven L. Jacobs, 2015, *Modern genocide: The Definitive Resource and Document
Collection*, Santa Barbara, CA: ABC-CLIO, 2051.
[19] For Dresden casualties see: Britannica Academic, n.d., "Bombing of Dresden," *academic.eb,* accessed
October 10, 2016, http://academic.eb.com/levels/collegiate/article/606267; for Hiroshima casualties see:
The Atomic Archive, n.d., "The Atomic Bombings of Hiroshima and Nagasaki: Total Casualties,"
atomicarchive.com, accessed November 10, 2016,
http://www.atomicarchive.com/Docs/MED/med_chp10.shtml; see also Randall Hansen, 2009, *Fire and
Fury: The Allied Bombing of Germany 1942—1945*, Doubleday Canada.

minitories. [20] The sheer magnitude of the event made such inhumanity impossible for the world to ignore. As Auguste Champier de Ribes, a French prosecutor during the Nuremberg trials stated: "This is a crime so monstrous, so undreamt of in history… that the term "genocide" has had to be coined to define it..."[21] In the following years, a renewed interest among societies and states led to collective action by major international powers to establish an international framework, as well as legal precedence, to prevent a recurrence of the inhumanity of the world war; the most influential of these being the instituting of the United Nations on June 26, 1945, for universal respect for, and observance of, human rights.[22]

The Nuremberg trial conducted by the victorious powers, the United States (US), the United Kingdom (UK), Russia, and France, tried, convicted, and sentenced a dozen high-ranking Nazi officials to death for their crimes between 1946 and 1949.[23] The trial, despite criticism of illegitimacy of "victor's justice," established precedent for the legal

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[20] Figures include Jews, Russian prisoners, Polish Catholics, Serbians, and other minority groups from other nationalities, religious groups, and homosexuals. The Holocaust Chronicle, n.d., "Appendices: Total Deaths from Nazi Genocidal Policies," *holocaustchronicle.org,* accessed November 10, 2016. http://www.holocaustchronicle.org/holocaustappendices.html; for more information on the Holocaust see: "The United States Holocaust Memorial Museum," *ushmm.org,* accessed March 16, 2017, www.ushmm.org; and "Yad Vashem - The World Holocaust Remembrance Center," *yadvashem.org*, accessed March 16, 2017, www.yadvashem.org.
[21] The Nizkor Project, n.d.,"The Trial of German Major War Criminals: Sitting at Nuremberg, Germany 29th July to 8th August 1946, One Hundred and Eighty-Ninth Day: Monday, 29th July, 1946," *nizkor.org*, accessed 19 November 2016, http://www.nizkor.org/hweb/imt/tgmwc/tgmwc-20/tgmwc-20-189-01.shtml; as a precursor to the Nuremberg trials, in 1944 Raphael Lemkin, a Polish-Jewish lawyer, coined the term 'genocide' from the Greek words 'genos' (race) and the Latin word 'cide' (killing). United to End Genocide, n.d., "Raphael Lemkin and Creation of the word "Genocide,"" *endgenocide.org*, accessed November 21, 2016, http://endgenocide.org/learn/what-is-genocide/.
[22] Jane Springer, 2006, *Genocide*, Toronto: Groundwood Books; Adam Jones, 2011, *Genocide: A Comprehensive Introduction, 2nd Ed.*, New York: Routledge.
[23] For information regarding the trials see: Joseph E. Persico, 1994, *Nuremberg: Infamy on trial*. New York: Viking and Telford Taylor, 2012, *The Anatomy of the Nuremberg Trials: A Personal Memoir*, New York: Knopf Doubleday Publishing Group.

prosecution of crimes against humanity, later codified by the 1948 Convention on the Prevention of Genocide. [24]

Despite legal developments and UN infrastructure, the Cold War effectively froze any prosecution of crimes against humanity until the 1990s, as well as the development of ideas of human security as critical to state security. Indeed, throughout the Cold War, both East and West accomplished the opposite effect, as their proxy wars contributed significantly to the degradation of human security for millions worldwide.[25] While the superpowers vied for geographical, economic, and ideological superiority, intra-state conflicts and the civilian death tolls grew, yet the global community was more preoccupied with nuclear annihilation.

B. Post-Cold War Influences

The Cold War finally ended with the collapse of the Soviet Union in 1991. Once again, the international community began to wrestle with the issue of human security and intervention. Advances in media technology, such as satellite feed, allowed information and graphic details of emerging conflicts including scenes of atrocities and humanitarian crises to be broadcast near-instantaneously to the public. As Piers Robinson, in his study of the "CNN effect," stated: "greater media autonomy and a loss of policy direction

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[24] Quincy Wright, 1948, "Legal positivism and the Nuremberg judgment," *The American Journal of International Law 42* (2): 405-414; see also: Danilo Zolo, 2009, *Victors' justice: From Nuremberg to Baghdad*, New York; London: Verso.

[25] One such example is the Congo Crisis from 1960-1965 where the Soviet Union and the United States each supported opposing factions in a series of civil wars. Each had the goal to establish a friendly regime in the newly independent Congo that had succeeded from Belgium. The US-backed Joseph Mobutu would eventually seize power from the Soviet back, and democratically elected Prime Minister Lumumba, causing approximately 100,000 deaths, of which only 7,175 were soldiers. PNW, n.d., "Congo Crisis," *The Polynational War Memorial* and Matthew White, "Mid-Range Wars and Atrocities of the Twentieth Century,"*erols.com*, accessed November 21, 2016, http://www.war-memorial.net/Congo-Crisis-3.128#fn.

following the Cold War led to greater potential for media to shape politics."[26] The

shaping of politics placed direct pressure on Western states to address the security of the

most vulnerable. Governments could no longer hide behind a veil of information

ignorance. Despite a lack of academic consensus on the subject, public opinion became

highly critical of the post-Cold War era as one fraught with civilian deaths and

atrocities.[27] As the December 2003 European Security Strategy relates in its analysis of

conflict since 1990, "almost 4 million people have died in wars, 90% of them civilians."[28]

States began to be viewed as having moral obligations to their citizens.[29] Two significant

conflicts had a direct impact on this view: UN inaction in Rwanda and the NATO

mission in Kosovo.

The Rwandan Genocide provided a stark example of the devastation that can

occur when the international community refuses to act to prevent or stop genocide and

crimes against humanity. In Rwanda, credible warnings concerning a Hutu-planned

operation to exterminate the minority Tutsi population preceded the killing. Earlier that

year, Major General Romeo Dallaire, commander of the United Nations Assistance

Mission for Rwanda (UNAMIR), had cabled the UN headquarters reporting that he held

reliable intelligence that plans had been made to exterminate the entire Tutsi population

as well as moderate Hutus who opposed the massacre.[30] These warnings would go

unanswered by the UNSC, then Secretary-General Boutros Boutros-Ghali, and world

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[26] Piers Robinson, 2005, "The CNN Effect Revisited," *Critical Studies in Media Communication*, Vol. 22, No. 4, October, 349.

[27] Adam Roberts, 2003, "Lives and Statistics: Are 90% of War Victims Civilians?," Survival (00396338) 52, no. 3, June: 115-136.

[28] Javier Solana, EU High Representative for Common Foreign and Security Policy, 2003, *A Secure Europe in a Better World: European Security Strategy*, Paris: European Union Institute for Security Studies, 5.

[29] Robert W. Murray, "Humanitarianism, Responsibility or Rationality? Evaluating Intervention as State Strategy," in Aidan Hehir and Robert Murray, 2013, *Libya: The Responsibility to Protect and the Future of Humanitarian Intervention*, New York: Palgrave Macmillan, 24-28.

[30] Samuel Totten and Paul R. Bartop, 2009, *The Genocide Studies Reader*, New York: Routledge: 330.

leaders. US President Clinton addressed the UN General assembly on September 27, 1993: "The United Nations simply cannot become engaged in every one of the world's conflicts. If the American people are to say yes to UN [sic] peacekeeping, the United Nations must know when to say no."[31] The US suffered from the "Mogadishu effect," an epithet describing American unwillingness to commit to UN operations where US interests were not directly affected, particularly in Africa, in the wake of their 1993 failed mission to Somalia that resulted in the deaths of 18 soldiers.[32] The international community did not respond, remaining idle and uncommitted as Rwandan governmental forces and militias slaughtered their own people.

Alex J. Bellamy argues that, although states find mass killings and crimes against humanity repugnant, they are bound to three principles: state sovereignty, political will, and prudence. The three work in tandem and indicate why intervention would have been unlikely in the case of Rwanda, especially in 1994. First, the Westphalian system is, by its very nature, state-centric. Reaching consensus in the UN regarding intervention has been difficult, given that many states are committed to the idea of non-intervention, as it also provides each of them protection from being the target of a future international intervention. They are supported in the UN Charter, Article 2(7) which prohibits the UN from interfering "in matters essentially within the domestic jurisdiction of the states."[33] Second, domestic state governance is primarily concerned with the well-being and care of its citizens. In the case of international intervention, there is the expectation that a state

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[31] Bill Clinton, 1993, "Address by President Bill Clinton to the UN General Assembly: Remarks to the 48th Session of the United Nations General Assembly," *state.gov*, September 27, accessed November 21, 2016, http://www.state.gov/p/io/potusunga/207375.htm.
[32] Gareth Evans, 2008, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for all*, Washington: Brookings Institutional Press, 27; for information on Somalia see: Mark Bowden, 1999, *Black Hawk Down*, New York: Grove Press.
[33] Alex J. Bellamy, 2011, *Global Politics and the Responsibility to Protect: From Words to Deeds*, New York: Routledge, 3-4.

will expend considerable resources, money, and potentially the lives of its citizenship to "save strangers from mass atrocities."[34] In the case of Rwanda, there lacked political will due to "Mogadishu effect." Third, even if a state is willing to act independently to intervene regardless of state sovereignty, it only has finite resources and must not embark on an operation that may create more harm than good. States will evaluate if it is prudent to commit to an intervention.[35] Bellamy's argument finds support in the words of former president Bill Clinton:

> In recent weeks in the Security Council, our Nation has begun asking harder questions about proposals for new peacekeeping missions: Is there a real threat to international peace? Does the proposed mission have clear objectives? Can an end point be identified for those who will be asked to participate? How much will the mission cost? From now on, the United Nations should address these and other hard questions for every proposed mission before we vote and before the mission begins.[36]

Inaction in Rwanda resulted in the identification of 951,018 victims of genocide.[37] The conflict produced crimes against humanity too numerous to effectively prosecute, including high levels of sexual assault and massive humanitarian displacement, with well over a million refugees.[38] Rwanda provides a chilling example where states decided that their primary interests lay elsewhere, and against any intervention.

By contrast, NATO's 1999 air campaign in Kosovo was conducted *outside* of the authority of the UN, but one that placed human security above state sovereignty and international law. In 1998, Serbian President Slobodan Milošević threatened to conduct a purge of ethnic Albanians from Kosovo. After failed peace talks, an escalation in violence, and the expulsion of hundreds of thousands of ethnic Albanians from Kosovo

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[34] *Ibid.*, 5.
[35] *Ibid.*, 6.
[36] Clinton, "Address by President Bill Clinton to the UN General Assembly…"
[37] A detailed census was taken in July 2000, as documented in: Jones, *Genocide*, 360.
[38] Totten and Bartop, *The Genocide Studies Reader*, 331.

by the Serbs, the UN Security Council failed to reach an agreement on the use of force. In

May of 1999, NATO commenced 78 days of air strikes in order to coerce the Serbs to

halt their selective atrocities. Although the air campaign caused "several thousand"

deaths, and created a refugee crisis, NATO ended the conflict.[39] The NATO operation has

been much debated, with scholars divided on both the conflicting legal and moral

principles. Gareth Evans, later a member of the ICISS, separates the debate into two

camps: the global South, upholding and safeguarding traditional state sovereignty, and

the global North, comprising the Western liberal perspective. Because the NATO mission

had not been approved by the UN Security Council, it was illegal under international law.

Yet, the actions taken by NATO were justifiable, or necessary in the face of Security

Council deadlock, since the operation was one based on humanitarian intervention in

order to prevent a crime against humanity, genocide, or ethnic cleansing from

occurring.[40]

      If one reapplies the three criteria that Bellamy proposed for inaction, one

concludes that NATO ignored the three traditional principles that limit state humanitarian

intervention. NATO was willing to violate Serbian state sovereignty without UN

authorization, the political will existed within the US and Europe to take action, and the

participating states believed it was in their best interest to devote the resources to solve

the crisis. Critics, such as Russia, alleged that humanitarian intervention in Kosovo

unmasked the imperial ambitions of the US.[41] The conflict in Yugoslavia, a Balkan

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[39] Yugoslavia, Ministry of Foreign Affairs, 1999, "Provisional Assessment of Civilian Casualties and Destruction in the Territory of the FRY from 24 March to 8 June 1999," *Ministry of Foreign Affairs*, 8 June, 24-26.

[40] Gareth Evans, *The Responsibility to Protect,* 29-30.

[41] Brian Frederking, 2007, *The United States and the Security Council: Collective Security Since the Cold War*, New York: Routledge, 42.

European state within the historical and geographic influences of the traditional Great

powers of Europe, risked destabilizing the region. Thus, there may have been mixed

motives for the intervention based on the threat of the conflict's impact on the security,

stability, and prosperity of Europe. Despite these facts, the Independent International

Commission on Kosovo concluded that actions taken by NATO were illegal, yet

legitimate.[42] Although Kosovo and Rwanda are fundamentally different in many respects,

they are similar with regard to one important fact: in both cases, state interest prevailed.

Individual states in NATO decided that they needed to collectively act, exercising the

primacy of their state interest through the NATO alliance.

Drawing from these juxtaposed responses, the inaction in Rwanda and

intervention in Kosovo, then-Secretary-General Kofi Annan indicated, in a 1999 editorial

in the *Economist,* that two competing conditions that had previously guided international

affairs needed to be revisited: the idea of "state sovereignty" and "the right to

intervene."[43] At the heart of his widely read and influential piece, entitled "Two

Concepts of Sovereignty," Annan evaluated the traditional concept of a state as an

absolute power over its people against an emergent international norm where the state is

responsible for providing its citizens with basic human securities. He stated: "The

genocide in Rwanda showed us how terrible the consequences of inaction can be in the

face of mass murder. But this year's conflict in Kosovo raised equally important

questions about the consequences of action without international consensus and clear

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[42] Independent International Commission on Kosovo, 2000, *The Kosovo Report: Conflict, International Response, Lessons Learned*, Oxford: Oxford University Press, 4.

[43] Secretary-General Annan's position was preceded by the work of Francis Deng, a Sudanese national and UN diplomat who introduced the idea of responsibilities of the state regarding human security in his work: F. Deng et al, 1996, *Security as Responsibility: Conflict Management in Africa, Washington*, DC: Brookings Institution.

legal authority."[44] The juxtaposition of the legal inaction in Rwanda and the illegal action

in Kosovo caused Annan to contemplate further: "[n]either of these precedents is

satisfactory as a model for the new millennium."[45]

C. 21st Century

Secretary Annan then pressed this issue further in his Millennial Address to the

UN General Assembly; "[f]ew would disagree that both the defence of humanity and the

defence of sovereignty are principles that must be supported. Alas, that does not tell us

which principle should prevail when they are in conflict."[46] He challenged the

international membership to consider a review of the way in which the UN interprets and

understands the concepts of human security and sovereignty with the goal to "enabl[e]

the United Nations never again to fail in protecting a civilian population from genocide or

mass slaughter." [47]

The Canadian government accepted Secretary-General Annan's Millennium

challenge and established the International Commission on Intervention and State

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[44] Kofi Annan, 1999, "Two concepts of sovereignty," *The Economist*, September 16, accessed 16 October 2016, http://www.economist.com/node/324795. Kofi Annan is directly linked to the inaction that may have prevented, reduced, or stopped the Rwandan genocide in 1994 as he was then then UN's Department of Peacekeeping Operations (DPKO) Under-Secretary-General. As a key member of the UN secretariat, he participated in decisions regarding UNAMIR's mandate, composition and is therefore directly linked to. Specifically, on January 11, 1994, Major General Dallaire (the military mission commander for the UN Assistance Mission in Rwanda, UNAMIR) sent a cable requesting authority to search and seize weapons caches. It was received by Annan, then acting Secretary-General of DPKO, who refused authorization and instead directed Dallaire to communicate the intelligence to the Rwandan government. Annan stated that "the overriding consideration is the need to avoid entering into a course of action that might lead to the use of force and unanticipated repercussions." United Nations Security Council, 1999, *Report of the Independent Inquiry into the actions of the United Nations during the 1994 genocide in Rwanda*, *S/1999/1257*, New York: United Nations, 16 December, 11, accessed April 5, 2017, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/1999/1257. See also: Gregory H. Stanton, 2002, "Could the Rwandan Genocide have been Prevented?," *genocidewatch.org*, accessed April 5, 2017, http://www.genocidewatch.org/images/Rwanda-02-COULD_THE_RWANDAN_GENOCIDE_HAVE_BEEN_PREVENTED.pdf; Human Right Watch, 1999, "Leave None to Tell the Story: Genocide in Rwanda," *hrw.org*, accessed April 5, 2017, https://www.hrw.org/reports/1999/rwanda/Geno15-8-01.htm#TopOfPage.
[45] Kofi Annan, "Two concepts of sovereignty."
[46] United Nations, *We the Peoples*: 48.
[47] *Ibid*., 48.

Sovereignty (ICISS). A panel of 12 experts in statecraft and academia, as well as former UN and NGO leaders and policy makers were drawn from across the globe, convened with a mandate "to wrestle with the whole range of questions – legal, moral, operational and political – rolled up in [the humanitarian intervention] debate..."[48] The panel was commissioned to study the evolution of national and international affairs since the UN's inception in 1945, with a purpose to identify and make recommendations regarding contemporary expectations and actions.[49] The ICISS adopted a cautious approach, wanting to be "neither forerunner nor pacesetter."[50] The commission had identified that success was contingent on "a position that could command international consensus."[51] In its 2001 report, *The Responsibility to Protect*, the ICISS outlined a framework wherein the state had a responsibility to protect its citizens while also locating a responsibility with the international community to intervene if a state should fail, either intentionally, or by neglect, or incapacity.

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[48] ICISS, *The Responsibility to Protect,* VII; The commission was comprised of 12 members derived from the UN General Assembly, all with experience in national and international policies. The members were: Gareth Evans (Australia), Co-Chair, formerly President and Chief Executive of the Brussels-based International Crisis Group and Australian politician; Mohamed Sahnoun(Algeria), Co-Chair, had previously served as representative to many UN and African organizations; Gisèle Côté-Harper (Canada) professor of law and member of numerous Humanitarian organizations; Lee Hamilton (United States) was Director of the Woodrow Wilson International Center for Scholars, Director of the Center on Congress at Indiana University and former US Congressman; Michael Ignatieff (Canada) Professor of Human Rights Practice, Senior Fellow of the 21st Century Trust, and was also a member of the Independent International Commission on Kosovo; Vladimir Lukin (Russia) was Deputy Speaker of the Russian State Duma and member of the World Economics and International Relations in Moscow; Klaus Naumann (Germany) former 4 star general who served as Chairman of the North Atlantic Military Committee of NATO and was a key member of NATO's response to the Kosovo crisis; Cyril Ramaphosa (South Africa) a lawyer and former Secretary-General of the African National Congress and state politician who played a crucial to end apartheid; Fidel V. Ramos (Philippines) officer and policeman by trade, the former President of the Republic of the Philippines; Cornelio Sommaruga (Switzerland) former statesman and president of numerous NGOs including the International Committee of the Red Cross; Eduardo Stein Barillas (Guatemala) former statesman and participant in several UN organizations; and Ramesh Thakur (India) Professor of International Relations, formerly Vice-Rector of the United Nations University, Tokyo, and was involved in the Non-Proliferation Treaty Review and Extension Conference to ban landmines. *Ibid*., 77-79.
[49] *Ibid*., 3.
[50] Thomas G. Weiss, 2004, "The Sunset of Humanitarian Intervention? The Responsibility to Protect in a Unipolar Era," *Security Dialogue*, Vol. 35, Iss. 2, 140.
[51] Alex J. Bellamy, 2011, *Global politics and the Responsibility to Protect*, New York: Routledge, 20.

The ICISS report had no initial traction. Published three months after 9/11, it was immediately overshadowed by the Global War on Terror (GWOT). The preoccupation with the US and the UK regarding weapons of mass destruction and the 2003 invasion of Iraq created "a 'poisonous' atmosphere in the General Assembly."[52] Many states recoiled at the "cloaking of 'preventive' war in Iraq with humanitarian motives."[53] Nonetheless, Annan pressed forward, using his power as the Secretary-General to incorporate the discussion of R2P into the UN's agenda. The UN's 2003 High-Level Panel on Threats, Challenges and Change outcome document, *A More Secure World: Our Shared Responsibility*, reaffirmed the need for R2P, and suggested traditional "just war" criteria that balanced state sovereignty and accountability:

> Whatever perceptions may have prevailed when the Westphalian system first gave rise to the notion of State sovereignty, today it clearly carries with it the obligation of a State to protect the welfare of its own peoples and meet its obligations to the wider international community… The Charter of the United Nations seeks to protect all States, not because they are intrinsically good but because they are necessary to achieve the dignity, justice, worth and safety of their citizens.[54]

In his five-year report to the Millennium Conference, and as a precursor to the 2005 World Summit, Secretary-General Annan "fully embrace[d] the broad vision of the [2003] report."[55] He endorsed the term "Responsibility to Protect" and urged the UN to take action to ensure that governments were held to account for the protection of all

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[52] Aidan Hehir, 2012, *The Responsibility to Protect: Rhetoric, reality and the future of humanitarian intervention*, Basingstoke; New York: Palgrave Macmillan, 46.

[53] Barbara J. Falk & Sara M. Skinner, 2016, "The Responsibility to Protect: A Normative Shift from Words to Action?," *International Peacekeeping*, 23: 3, 494; Hehir, *The Responsibility to Protect*, 46.

[54] The just war criteria in the 2003 High-Level Panel on Threats, Challenges and Change outcome document mirror 5 of the 6 criteria outlined in the 2001 ICCIS report. These criteria are Seriousness of threat, Proper purpose, Last resort, Proportional means, and Balance of consequences. United Nations, 2004, *A More Secure World: Our Shared Responsibility*, New York: United Nations, 17; and Falk & Skinner, "The Responsibility to Protect," 494.

[55] United Nations, 2005, *In larger freedom: towards development, security and human rights for all,* New York: United Nations, 24.

citizens from mass atrocities by moving from "an era of legislation to an era of implementation."[56]

The 2005 World Summit marked the formal affirmation of R2P by 150 UN member states in paragraphs 138 and 139 of the Outcome Document. The UN membership pledged to "take collective action, in a timely and decisive manner… should peaceful means be inadequate and national authorities are manifestly failing to protect their populations."[57] However, in order to achieve success, concessions which deviated from the recommendations of the ICISS and the 2003 High-Level Panel had to be made. Aidan Hehir, in his work, *The Responsibility to Protect*, outlines three critical concessions. First, the authority and the autonomy of the P5 were upheld as the "code of conduct" was abandoned. [58] Second, the "just cause" threshold limited the intervention to

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[56] United Nations, *In larger freedom,* 35.

[57] "Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity:
138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.
139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out." United Nations, 2005, *World Summit Outcome Document*, New York: United Nations, 30

[58] The ICISS proposes in paragraphs 6.19-6.21 entitled, 'Legitimacy and the veto,' that the use of the veto by the Security Council's P5 is the "principal obstacle to effective international action" and that a "code of conduct" should be employed where states will apply "constructive abstention" in order to allow a vote to pass without obstruction from a member "when its vital national interests were not claimed to be involved…" ICISS, *The Responsibility to Protect*, 51.

genocide, war crimes, ethnic cleansing, and crimes against humanity.[59] Third, the

wording regarding the transference of the responsibility of the state to the international

community changed from "unable and unwilling" to "manifest failure."[60] These

concessions did not fundamentally alter the tenets of R2P as originally outlined by the

2001 ICISS report and its adoption was a major step forward in clarifying the roles of the

state and the UN regarding human security.

D. The Responsibility to Protect

With the affirmation of R2P by the UN in 2005, the international community

entered into a framework where state sovereignty was effectively redefined to include

responsibilities to its citizenship. Only where a state manifestly failed to protect its

citizens from genocide, war crimes, ethnic cleansing, and crimes against humanity, did

the responsibility fall on the international community to intervene. R2P provided a

procedural framework that state and international bodies could use in order to determine

the legitimacy for action. The ICISS report clarified the relationship between the state

and the international community in three critical ways: First, R2P emphasized the

individual state's proprietorship of its citizens' human security ahead of the international

community's "right to intervene." Second, the state remained in full control, only

opening the door to intervention if it should "manifestly fail."[61] Third, it required the

international community to take a more holistic approach to improve human security,

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[59] The ICISS proposed that in order to justify a military intervention there must be, or be an imminent threat of "serious or irreparable harm occurring [which include:] A. large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or B. large scale 'ethnic cleansing', actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape." ICISS, *The Responsibility to Protect*, XII.
[60] Hehir, *The Responsibility to Protect*, 47-48.
[61] Originally stated in the ICISS as "unable or unwilling," but changed in the 2005 World Summit Outcome document to "manifestly fail." ICISS, *The Responsibility to Protect*, 17; and United Nations. *World Summit Outcome Document*, 30.

following the 3 Pillars sequentially: assistance, intervention, and reconstruction.[62] Such

an approach reinforced the view that military intervention alone cannot resolve

humanitarian crises.[63]

According to R2P, only in "extreme and exceptional cases" should the

responsibility to react resort to military action.[64] The starting point should *always* be

non-intervention. However, once all options have been explored, R2P outlines six criteria

to legitimize intervention that needs, as a minimum, to be addressed before a UN decision

to deploy military assets into another state's territory: right authority, just cause, right

intention, last resort, proportional means, and reasonable prospects.[65]

i.   *Right authority*. Right authority reiterates the pre-existing framework that resides

within the UN as the method to legitimize the authorization of an intervention. It

reemphasizes that the authority from the UN is not by its coercive power, but by the

legitimacy that the international community grants the institution.[66] The Security Council

retains its "primary responsibility for the maintenance of international peace and

security," as outlined in Article 24 of the Charter, and its authorization must be sought in

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[62] The ICISS identify 3 Pillars of its R2P doctrine that would later be adopted by Secretary-General Ban Ki-Moon in the Secretary-General's 2009 report, *Implementing the Responsibility to Protect* : "A. The responsibility to prevent: to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk. B. The responsibility to react: to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention. C. The responsibility to rebuild: to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert." ICISS, *The Responsibility to Protect*, XI; see also: United Nations, 2009, *Implementing the Responsibility to Protect*, New York: United Nations.
[63] ICISS, *The Responsibility to Protect*, 17.
[64] *Ibid.*, 31.
[65] These tenets were later reinforced in the 2003 High-Level Panel; United Nations, *A More Secure World*, para 207.
[66] ICISS, *The Responsibility to Protect*, 48.

all cases prior to military intervention.[67] Although R2P asserts that if the Security Council

should fail to make a decision, an Emergency Special Session under the "Uniting for

Peace" procedure could be called, the result would only be one of influence since the

General Assembly has no means to authorize military action. Lastly, R2P does not

restrict action to the UN, but the UN alone needs to provide authorization. With the prior

approval of the Security Council, regional organizations or ad hoc coalitions are able to

conduct interventions.[68]

ii.   *Just cause*. Just cause, based on the philosophical tenet of a "just war," establishes

the conditions under which military action could be justified, and how to assess its

legitimacy. In the case of R2P, there are two such cases: the actual or apprehended large

scale loss of life; or the actual or apprehended ethnic cleansing.[69] There are two

additional distinctions that are important in the assessment of these causes. First, the acts

themselves do not *have* to occur. Second, there is no quantifiable scale to determine what

"large scale loss of life" is, but it is not limited to genocide. If there is credible evidence

or an imminent threat, anticipatory military action is considered a legitimate response to

prevent or stop mass killing.[70]

iii.   *Right intention*. Right intention is the principle that the primary purpose of the

international intervention must be to halt or avert human suffering. The ICISS points to

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[67] United Nations, 1945, Charter of the United Nations, Chapter V: Article 24, 1; and ICISS, *The Responsibility to Protect*, 50.

[68] ICISS, *The Responsibility to Protect*, 52-54.

[69] The exact verbiage used by the ICISS are: "large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or large scale "ethnic cleansing," actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape." *Ibid*., 32.

[70] *Ibid*., 32-34; for more information on legal definition on genocide and mass atrocities see: William A. Schabas, 2000, *Genocide in International Law: the Crime of Crimes*, Cambridge: Cambridge University Press; Mark Osiel, 2009, *Making Sense of Mass Atrocity*, Cambridge: Cambridge University Press; and David Luban, 2004, "A Theory of Crimes Against Humanity," *Georgetown University Law Center,* accessed January 10, 2017, *http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1165&context=facpub.*

three criteria that should be taken into account in any evaluation: a collective or multilateral military intervention should always be favored, an assessment of the support for intervention by those who will benefit from it, and whether countries in the region are supportive and their opinions accounted for.[71] R2P recognizes that state interactions are complex: a "pure" intervention absent of self-interest is not likely to happen. Mixed motives are the reality. However, R2P suggests any ulterior or additional motives must be secondary to "right intention." This criterion denies states the ability to purposely plan and implement military action with the goal of altering borders, conducting regime change or advancing the claims of a particular group.[72]

iv.   *Last resort*. Last resort is directly related to the priority that R2P places on prevention prior to military action. R2P dictates that the "responsibility to prevent" is the "single most important dimension of the responsibility to protect," indicating that assistance and prevention should always be exhausted before "the responsibility to react," or intervention, is contemplated.[73] Intervenors should explore all "measures short of military action," including military embargoes, economic sanctions, and diplomacy, before adopting a military option. This factor does not mean that every option must have been tried and failed, but that a reasonable assessment must first be made regarding alternatives.[74]

v.   *Proportional means*. Proportional means relates to the size, duration, and intensity of the military intervention. In all cases, only the minimum force required should accomplish the humanitarian intervention, and any intervention should not disrupt the

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[71] ICISS, *The Responsibility to Protect*, 35-36.
[72] *Ibid.*, 35-36
[73] *Ibid.*, XI, 29-30.
[74] *Ibid.*, 36.

political system more than required. In this respect, proportionality is based on the same

reasoning as in international humanitarian law or the Law of Armed Conflict.

vi.   *Reasonable prospects*. Reasonable prospects for success must accompany the

decision to conduct an intervention. If there are no reasonable prospects for success, or

that an intervention could exacerbate the situation, an intervention is not justifiable.

Equally, an intervention that threatens regional stability or risks drawing in major powers,

including the P5, into conflict with another is not justifiable.[75] Any decision to intervene,

given the difficulty in predicting the second and third order effects of a military

operation, poses a significant moral hazard on states.

These six criteria together are the foundation for the legitimacy of humanitarian

intervention in the name of R2P, and thus, will be used to evaluate the case studies in

Chapter 3. Beforehand, it is essential to understand the divergent views regarding R2P

within the international community.

E. R2P's ongoing debate

Although R2P was affirmed in the 2005 UN Summit Outcome Document, it did

not become international law. As it was never a convention ratified by the UN members,

its legal status is neither complete nor stagnant. The Secretary-General's guided the

evolution and the implementation of the tenets forged by the ICISS as the UN

institutionalized R2P. In 2007, Edward Luck was appointed by Secretary-General Ban

Ki-Moon as the first "Special Advisor on the Responsibility to Protect." Policy

documents were published at a regular rate with R2P receiving a lot of attention in the

form of Secretary-General reports, including: *Implementing the Responsibility to Protect*

(2009); *Early warning, assessment and the responsibility to protect* (2010); *The role of*

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[75] *Ibid.*, 37.

regional and sub-regional arrangements (2011); *The responsibility to protect: timely and decisive response* (2012); and *State Responsibility and Prevention* (2013). Despite these initiatives, because R2P was created as a series of practical policy guidelines rather than law, it remains widely debated among states and scholars. Recent deliberations largely focus on three areas: the debate whether R2P can be considered the norm, the malleability of the principle of sovereignty, and R2P's overall effectiveness. As the third principle is the central focus of this study's subsequent chapters, only the first two shall be explored below.

i.   *R2P as a Norm.* The debate regarding R2P's normative status has been ongoing since it was affirmed at the 2005 World Summit. Gerrit Kurtz and Philipp Rotmann argue that R2P cannot be considered a norm because of the "vagueness associated with humanitarian intervention… [and as] a result, studying R2P as some kind of proto-norm turns out to be less than fruitful and obscures its intended and actual functions as a political instrument."[76] In assessing UN policy texts, they argue that in order to consider R2P as a norm, one must make assumptions about its nature. Yet, the UN has not clearly defined what *has* or *has not* been accepted or rejected by the international community.

Others, such as Jennifer Welsh, the current UN Secretary-General's Special Adviser on the Responsibility to Protect, disagree with Kutz and Rotmann's argument. She argues that the undefined character of R2P is a part of its natural evolution and development as "an indeterminate and complex norm" in international relations.[77] She does not dispute that "R2P is particularly susceptible to contestation, given its inherently

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[76] Gerrit Kurtz and Philipp Rotmann, 2016, "The Evolution of Norms of Protection: Major Powers Debate the Responsibility to Protect," *Global Society*, 30, 8.
[77] Jennifer Welsh, 2012, "Norm Contestation and the Responsibility to Protect", *Global Responsibility to Protect*, Vol. 5, No. 4, 395.

indeterminate nature." [78] This contestation occurs along two axes: both procedural, the

debate as to which portion of the UN should be responsible for a norm – that is, the

Security Council or General Assembly, and substantive, the debate surrounding

developing the situations where R2P should be invoked.[79] Despite this contestation, she

firmly argues that R2P is a norm. Welsh is supported by Alex J. Bellamy, who suggests

that the serious debate of R2P is not focused on whether it is a norm, but the type of norm

it is. The first group proposes that R2P is not a single norm but "a collection of shared

expectations" that embody pre-existing norms.[80] The second argues that the success of a

norm is based on its effective use, debating whether R2P has generated sufficient support

from the international community to exert "compliance-pull that alters state behaviour."[81]

The debate on norms is further explored by Theresa Reinold who analyses the

progression and establishment of norms in international law. She explains that norms

follow a three stage process. First is the agenda-setting process by norm entrepreneurs;

second is the point when a critical mass of states supports the norm "candidate,"

institutionalizing it within an international organization; third occurs when the norm

becomes habitual, or where a state centered cost/benefit analysis of compliance is not

habitual.[82] Furthermore, she reinforces her argument with reference to the principle of

"*opinio juris"* in customary law, where "states must believe that something *is* law for it to

become law."[83] Reinold is supported by Thomas Frank who argues, "Legitimacy is the

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[78] *Ibid*., 355.
[79] *Ibid*., 382-384.
[80] Bellamy, *Global politics and the Responsibility to Protect*, 84.
[81] *Ibid*., 84.
[82] Theresa Reinold, 2013, *Sovereignty and the Responsibility to Protect: The Power of Norms and the Norms of the Powerful*, Routledge: New York, 22.
[83] *Ibid*., 24.

standard by which the community measures rules' capacity to obligate."[84] For R2P to be

a norm, it must be something that is widely accepted by states *and* rendered to be a

habitual activity. For it to be a law, it must be accepted *and* followed by states as they

conduct their foreign policy. Under this argument, R2P does not have status as a legal

norm.

ii.   *The Principle of Sovereignty*. Among the most divisive debates regarding R2P is

the principle of sovereignty. Secretary-General Annan's goal was to redefine the

responsibilities of the state and international community. However, R2P has failed to

clarify these roles as it has been praised for rebalancing human security by some, while

others dispute this point.

   Those in favor argue that R2P has redefined state and international

responsibilities. Gareth Evans, a former co-chair of the 2001 ICISS panel, argues that

R2P is unique and is an evolution of the previous definition of humanitarian

intervention.[85] Historically, in a Westphalian system, the state rules in an absolute

manner. It alone has the inherent right to self-determination. This right is upheld by the

principle of domestic jurisdiction within the 1945 Charter of UN: "Nothing contained in

the present Charter shall authorize the United Nations to intervene in matters which are

essentially within the "domestic jurisdiction" of any state…"[86] A state is not inhibited by

the external influence of others despite their internal actions. However, the limits that

R2P placed on state sovereignty, by imposing a minimum code of conduct concerning the

treatment and security of a citizenry significantly advanced international relations and

society. The obligation of the international community to take action was elevated above

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[84] Thomas Franck, 1990, *The Power of Legitimacy among Nations*, Oxford: Oxford University Press, 206.
[85] Gareth Evans, *The Responsibility to Protect*, 56.
[86] United Nations, *Charter of the United Nations*, Ch I, Art 2, Para 7.

the domestic jurisdiction of the state, dismissing the previous trend of non-intervention. Anne-Marie Slaughter reinforces this argument, stating that R2P represents "the most important shift in the definition of sovereignty… since the Treaty of Westphalia of 1648."[87] R2P is praised for putting the human security of all citizens above the powers of a state.

By contrast, others assert that the obligation of a state to protect its citizens is not a novel idea, nor is it a simplistic task. They argue that the international community had means prior to R2P's existence to handle humanitarian interventions, and did so on a number of cases.[88] Jeremy Moses contends that R2P fails to address the role of the state on a legal basis. Because R2P is not a law, and cannot be ratified, it does not impose any more responsibility on a state than what previously existed in the UN Charter; "'sovereignty as responsibility,' in its attempt to displace the impunity of sovereign powers, ends up regenerating a new unaccountable sovereign in its place."[89]

Likewise, a post-colonial critique, one adopted by "a number of actors [who] saw [R2P] as a thin disguise for the coercive imposition of Western interests," interprets R2P as a means for the West to impose its paradigm on the rest of the world and to maintain its dominant status within the international system.[90] Asian, African, Latin-American, and Middle Eastern scholars and state officials, such as Mahmood Mamdani argue that R2P "justifies interventions by big powers as an antidote to malpractices by newly

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[87] Anne-Marie Slaughter, 2006, "A New U.N. For a New Century," *74 Fordham L. Rev*., 2964.
[88] Mahmood Mamdani, 2009, *Saviors and Survivors: Darfur, Politics, and the War on Terror*, New York: Pantheon Books, 282.
[89] Jeremy Moses, 2014, *Sovereignty and Responsibility: Power, Norms and Intervention in International Relations*, Oxford: Palgrave Macmillan UK, 53; see also: Michael Byers, "International Law and the Responsibility to Protect," in Ramesh Chandra Thakur and William Maley, 2015, *Theorising the Responsibility to Protect*, New York: Cambridge University Press, 101-124.
[90] Thomas G. Weiss, 2007, *Humanitarian Intervention*, Cambridge, UK: Polity, 120–122.

independent small powers;" eroding the power of the state and enabling the West to further its own agenda.[91]

The divergent debates regarding R2P demonstrate that there is a lack of consensus on the merits of R2P, especially concerning its status as a norm. Jennifer Welsh would argue that this division is indicative of the standard evolution of a norm, while others use the same evidence to enunciate R2P's failings and contradictions. More recently, in the wake of the 2009 UN Report, *Implementing the Responsibility to Protect*, scholarly analysis has turned to evaluating the effectiveness of R2P to *react* to humanitarian crises. It is within this context that the following chapters will analyze what progress has been made regarding the implementation of R2P, the influence of mixed state motives, and what impact these factors have on the continuing debate, as well as to the current international system as a whole.

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[91] Mamdani, *Saviors and Survivors*, 282; for more information on regional perspectives see Jared Genser and I. Cotler, 2012, *The responsibility to protect: The promise of stopping mass atrocities in our time*, New York: Oxford University Press, 109-234; Mojtaba Mahdavi, 2015, "A Postcolonial Critique of Responsibility to Protect in the Middle East," *Perceptions: Journal of International Affairs*, Vol. 20, Iss. 1 (Spring), accessed February 18, 2017, http://sam.gov.tr/wp-content/uploads/2015/11/02_Mahdavi.pdf; and Siddharth Mallavarapu, "Colonialism and the Responsibility to Protect," in Ramesh Thakur and William Maley, 2015, *Theorising the Responsibility to Protect*, Cambridge: Cambridge University Press, 305-322.

CHAPTER III: CASE STUDIES - LIBYA AND SYRIA

The limited progress regarding the operationalization or implementation of R2P

will be evaluated in this chapter by studying the 2011 conflicts in Libya and Syria against

the six criteria outlined in the ICISS as the minimum standard for achieving legitimacy of

a humanitarian intervention: right authority, just cause, right intention, last resort,

proportional means, and reasonable prospects. On completion, a further analysis of these

two conflicts suggests that the irregular implementation of R2P is *directly* attributable to

the complexity of mixed motives. Moreover, individual state self-interests *remain*

primary within the Westphalian system, undermining the effectiveness of R2P.

A. Libya: History and Context

On December 17, 2010, the Arab Spring was launched with the self-immolation

of a Tunisian vegetable vendor, Mohammed Bouazizi. In the early months of 2011, social

movements united against decades of authoritarian governance spread quickly across the

Middle East and North Africa.[92] Established heads of state unexpectedly became

vulnerable to the threat of regime change. The Libyan government was among the first

states to be challenged by large-scale protest. However, compared with other states,

protest in Libya initially was more violent. On February 15, 2011, protestors clashed with

government security forces loyal to Colonel Muammar Gaddafi over the detention of a

lawyer. Although there remains ongoing debate whether the protestors were armed or

peaceful, Gaddafi would direct the response personally and order his forces to use

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[92] Rania Abouzeid, 2011, "Bouazizi: The Man Who Set Himself and Tunisia on Fire," *Time*, 21 January, accessed April 5, 2017, http://content.time.com/time/magazine/article/0,9171,2044723,00.html. For a in-depth analysis of the Libyan Arab Spring movement see: Vijay Prashad, 2012, *Arab Spring, Libyan Winter*, Oakland, CA: AK Press Pub.

excessive force in the form of anti-aircraft weaponry to confront the protestors.[93] The

situation escalated with the burning of government buildings and mass protests across the

North and into the capital, Tripoli.[94] In the first four days of the response, it was

estimated that 233 people died at the hands of the government, with the additional

disappearance of several hundreds of people suspected of involvement in the protest

movement.[95] Gaddafi's response was violent, and his rhetoric was strong. In a February

22, 2011, speech he stated, "I and the millions will march in order to cleanse Libya, inch

by inch, house by house, home by home, alley by alley, individual by individual, so that

the country is purified from the unclean."[96]

The international response was swift. So swift that the UK's former Defence

Secretary, Malcolm Rifkind, commented: "By the standards of the last 20 years, this is…

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[93] Alan J. Kuperman, "NATO's Intervention in Libya: A Humanitarian Success," in Hehir and Roberts, *Libya,* 193-196; M Cherif Bassiouni, 2013, *Libya, From Repression to Revolution: A Record of Armed Conflict and International Law Violations*, 2011-2013, Leiden, The Netherlands : Martinus Nijhoff Publishers, 576.

[94] Asseburg, "Protest Revolt and Regime Change in the Arab World," 11; The Institute for National Security and Counterterrorism, 2012, *Libya in Conflict: Mapping the Libyan Armed Conflict*, Syracuse, NY: Syracuse University, College of Law, 3-9, 17-18, accessed March 15, 2017, http://insct.syr.edu/wp-content/uploads/2013/02/Mapping-the-Libyan-Conflict.pdf.

[95] Initial reports by credible news broadcasters had the number of deaths estimated above 1000; Human Rights Watch, 2011, "Libya: Governments Should Demand End to Unlawful Killings," *hrw.org*, 20 February, accessed January 10, 2017, https://www.hrw.org/news/2011/02/20/libya-governments-should-demand-end-unlawful-killings; Human Rights Watch, 2012, "World Report 2012: Libya," *hrw.org*, accessed January 10, 2017, https://www.hrw.org/world-report/2012/country-chapters/libya; Adrian Bloomfield, 2011, "Libya: 'more than 1,000 dead,'" *The Telegraph,* 23 August, accessed January 10, 2017, http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8342543/Libya-more-than-1000-dead.html; UN News Center, 2011, "Libya: Security Council, UN officials urge end to use of force against protesters," *un.org*, 22 February, accessed February 21, 2017, https://www.un.org/apps/news/story.asp?NewsID=37583#.WKyJHcszVD8; and International Crisis Group, 2011, accessed February 21, 2017, "Immediate International Steps Needed to Stop Atrocities in Libya," International Crisis Group, 22 February, https://www.crisisgroup.org/middle-east-north-africa/north-africa/libya/immediate-international-steps-needed-stop-atrocities-libya.

[96] Alexander Valiente, 2011, "Muammar Gaddafi's Speech Made In The Early Days Of The Crisis," Libya 360°, 8 July, accessed February 21, 2017, https://libyadiary.wordpress.com/2011/07/08/muammar-gaddafis-speech-made-in-the-early-days-of-the-crisis/; see also: SLOBoe, n.d., "Muammar Gaddafi speech TRANSLATED (2011 Feb 22)," *youtube.com*, accessed January 11, 2017, https://www.youtube.com/watch?v=69wBG6ULNzQ.

remarkable…."[97] On February 25, 2011, the United Nations Human Rights Council condemned the actions of Gaddafi and established a commission "to investigate all alleged violations of international human rights law in Libya…" [98] The next day, United Nations Security Council Resolution (UNSCR) 1970 was unanimously adopted:

> Expressing grave concern at the situation in the Libyan Arab Jamahiriya and condemning the violence and use of force against civilians, Deploring the gross and systematic violation of human rights, including the repression of peaceful demonstrators, expressing deep concern at the deaths of civilians, and rejecting unequivocally the incitement to hostility and violence against the civilian population made from the highest level of the Libyan government…*Recalling* the Libyan authorities' *responsibility to protect* [emphasis added] its population.[99]

The Security Council referred the file to the prosecutor of the International Criminal Court in order to investigate the possibility of war crimes. Despite the resolution, violence in Libya continued, prompting the Security Council to release a second resolution, UNSCR 1973, on March 16, 2011. It reaffirmed the tenets of the first, adding additional measures, including the demand for a ceasefire, the establishment of a no-fly zone, the freezing of Libyan financial assets, the strengthening of an arms embargo, and, most significantly, the intent "to take all necessary measures… to protect civilians and civilian populated areas under threat of attack… while excluding a foreign occupation

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[97] Malcolm Rifkind, 2011, "Statement to Newsnight," in *The Guardian*, "Libya resolution: UN security council air strikes vote - as it happened," *theguardian.com*, 17 March, accessed February 21, 2017, https://www.theguardian.com/world/2011/mar/17/libya-united-nations-air-strikes-live; for additional info on the adoption of UNSCR 1973 see: Tim Dunne and Jess Gifkins, 2011, "Libya and the state of intervention," *Australian Journal of International Affairs 65*, 522-524.

[98] The Human Rights Council established the International Commission of Inquiry with three members Asma Khader (Jordan), Philippe Kirsch (Canada), and M. Cherif Bassiouni (Egypt). Bassiouni was appointed as Chairperson, a role taken over by Kirsch in October 2011. Its mandate was "to investigate all alleged violations of international human rights law in Libya, to establish the facts and circumstances of such violations and of the crimes perpetrated and, where possible, to identify those responsible, to make recommendations, in particular, on accountability measures, all with a view to ensuring that those individuals responsible are held accountable." Human Rights Council, 2012, "Report of the International Commission of Inquiry on Libya," *Human Rights Council*, Nineteenth session, Agenda item 4, A/HRC/19/68, 8 March.

[99] United Nations Security Council, 2011, *Resolution 1970 (2011)*, New York: United Nations, 26 February.

force of any form on any part of Libyan territory…"[100] Unlike the first resolution,

UNSCR 1973 did not pass unanimously, as Brazil, China, Germany, India and Russia

abstained due to concerns that military action was contrary to the intent of the resolution

to protect civilians. A day later, despite government assurances to the international

community that he would comply with the resolution, Gaddafi delivered a clear message

to his people: "there will be no mercy." [101] The US-led NATO coalition did not hesitate

and commenced military action. Eight months later, the regime fell when Colonel

Ghaddafi was killed by opposition forces after his convoy was hit by NATO aircraft

ordinance.

B. Libya: Analysis of R2P Criteria

i.   *Right authority*. At the outset of its military operation, the NATO coalition did

have the right authority via UNSCR 1973, which established military force as a legal

method of enforcement to protect civilians by the establishment of a no-fly zone. Thus,

the limited intervention was absolutely legal. Conversely, legitimacy was arguable, both

then and now. Abstentions by Brazil, China, Germany, India, and Russia indicated a lack

of consensus within the Security Council and a resignation to subscribe the military

response in Libya to R2P, or on the grounds of humanitarian intervention. If one

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[100] United Nations Security Council, 2011, *Resolution 1973 (2011)*, New York: United Nations, 17 March, 3.

[101] Samira Shackle, 2011, "Libya Declares Ceasefire," *Newstatesman.com,* 18 March, accessed January 11, 2017, http://www.newstatesman.com/blogs/the-staggers/2011/03/fly-zone-ceasefire-libya; Ishan Tharoor, 17 March 2011, "Gaddafi Warns Benghazi Rebels: We Are Coming, And There'll Be No Mercy," *Time,* 17 March, accessed January 11, 2017, http://world.time.com/2011/03/17/gaddafi-warns-benghazi-rebel-city-we-are-coming-and-therell-be-no-mercy/; the first actions taken were by French aircraft striking armored units near Benghazi, followed by the UK employing cruise missiles to target air bases on March 19, 2011. Jeremy Gertler, 2011, "Operation Odyssey Dawn (Libya): Background and Issues for Congress," *CRS Report for Congress*, accessed January 11, 2017, https://fas.org/sgp/crs/natsec/R41725.pdf.

considers that UNSCR 1970, which did not include military action, passed unanimously,

the legitimacy of UNSCR 1973, which included military action, was not absolute.[102]

Despite the lack of absolute legitimacy, UNSCR 1973 provided sufficient

legitimacy and the legal authority for NATO to conduct its operations. However, as the

conflict progressed and "mission creep" set in, legal authority effectively dissolved.

UNSCR 1973's "strong commitment to the sovereignty, independence, territorial

integrity and national unity…" of Libya conflicted with the coalition's eventual intent to

conduct a regime change.[103] As early as February 25, 2011, the Prime Minister of

Canada, Stephen Harper, had released a communiqué claiming that "those responsible for

ordering and carrying out atrocities against the Libyan people must be held accountable,"

and on November 4, 2011, his defence minister, Peter MacKay, described Gaddafi as a

"brutal and maniacal dictator."[104] Equally, despite White House denial that the US policy

was focused on regime change, on March 22, 2011, US President Barack Obama declared

that, "installing a democratic system that respects the people's will," was its primary goal

and that Gaddafi was no longer fit to lead.[105] As early as April 2011, Gaddafi had made a

diplomatic effort to stop NATO's air campaign and negotiate a settlement to the conflict,

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[102] UNSCR 1970 referred the situation in Libya to the Prosecutor of the International Criminal Court (ICC), authorized an arms embargo, and froze Libyan financial assets. UNSCR 1973 added additional measures, including the demand for a ceasefire, the establishment of a no-fly zone, the freezing of more Libyan financial assets, the strengthening of the arms embargo, and, most significantly, the authorization "to take all necessary measures… to protect civilians and civilian populated areas under threat of attack." United Nations, *Resolution 1973 (2011)*, 3; United Nations, *Resolution 1970 (2011)*.

[103] United Nations Security Council, *Resolution 1973 (2011)*.

[104] *The Star*, 2011, "Canada prepares sanctions for Libya," *the star.com,* 25 February, accessed January 10, 2017, https://www.thestar.com/news/canada/2011/02/25/canada_prepares_sanctions_for_libya.html; Peter MacKay, 2011, "Return of Personnel from Op Mobile," *www.forces.gc.ca,* 4 November, accessed January 11, 2017, www.forces.gc.ca/site/news-nouvelles/news-nouvelles-eng.asp?id=4042.

[105] Sam Youngman and Jordan Fabian, 2011, "White House denies regime change is part of Libya mission," *The Hill*, 22 March, accessed March 16, 2017, http://thehill.com/homenews/campaign/151191-white-house-suggests-regime-change-is-goal-of-libya-mission.

but these requests were rejected.[106] Despite NATO maintaining its public messaging that

it was an unbiased member of the conflict, as of August it was clear that it was not. As

Micah Zenko explains, "[w]hat was initially supposed to be a neutral intervention to

protect civilians that were threatened specifically in Benghazi has morphed into being

largely a one-sided affair to support the Libyan rebel force to overthrow Gaddafi."[107] This

assessment, combined with evidence that NATO forces deliberately targeted Gaddafi's

compound early in the campaign, supported arms transfers to the rebel groups, engaged

retreating governmental fighters that posed no threat to civilians, and assisted directly to

Gaddafi's demise through an air attack on his convoy, all indicate that there were serious

doubts as to NATO's true intent.[108] Although not possible to isolate a particular day on

which the legal authority was "lost," it was precisely this fear that motivated the five

Security Council members to abstain from UNSCR 1973. Despite initial legitimacy and

legal frameworks, by August 2011, NATO had lost authority under international law by

expanding beyond the specific mandate provided by UNSCR 1973.

ii.   *Just cause.* Just cause is an evidence-based criterion requiring intervening states

to conclude the existence of an actual or an imminent probability of large-scale loss of

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[106] Colonel Gaddafi sent a letter to US President Obama on April 4, 2011, requesting an end to the NATO campaign. The letter was rejected by the US. A copy of the letter can be found at: Gus Lubin, 2011, "READ QADDAFI'S LETTER TO OBAMA: "Our Dear Son, Excellency, Baraka Hussein Abu Oumama,"" *Business Insider*, 6 April, accessed March 15, 2017, http://www.businessinsider.com/qaddafi-obama-letter-2011-4; see also: David D. Kirkpatrick, 2011, "Qaddafi Writes to Obama, Urging End to Airstrikes," *The New York Times*, 16 April, accessed March 15, 2017, http://www.nytimes.com/2011/04/07/world/africa/07libya.html?_r=0; CNN Wire Staff, 24 August 2011, "A timeline of the conflict in Libya," *cnn.com*, 24 August, accessed January 10, 2017, http://www.cnn.com/2011/WORLD/africa/08/18/libya.timeline/index.html.

[107] Saul Takahashi, 2014, *Human Rights, Human Security, and State Security: The Intersection*, Vol. 1, Santa Barbara, CA: Praeger. For a fulsome list of diplomatic efforts made by the Libyan government, see: Davis Edwards, 2011, "NATO Rejects Every Attempt Made to Declare a Ceasefire in Li," *Media Lens*, Forums, 6 October, accessed 15 March 2017, http://medialens.org/23_fg_75_lc/viewtopic.php?t=3241&highlight=libya.

[108] Micah Zenko, "The Big Lie About the Libyan War," *foreignpolicy.com*; Kuperman, "NATO's Intervention in Libya," 197-198.

life or ethnic cleansing. Regarding Libya, there were sufficient grounds to believe that

government security forces possessed a serious threat to large-scale loss of life but not

ethnic cleansing. Because Gaddafi did not target a specific group, the ethnic cleansing

argument was absent in Libya. However, as only one of these two criteria need be met,

there was just cause. The prior use of lethal weapons against unarmed protestors on

February 18-23, 2011, as well as the dogmatic threats emanating from Gaddafi gave

sufficient grounds to conclude in March of 2011 that there was an actual and imminent

danger to civilians.[109] The Human Rights Council March 12, 2012, *Report of the*

International Commission of Inquiry on Libya later confirmed that "[a]cts of murder,

enforced disappearance, and torture were perpetrated within the context of a widespread

or systematic attack… as well as unlawful killing, individual acts of torture and ill-

treatment, attacks on civilians, and rape."[110] Considering Gaddafi's history and his

troubled human rights record, the criterion of just cause is strengthened. The assessment

by Western states regarding the possibility of war crimes was based on several historical

and contemporary precedents that included thousands of killed and missing individuals

since the 1970s, demonstrating a willingness on the part of the government to commit

atrocities.[111]

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[109] Human Rights Council, "Report of the International Commission of Inquiry on Libya," 6; Davis D. Kirkpatrick and Kareem Fahim, 2011, "Qaddafi Warns of Assault on Benghazi as U.N. Vote Nears," *The New York Times*, 17 March, accessed March 15, 2017, http://www.nytimes.com/2011/03/18/world/africa/18libya.html?pagewanted=all; Barack Obama, 2011, "Remarks by the President in Address to the Nation on Libya," *The White House*, Office of the Press Secretary, National Defense University, Washington, D.C., 28 March, accessed March 15, 2017, https://obamawhitehouse.archives.gov/the-press-office/2011/03/28/remarks-president-address-nation-libya.
[110] Human Rights Council, "Report of the International Commission of Inquiry on Libya," 6.
[111] David Stamp, "Factbox: Gaddafi rule marked by abuses, rights groups say," *Reuters.com*, accessed January 10, 2017, http://www.reuters.com/article/us-libya-protest-abuses-idUSTRE71L1NH20110222; Bassiouni, *Libya, From Repression to Revolution,* 101-104.

There is evidence that NATO's analysis of just cause may have been based on incorrect information. Alan Kuperman offers that the threat to civilians was not as initially assessed by Western states, as the targeting of innocent civilians before the passing of UNSCR 1973 was an exaggeration perpetuated by Western media. He argues that, although Gaddafi did use disproportionate violence, it was aimed at armed and violent protestors and rebels, and not helpless women and children, as was reported.[112] Kuperman is supported by a 2016 British Parliamentary Report which indicated that the "UK strategy was founded on erroneous assumptions and an incomplete understanding of the evidence."[113] Despite this argument, at the heart of the just cause criterion is *intent*. Given reasonable assumptions and the regime's troubling history in 2011, a deliberate assessment concluded that Gaddafi's security forces directly targeted the civilian population of Libya and possessed the intent to continue with operations leading to large-scale losses of life, satisfying the criterion of just cause.

iii.   *Right intention*. Throughout the campaign, NATO defiantly and dogmatically defended that its primary role was to alleviate human suffering and *not* to interfere with the warring factions of the government, rebel groups, or the National Transitional Council (NTC).[114] However, there is doubt whether NATO forces did retain a neutral

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[112] Kuperman, "NATO's Intervention in Libya," 193-196.

[113] United Kingdom, House of Commons, Foreign Affairs Committee, 2016, "Libya: Examination of intervention and collapse and the UK's future policy options, Third Report of Session 2016–17," *www.parliament.uk*, 16 September, 15, para 38, accessed March 15, 2017, https://www.publications.parliament.uk/pa/cm201617/cmselect/cmfaff/119/119.pdf.; also see: James Siebens and Benjamin Case, 2012, "The Libyan Civil War: Context and Consequences," *THINK International and Human Security*, August, accessed March 16, 2017, http://www.thinkihs.org/wp-content/uploads/2012/08/Siebens-Case-LibyaSReport-2012.pdf.

[114] Barack Obama, David Cameron, and Nicolas Sarkozy, 2011, "Libya's Pathway to Peace," *The New York Times*, 14 April, accessed February 20, 2017, http://www.nytimes.com/2011/04/15/opinion/15iht-edlibya15.html; NATO, 2015, "NATO and Libya (Archived)," *nato.int,* 9 November, accessed February 20, 2017, http://www.nato.int/cps/en/natohq/topics_71652.htm.The National Transitional Council (NTC) was formed on between February 24 and 5 March, 2011, in Benghazi and was chaired by former Libyan Justice Minister Mustafa Abdul Jalil. Created before the conflict erupted, the NTC was the self-appointed

position, or in fact, pursued regime change in Libya.[115] Equally disconcerting, NATO

adopted a morally perplexing and hypocritical relationship with Sudan in support of the

humanitarian intervention, as its president, Omar al-Bashir was equally wanted by ICC

for crimes against humanity and war crimes.[116] Collaborating with one alleged war

criminal to defeat another raised serious doubts regarding NATO's motives.[117]

Despite these misgivings, the ICISS recognized that there may be mixed motives

that affect the decision-making process of states and that an altruistic humanitarian

intervention may not be possible. It is for this reason that the ICISS indicated three

criteria that must be evaluated before conducting military action. The first criterion ties

interim government whose mandate was to oversee the transition of power from Gaddafi to one more representative of the Libyan people. During the conflict, before Gaddafi was killed on October 20, 2011, the NTC received recognition as the legitimate representative of Libya by the UN General Assembly on September 16, 2011. Indicative of the fractured nature of the conflict, the NTC was internally divided and did not represent the many rebel factions that opposed Gaddafi during the revolt. The NTC was dissolved after handing over power to the General National Congress, formed by democratic election on August 8, 2012. National Transitional Council – Libya, n.d., "NTC Libya," *ntclibya.org*, accessed April 18, 2017, http://ntclibya.org/; Temehu, n.d., "Interim Transitional National Council (ITNC)," *temehu.com*, accessed April 18, 2017, https://www.temehu.com/ntc.htm; United Nations, Meetings Coverage, 2011, "After Much Wrangling, General Assembly Seats National Transitional Council of Libya as Country's Representative for Sixty-Sixth Session," un.org, 16 September, accessed April 18, 2017, https://www.un.org/press/en/2011/ga11137.doc.htm; United Nations General Assembly, 2011, *Document A/66/PV.2*, New York: United Nations, 16 September; United Nations General Assembly, 2011, *Document A/RES/66/1*, New York: United Nations, 18 October; Jomana Karadsheh, 2012, "Libya's transitional council hands over power," cnn.com, 9 August, accessed April 18, 2017, http://www.cnn.com/2012/08/08/world/meast/libya-power-transition/; Christopher Chivvis, et all, 2014, *Libya after Qaddafi: Lessons and implications for the future*, Vol. RR-577-SRF, Santa Monica, CA: RAND Corporation, 36-37.

[115] Simon Adams, 2012, "Libya and the Responsibility to Protect," Global Centre for the Responsibility to Protect, Occasional Paper Series, No. 3, October, accessed March 16, 2017, http://www.globalr2p.org/media/files/libyaandr2poccasionalpaper-1.pdf;

[116] Alex de Waal, "'My Fears, Alas, were not Unfounded': Africa's Responses to the Libya Conflicts," and Kim Richard Nossal, "The Use – and Misuse – of R2P: The Case of Canada," in Hehir and Roberts, *Libya: The Responsibility to Protect and the Future of Humanitarian Intervention*, 73-75 and 119.

[117] Sudanese interests in assisting the overthrow of Gaddafi included increased and better relations with neighboring and regional states, and therefore increased stability within Sudan. Sudan assisted rebels by providing logistical support, training, arms, ammunitions, equipment, and intelligence sharing and participated directly in combat operations in Libya. Notalbly, Sudanese forces were responsible for capturing the Libyan town of Kufra, then handing it to rebels; "the coordination efforts between Sudan, the NTC and the international forces became a key tool in defeating the Gaddafi regime and helped rebels to enter Tripoli on August 21, 2011." Asim Elhag, 2012, "The Sudanese Role in Libya 2011," *tufts.edu*, 17 December, accessed April 18, 2017, https://sites.tufts.edu/reinventingpeace/2012/12/17/the-sudanese-role-in-libya-2011/.

intervention legitimacy to collective, or multilateral, action. In the case of Libya, a

coalition of 19 member states participated in NATO's Operation Unified Protector, as

well as others such as Egypt and Sudan who secretly enabled rebels with NATO's

knowledge.[118]

The second criterion requires an assessment confirming that those who are being

supported will actually benefit from the intervention. This criterion depends on the

intended target of support: the civilians or the rebels. Regardless, this criterion was met in

Libya as there is evidence that Western states believed intervention would prevent more

atrocities against civilians and military assistance was a proven benefit to the NTC.

Third, potential intervenors must take into account complex regional dynamics.

However, accounting for, or siding with mere opinions, does not add up to a fulsome

assessment of the probability of benefit versus harm. In the case of Libya, the African

Union (AU) was the principal regional organization and from the outset of the conflict,

NATO had developed a policy unsupported by the AU. Alex de Waal outlines the

divergent policies of the West and the AU, indicating that the AU supported a diplomatic

or negotiated settlement, whereas NATO countries were dismissive of such a solution,

directing UN policy toward a military mandate.[119] Despite NATO's misgivings regarding

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[118] Guardian News and Media Limited, n.d., "NATO operations in Libya: data journalism breaks down which country does what," *theguardian.com*, accessed January 10, 2017, https://www.theguardian.com/news/datablog/2011/may/22/nato-libya-data-journalism-operations-country; Stamp, "Factbox;" and Nossal, "The Use – and Misuse – of R2P," 73-74.

[119] de Waal, "'My fears, Alas, Were Not unfounded,'" 56-72; and Dawit Toga, 2016, "The UN and NATO-led coalition rejected subsequent AU efforts to mediate the crisis," *World Peace Foundation*, June 2016, 2, accessed January 10, 2017, http://fletcher.tufts.edu/~/media/Fletcher/Microsites/African%20Peace%20Missions/Research/12%20AU%20and%20Libyan%20Revolution%20D%20Toga.pdf; also see: Matthias Dembinski and Theresa Reinold, 2011, "Libya and the Future of the Responsibility to Protect – African and European Perspectives," *Peace Research Institute Frankfurt*, PRIF-Report No. 107, 10-14, accessed March 16, 2017, https://www.hsfk.de/fileadmin/HSFK/hsfk_downloads/prif107.pdf.

the process which the AU undertook, their disregard for regional dynamics is evident, especially given active efforts to resolve the conflict.

Overall, even dismissing the reality of mixed motives and focusing *only* on intent, there is evidence of *some* legitimacy with respect to collective action and a benefit to the victims. At the same time, a concentrated effort to support regional dynamics was especially lacking.

iv. *Last resort*. Prevention of conflict is valued higher in the literature of R2P than actual intervention. In the case of Libya, for the criterion of last resort to be met, there must have been an exploration or evaluation of alternative means by Western forces before reaching the conclusion of requisite military action. Although it is impossible to know the internal assessments that occurred within NATO states, there was certainly a lack of governmental discussion and public debate regarding alternative options to conflict resolution in February and March of 2011.[120] Additionally, NATO's actions, principally the US, the UK and France, incapacitated the AU's attempt to end the conflict diplomatically.[121] Although last resort does not mean that all other methods must have failed, given the speed at which UNSCR 1973 was approved and the immediacy of the air campaign that followed, which directly inhibited efforts by the AU's High-Level Council to negotiate a peace, NATO did *not* meet the tenet of last resort.

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[120] United Kingdom, House of Commons, Hansard, 2011, "Debate on: United Nations Security Council Resolution 1973," *www.parliament.uk*, 21 March, accessed February 21, 2017, https://hansard.parliament.uk/commons/2011-03-21/debates/1103219000001/UnitedNationsSecurityCouncilResolution1973; Government of Canada, 2011, "Debate: United Nations Security Council Resolution Concerning Libya," House of Commons Debates, Vol. 145, No. 145, 3rd Session, 40th Parliament, 21 March, accessed February 21, 2017, http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=40&Ses=3&DocId=5039495.

[121] Nossal, "The Use – and Misuse – of R2P," 78; and Dembinski and Reinold, "Libya and the Future of the Responsibility to Protect – African and European Perspectives," 10-14.

v.   *Proportional means*. It is difficult to fully assess the criterion of proportional

means in resolving the humanitarian crisis in Libya during the NATO operation. The

Libyan government's initial use of force against civilians included direct fire weapons,

arrests, and other direct engagements. NATO's response to these measures was centered

on degrading Gaddafi's overall military capacity while arming and assisting the NTC.

Although the desired second order effect of this response could have been to dissuade

Gaddafi from further endangering the lives of civilians, it cannot be ignored that the

principal effect actually achieved was the weakening of pro-Gaddafi forces and thereby

supporting NTC efforts to overthrow the regime. Whether it was the precision attacks

against military and governmental targets, the unwillingness of the coalition to entertain

peace talks or settlement, or the illegal support to foreign fighters and arms, all currently

available evidence indicates the use of disproportionate means to resolve a humanitarian

crisis and an approach to resolving the mass atrocities and war crimes through regime

change.[122]

vi.   *Reasonable prospects*. "Reasonable prospects" is perhaps the most debated

criterion relating to R2P and the intervention in Libya. Even though there was initial

evidence that an uninhibited Gaddafi would have led to the deaths and unlawful

imprisonment of hundreds, not including other atrocities such as sexual assault, there is

growing divide among scholars whether the intervention in Libya created more harm than

it did good. Alan Kuperman argues that, if NATO had not intervened after UNSCR 1973,

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[122] Hugh Roberts, 2011, "Who said Gaddafi had to go?," *London Review of Books*, Vol. 33, No. 22, 17 November, accessed March 16, 2017, https://www.lrb.co.uk/v33/n22/hugh-roberts/who-said-gaddafi-had-to-go.

the conflict would have ended in six weeks with no more than 1,100 additional deaths.[123]

Instead, the NATO-led intervention lasted 36 weeks and resulted in some 8,000 deaths.[124]

Additionally, Mediel Hove argues that the regime change in Libya has had a wider

negative impact on the North Africa as a whole.[125] President Idriss Déby of Chad warned

in early 2011 that an armed intervention would be "a hasty decision that [could] have

serious consequences for regional destabilization."[126] His prediction has proven true as

the Libyan conflict has led to further destabilization in the region as well as security

complications in Niger, Chad, and Mali.[127] A tertiary impact was the damage to the AU's

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[123] Kuperman, "NATO's Intervention in Libya," 204; Deutsche Welle, 2016, "Idriss Deby: 'Crises in Africa come from outside,'" *Deutche Welle*, 14 October, accessed February 21, 2017, http://dw.com/p/2RDdl.

[124] Kuperman, "NATO's Intervention in Libya," 206; BBC, 2011, "Counting the cost of NATO's mission in Libya," *bbc.co.uk*, 31 October, accessed February 21, 2017, http://www.bbc.co.uk/news/world-africa-15528984; Mary Ellen O'Connell, 2011, "How to Lose a Revolution," *E-International Relations*, 3 October, accessed February 21, 2017, http://www.e-ir.info/2011/10/03/how-to-lose-a-revolution/; and Mohammed Nuruzzaman, 2014, "Revisiting 'Responsibility to Protect' after Libya and Syria," *E-International Relations*, 8 March, accessed February 21, 2017, http://www.e-ir.info/2014/03/08/revisiting-responsibility-to-protect-after-libya-and-syria/#_ftn21.

[125] Mediel Hove, 2015, "Post-Gaddafi Libya and the African Union: Challenges and the Road to Sustainable Peace," *Journal of Asian and African Studies*, 1–16: 11-14, accessed February 21, 2017, http://journals.sagepub.com/doi/pdf/10.1177/0021909615583366.

[126] Nossal, "The Use – and Misuse – of R2P," 79.

[127] *Ibid.*, 78. The Libyan conflict may have also been directly responsible for the Syrian conflict through the process of diffusion in international relations. "Diffusion is the study of how a phenomenon spreads, across time and space, from a point of origin to proximate locations... The space between objects may be geographic or nongeographic, and the signals transmitted may be… intangible (for example, norms, policies)." Yuri M. Zhukov and Brandon M. Stewart, 2013, "Choosing your neighbors: Networks of diffusion in international relations," *International Studies Quarterly* 57 (2), 283. The Syrian people drew influence from the "success" of the Libyan protest movement. The key method of diffusion was through social media, especially Twitter, to harness the ideas and experience of other Arab Spring movements; it "played a significant role in either coalescing collective action within countries… from Tunisia to Egypt, Yemen, Libya, and Syria…" Etel Solingen, 2012, "Of dominoes and firewalls: The domestic, regional, and global politics of international diffusion," *International Studies Quarterly* 56 (4), 635; Reinoud Leenders and Steven Heydemann, 2012, "Popular Mobilization in Syria: Opportunity and Threat, and the Social Networks of the Early Risers," *Mediterranean Politics*, 17: 2, 141. The effect of NATO's international humanitarian intervention in Libya, which toppled Gaddafi, served as positive reinforcement of the protest movement and as a model for regime change in Syria. Syrian protestors hoped "to attract a NATO intervention like Libya's. Many likely expected Bashar al-Asad's regime to succumb to a similar fate as those of Egypt's Hosni Mubarak and Tunisia's Zine el-Abedine Ben Ali." Marc Lynch, Deen Freelon, and Sean Aday, 2014, "Syria in the Arab Spring: The integration of Syria's conflict with the Arab uprisings, 2011–2013" *Research & Politics 1 (3)*, October-December: 1. The phenomenon demonstrates a potential pitfall in R2P as, "[f]or rebels, it [R2P] creates a perverse incentive to escalate ethnic violence so as to provoke an international military response." Alex de Waal, 2012, "How to End Mass Atrocities," *The New*

legitimacy as a legitimate regional peace force because its actions were ignored by

NATO and "diametrically opposed" to the UNSC.[128] Although contestable because of the

information determined after the outcome of the conflict, there were sufficient grounds at

the outset of the violence, based on the potential for mass atrocities by Gaddafi forces, to

suggest that the Western states reasonably concluded that they would do more good than

harm, and thus initially possessed reasonable prospects.

In the case of Libya, the intervention met only *some* of the criteria for R2P.

Regarding right authority, what began as a lawful intervention evolved beyond the legal

mandate outlined by UNSCR 1973. Based on Gaddafi's history and a reasonable

analysis, just cause was established, regardless of the post-conflict analysis that has cast

doubt on the accuracy of early reports. Despite an insistence that its intent remained

focused on humanitarian operations, right intent was only partially satisfied by the NATO

coalition, as there was a disregard of an AU regional initiative. Furthermore, NATO's

disruption of the AU's diplomatic efforts demonstrated that military means were *not* used

only as a last resort. Additionally, the disproportional military means focused more on

weakening Gaddafi's overall military might rather than preventing atrocities and war

crimes. Lastly, faced with the threat of an unchecked aggressive Libyan government, the

coalition had sufficient reasonable prospects of improving the situation. The Libyan

mission began as a legal operation with minor legitimacy issues but evolved into an

illegal and illegitimate one focused on regime change.

York Times, 9 March, accessed March 18, 2017, http://www.nytimes.com/2012/03/10/opinion/how-to-end-mass-atrocities.html.

[128] Toga, "The UN and NATO-led coalition rejected subsequent AU efforts to mediate the crisis," 2.

C. Syria: History and Context

Over two and a half years have passed since the UN High Commissioner for Human Rights stopped counting the dead in Syria due to an inability to accurately assess numbers. The current UN Special Envoy, Staffan de Mistura estimated in 2016 that the number is likely in the area of 400,000.[129] Other non-governmental organizations (NGOs) have estimated a figure between 450,000 and 470,000.[130] Currently, there are almost five million refugees registered by the UNHCR, and an estimated total of 11.2 million displaced persons as a result of the conflict.[131] What began with the arrest, detainment, and alleged torture of 15 school children in the southern city of Daraa for anti-government graffiti escalated quickly, transforming the fervor of the Arab Spring into the largest humanitarian crisis since the Second World War.[132] The conflict grew into a multi-faceted and complex civil war, but has also been termed a proxy war due to the

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[129] United Nations Radio, 2016, "Syria envoy claims 400,000 have died in Syria conflict," *unmultimedia.org,* 11 Apr, accessed January 11, 2017. http://www.unmultimedia.org/radio/english/2016/04/syria-envoy-claims-400000-have-died-in-syria-conflict/#.WH2ZycszVD8.

[130] The Syrian Centre for Policy Research reports 470,000 deaths; Syrian Centre for Policy Research, 2016, "Forced Dispersion, Syrian Human Status: The Demographic Report 2016," *Syrian Centre for Policy Research*, 61, accessed April 5, 2017, http://scpr-syria.org/download/1574/?v=1575; Ian Black, 2016, "Report on Syria conflict finds 11.5% of population killed or injured," *theguardian.com,* 11 February, accessed January 11, 2017, https://www.theguardian.com/world/2016/feb/11/report-on-syria-conflict-finds-115-of-population-killed-or-injured; Anne Barnard, 2016, "Death Toll From War in Syria Now 470,000, Group Finds," *The New York Times*, 11 February, accessed April 5, 2017, https://www.nytimes.com/2016/02/12/world/middleeast/death-toll-from-war-in-syria-now-470000-group-finds.html. The Syrian Observatory for Human Rights reports 450,000 were killed and more than two million were injured in 69 months since the start of the Syrian revolution, Syrian Observatory for Human Rights, 2016, "About 450 thousand were killed and more than two millions were injured in 69 months of the start of the Syrian revolution," *syriahr.com,* 13 December, accessed January 11, 2017, http://www.syriahr.com/en/?p=56923.

[131] United Nations High Commissioner for Refugees, "Syria Regional Refugee Response: Inter-agency Information Sharing Portal," *unhcr.org*; Nick Thompson, 2016, "Syria's war: Everything you need to know about how we got here," *cnn.com,* 25 February, accessed January 11, 2017, http://www.cnn.com/2015/10/08/middleeast/syria-war-how-we-got-here/; the European Commission for Humanitarian Aid and Civil Protection estimates that there are 13.5 million persons requiring aid and 6.3 million persons displaced within Syria, European Commission for Humanitarian Aid and Civil Protection, 2017, "Syria Crisis: Echo Factsheet," *ec.europa.eu*, January, accessed January 11, 2017, https://ec.europa.eu/echo/files/aid/countries/factsheets/syria_en.pdf.

[132] Thompson, "Syria's war."

significant involvement of external actors, including Iran, Saudi Arabia, Turkey, the US, and Russia; each of whom has independent and to some degree incompatible agendas.[133] There is currently no end in sight as the December 31, 2016, ceasefire plan brokered by Russia and Turkey has already shown signs of failure.[134]

    In the early stages of the conflict, after the announcement of reforms by President Bashar al-Assad was insufficient to appease protestors, government forces cracked down violently against those who continued to protest.[135] The state responded with acts that constituted mass atrocity and war crimes including: "use of artillery fire against unarmed civilians, door-to-door arrest campaigns, the shooting of medical personnel… [and] raids

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[133] There are multiple competing factions participating in the Syrian Civil War, including: the core conflict between Bashar al-Assad's forces and rebels, the Kurdish minority, the Islamic State (ISIL, ISIL or Daesh), and the regional and great power involvement (Turkey, US, and Russia); Max Fisher, 2016, "Straightforward Answers to Basic Questions About Syria's War," *nytimes.com,* 18 September, accessed January 11, 2017, https://www.nytimes.com/2016/09/19/world/middleeast/syria-civil-war-bashar-al-assad-refugees-islamic-state.html?_r=0.

[134] Reuters in Amman, 2017, "Syrian rebels freeze peace talks after Assad abuses ceasefire," *thegaurdian.co.uk*, 2 January, accessed January 11, 2017, https://www.theguardian.com/world/2017/jan/02/syrian-rebels-freeze-peace-talks-after-assad-abuses-ceasefire. The most recent and most serious setback to the conflict since December 31, 2016, was the alleged use of the nerve agent sarin by the Syrian military forces against a rebel-held town in the norther province of Idlib on April 4, 2017. Although al-Assad, supported by Russia, denies the use of chemical weapons, blaming rebel forces instead, there is mounting evidence against the government. Patrick Kingsley and Anne Barnard, 2017, "Banned Nerve Agent Sarin Used in Syria Chemical Attack, Turkey Says," *The New York Times*, 6 April, accessed April 11, 2017, https://www.nytimes.com/2017/04/06/world/middleeast/chemical-attack-syria.html?_r=1; Bassem Mroue and Philip Issa, 2017, "Tests confirm sarin gas used in Syria chemical attack, Turkey's health minister says," *Global News*, 11 April, accessed April 11, 2017, http://globalnews.ca/news/3370833/syria-chemical-attack-sarin-gas/; Debra Killalea, 2017, "'Chemical war' in Syria: Russia blaming rebels 'highly implausible,'" *news.com.au*, 7 April, accessed April 11, 2017, http://www.news.com.au/world/middle-east/chemical-war-in-syria-russia-blaming-rebels-highly-implausible/news-story/d751f6972509fad5a9f3d7f98e3f4a92; Daryl Kimball, 2017, "Timeline of Syrian Chemical Weapons Activity, 2012-2017," *Arms Control Association*, dated 7 April, accessed April 11, 2017, https://www.armscontrol.org/factsheets/Timeline-of-Syrian-Chemical-Weapons-Activity.

[135] Reforms included: free and open parliamentary elections, political and anti-corruption reforms, and the loosening of government control of the media. Bashar al-Assad, 2011, "President al-Assad 2011 Damascus University Speech," *presidentassad.net*, 20 June, accessed February 21, 2017, http://www.presidentassad.net/index.php?option=com_content&view=article&id=359:president-al-assad-2011-damascus-university-speech&catid=117&Itemid=496; and Ipek Yezdani, 2011, "Syrian opposition: Assad's promises are 'meaningless,'" *Daily News*, 22 August, accessed February 21, 2017, http://web.hurriyetdailynews.com/syrian-opposition-assads-promises-are-meaningless.aspx?pageID=438&n=syrian-opposition-assad8217s-promises-are-8216meaningless8217-2011-08-22.

against hospitals, clinics and mosques..."[136] The UN Security Council meeting to discuss

the situation in Syria on April 27, 2011, proved ineffective at reaching consensus. The

Russian position was suspicious of Western biases, especially on the issue of mixed

motives:

> A real threat to regional security, in our view, could arise from outside
> interference in Syria's domestic situation, including attempts to promote
> ready-made solutions or to take sides…. Such approaches lead to an
> endless cycle of violence and represent an invitation to civil war.[137]

This deadlock later resulted in Russia and China voting against a UN resolution to

sanction the Syrian government on October 4, 2011, a pattern that has continued ever

since. The Chinese delegate emphasized the reason for his state's veto, citing the

importance of state sovereignty: "respect for the sovereignty of Syria and resolving the

crisis there through political dialogue. [Furthermore,] sanctions or the threat thereof does

not help to resolve the question of Syria and, instead, may further complicate the

situation." [138] Since hostilities commenced, 21 separate UNSCRs have been passed on the

conflict, of which non-intervention has been upheld in all cases except those involving

the placing of Syria's chemical weapons under the control and destruction of the non-

armed Organization for the Prohibition of Chemical Weapons (OPCW). In all other

cases, resolutions focused on maintaining borders open for humanitarian aid, free access

for observers, and a political solution to end the conflict.[139]

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[136] Small, Michael. 2014. "An analysis of the responsibility to protect program in light of the conflict in Syria." *Washington University Global Studies Law Review* 13 (1): 189 -190; and United Nations Security Council, 2011, *Document S/PV.6524*, New York: United Nations, 27 April.

[137] United Nations Security Council, *Document S/PV.6524*.

[138] United Nations Security Council, 2011, *Document S/PV.6627*, New York: United Nations, 4 October.

[139] A list of all UN documents relating to Syria can be found at: Security Council Report, "UN Documents for Syria," *securitycouncilreport.org*, accessed January 17, 2017. http://www.securitycouncilreport.org/un-documents/search.php?IncludeBlogs=10&limit=15&tag="SecurityCouncilResolutions"+AND+"Syria"&ctype=Syria&rtype=SecurityCouncilResolutions&cbtype=syria.

One of the many UNSCRs vetoed by Russia and China was the October 4, 2011,

draft resolution by 66 states referring Syria to the ICC for the investigation of crimes

against humanity.[140] Contrary to the Libyan resolution, this measure was not adopted,

despite the existence of equally credible evidence against the al-Assad government.

Beyond the aforementioned excessive use of force, in his January 6, 2013, public address,

al-Assad boldly stated, "we will not stop as long as there is a single terrorist in Syria.

What we started, we won't stop."[141] Additionally, the Syrian government's Central Crisis

Management Cell, responsible for coordinating a response to the revolt in August of

2011, issued the direction to "cleanse" sectors of "wanted people."[142] Despite significant

evidence of crimes and atrocities, international consensus has yet to be achieved.

What has been noticeably absent throughout the past six years of conflict has been

the use of the term "Responsibility to Protect" in UN documents and publications. Very

early on, the term was included in the draft UNSCR on October 4, 2011; the "Syrian

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[140] United Nations, 2014, *Document S/PV.7180*, New York: United Nations, 22 May.

[141] Bashar al-Assad, 2012, "President Bashar Al-Assad's January 6th, 2013 Speech," *presidentassad.net*, 6 January, accessed April 4, 2017, http://www.presidentassad.net/index.php?option=com_content&view=article&id=273:president-bashar-al-assad-s-january-6th-2013-speech&catid=119&Itemid=496. President al-Assad has continually referred to opposition forces as terrorist. He has noted several times that fighting will continue so long as terrorists exist within the country, leaving no logical means to end the conflict though diplomacy or political process. Khaled Yacoub Oweis, 2011, "Syria death toll hits 5,000 as insurgency spreads," *Reuters*, 13 December, accessed April 11, 2017, http://in.reuters.com/article/syria-idINDEE7BC00720111213; BBC, 2015, "Syria crisis: Assad says no transition while 'terrorists' remain," *bbc.co.uk*, 19 November, accessed April 11, 2017, http://www.bbc.com/news/world-middle-east-34867215; Jack Stubbs and Ellen Francis, 2016, "Syria's Assad says taking Aleppo from rebels key to pushing 'terrorists' back to Turkey," *Reuters*, 14 October, accessed April 11, 2017, http://www.reuters.com/article/us-mideast-crisis-syria-idUSKCN12D2FY; Bassem Mroue, 2017, "President Assad says U.S. troops are welcome in Syria to fight 'terrorists,'" *The Star*, 10 February, accessed April 11, 2017, https://www.thestar.com/news/world/2017/02/10/president-assad-says-us-troops-are-welcome-in-syria-to-fight-terrorists.html.

[142] Ben Taub, 2016, "The Assad Files: Capturing the top-secret documents that tie the Syrian regime to mass torture and killings," *The New Yorker,* 18 April, accessed January 11, 2017, http://www.newyorker.com/magazine/2016/04/18/bashar-al-assads-war-crimes-expose.

Government's primary responsibility [is] to protect its population."[143] However, that

resolution was vetoed by Russia and China. Particularly significant, the Russian

ambassador confronted the issue of R2P directly in the ensuing discussion: "Syria cannot

be considered in the Council separately from the Libyan experience. The international

community is alarmed by… the NATO interpretation… in implementing the

responsibility to protect."[144] Over the next five years, R2P was omitted from all

resolutions and policies related to Syria. There was a silence among the P5, with only a

few outcast references of the term at all. Some notable exceptions include: France, Togo,

and Secretary-General Ban Ki-Moon, in response to the Russian and Chinese veto on

March 12, 2012, a delegate from Rwanda who passed on his President's encouragement

for the continued work on R2P on September 27, 2012, Argentina and Lithuania

emphasized the importance of protecting one's own citizens on February 22, 2014, Spain

and Lithuania criticized Syria's failure to protect its citizens on February 26, 2015, and

the Syrian delegate who emphasized that R2P would be inappropriate and an

infringement on its sovereignty on April 18, 2013.[145]

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[143] United Nations Security Council, 2011, *Document S/2011/612*, New York: United Nations, 4 October, 1. The draft resolution was vetoed by Russia and China.

[144] *Ibid.*, 4.

[145] France: "In 2005, the evolution of our work led us to recognize that the Council had the obligation to act when the responsibility to protect was not assured and when gross violations of human rights took place before our eyes, and that Governments were accountable for acts of commission and omission alike….;" Togo: "It is our responsibility to act — and to act now — to finally put an end to the martyrdom of the Syrian people and allow them to regain control of their own future.", United Nations Security Council, 2012, *Document S/PV.6734*, New York: United Nations, 27 September, 14; United Nations Security Council, 2012, *Document S/PV.7116*, New York: United Nations, 22 February, 9; Span and Lithuania: United Nations Security Council, 2015, *Document S/PV. 7394*, New York: United Nations, 26 February, para 8f and 17; Secretary-General Ban Ki-Moon: "The Syrian Government has failed to fulfill its responsibility to protect its own people, and instead has subjected citizens in several cities to military assault and disproportionate use of force." United Nations Security Council, *Document S/PV.6734*, 1; the Syrian delegate, United Nations Security Council, 2013, *Document S/PV.6949*, New York: United Nations, 18 April 18: 11; Secretary-General, Spain, Australia, Italy, Portugal, Netherlands, Slovakia, Holy see, Batswana, and the Republic of Korea, however, their comments were mostly general and not aimed at Syria, United Nations Security Council, 2015, *Document S/PV.7419*, New York: United Nations, 27 March.

In the case of Syria, there has been no humanitarian military intervention as a response, even as atrocities escalate. The following sections will evaluate the six criteria outlined by the ICISS for the legitimate and legal use of force under R2P in order to determine if a humanitarian military operation was, and still is valid.

D. Syria: Analysis of R2P Criteria

i.   *Right authority*. Since the commencement of hostilities in Syria, no UN authority to conduct a military humanitarian intervention has existed. No combatant forces have been authorized to conduct operations to resolve the conflict between the Syrian government and rebel forces.[146] Russia and China used their veto to block every UNSCR drafted by Western states that has included military action.[147] Therefore, there is no legal argument under the policy of R2P, or any other international legal framework, to conduct military actions in Syria to end the mass atrocities and war crimes.[148]

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[146] Legal military action is being conducted by external nations in Syria to combat Da'esh (Islamic State). UN members are authorized to "take all necessary measures… on the territory under the control of ISIL also known as Da'esh, in Syria and Iraq, to redouble and coordinate their efforts to prevent and suppress terrorist acts committed specifically by ISIL also known as Da'esh as well as ANF, and all other individuals, groups, undertakings, and entities associated with Al Qaeda, and other terrorist groups, as designated by the United Nations Security Council…" United Nations Security Council, *Resolution 2249 (2015)*, New York: United Nations, 10 November, 2.

[147] Only UNSCRs to deploy unarmed military observers, to control chemical weapons, broker a ceasefire, and to distribute humanitarian aid have been authorized.

[148] The missile attack by the US as a response for the alleged use of sarin gas by the Syrian military on April 7, 2017, was illegal. There was no authorization under the UNSC to conduct any intervention in the Syrian civil war (outside of military actions taken to combat Daesh). Despite UNSCR 2209 that condemned the use of chemical agents, there was no legal framework in that resolution to support UN military action for any reason. The legitimacy of the action can be debated, but it is too soon to determine if the limited intervention will have a positive or negative result on the conflict. It is important to note that illegal interventions by the US deemed legitimate for 'moral reasons' are often linked to the The Independent International Commission on Kosovo,' which concluded that the 1999 NATO Kosovo campaign was illegal but legitimate; this intervention is not exceptional. Craig Forcese, 2017, "Illegal but legitimate? The consequences of U.S. action in Syria," *The Globe and Mail*, 6 April, accessed April 11, 2017, http://www.theglobeandmail.com/opinion/us-strikes-syria-illegal-but-legitimate/article34625910/; Theo Farrell, 2014, "Are the US-led air strikes in Syria legal - and what does it mean if they are not?," *The Telegraph*, 23 September, accessed April 11, 2017, http://www.telegraph.co.uk/news/worldnews/middleeast/syria/11116792/Are-the-US-led-air-strikes-in-Syria-legal-and-what-does-it-mean-if-they-are-not.html; Shane Reeves, 2017, "The Problem of Morally Justifying the United States Strike in Syria," *Lawfare*, 11 April, accessed April 11, 2017, https://lawfareblog.com/problem-morally-justifying-united-states-strike-syria; United Nations Security

Although right authority is limited to legality, there is also a need to consider the legitimacy. Examined by the various abstentions to various UNSCRs, there were and still are significant legitimacy concerns by states regarding military action. On October 4, 2011, Brazil, India, Lebanon, and South Africa abstained from the vote. The delegate from India would explain:

> [States] have the obligation to protect their citizens from armed groups and militants. While the right of people to protest peacefully is to be respected, States cannot but take appropriate action when militant groups – heavily armed – resort to violence against State authority and infrastructure. Given the complexity of ground realities in Syria, we believe that engaging Syria in a collaborative and constructive dialogue and partnership is the only pragmatic and productive way forward.[149]

On July 27, 2012, the vote to renew the mandate of the United Nations Supervision Mission in Syria (UNSMIS) that included a measure of compliance under Article 41 of the UN Charter was vetoed.[150] Pakistan and South Africa abstained, both citing a concern for coercive approaches and a failure among Security Council members to cooperate.[151] Lastly, UNSCR 2209 condemning the use of chlorine bombs was adopted on March 6, 2012, with the notable abstention of Venezuela, who "consider[ed] it necessary, prior to the adoption of a resolution… to conclude the investigation to determine who is

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Council, 2015, *Resolution 2209 (2015)*, New York: United Nations, 6 March; Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned*, 4.

[149] United Nations Security Council, *Document S/PV.6627*, 6.

[150] Chapter VII, Article 41 of the UN Charter states: "The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call on the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations." United Nations, *Charter of the United Nations*.

[151] United Nations Security Council, 2012, *Document S/2012/538*, New York: United Nations, 19 July, 3-4; United Nations Security Council, 2012, *Document S/PV.6810*, New York: United Nations, 19 July, 6 and 11-12; South Africa's position regarding Syria was linked to NATO's regime change in Libya, see: Mail and Guardian, Staff Reporter, 2011, "SA slams NATO's 'regime change' in Libya in UN speech," *Mail and Guardian,* 15 June, accessed March 16, 2017, https://mg.co.za/article/2011-06-15-sa-slams-natos-regime-change-in-libya-un-speech.

responsible for such an abominable act."[152] In all cases, there is evidence that there was a

lack of consensus on the facts, or certitude of reporting, surrounding the conflict in Syria.

Deadlock regarding Syria went beyond a "Cold War-styled" ideological impasse.

Multiple states had reservations relating to the legitimacy of a military intervention. Thus,

there was neither the legal authority *nor* the legitimacy to intervene.

ii.   *Just cause*. The Syrian conflict's defining trait has been the large-scale loss of

life. Not unlike in Libya, prior to the October 4, 2011, draft UNSCR, al-Assad did not

target a specific ethnic or minority group, therefore, the ethnic cleansing argument was

not present in Syria. Since that time, the conflict has evolved in complexity and there has

been an ethical cleansing dimension as part of the conflict.[153] However, as only one of

these two criteria need be met, military intervention had and continues to have just cause

solely because of the large-scale loss of life. Within the first days of the conflict, not only

actual large-scale loss of life occurred, but there were sufficient grounds to believe that

the conflict between government security forces and rebels had the real potential to

escalate the scale of killing in the longer term. Since succeeding his father, al-Assad has

implemented "a consistent policy of repressing dissent regardless of international or

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[152] United Nations Security Council, 2015, *Resolution 2209 (2015)*, 2.

[153] The Human Rights Council's report, "They came to destroy": ISIS Crimes Against the Yazidis," reports Daesh has committed genocide against the Yazidis, a Kurdish minority religious sect in Syria through, rape and other sexual abuses, enslavement, torture and other degrading treatment, and forcibly transferring groups of men, women, and children. Daesh is equally guilty of crimes against humanity, war crimes, and human rights abuses against the Yazidis. Human Right Council, 2016, "They came to destroy": ISIS Crimes Against the Yazidis," *Human Right Council*, Thirty-second session, Agenda item 4, A/HRC/32/CRP.2, 15 June, 20-32; see also: Nick Cumming-Bruce, 2016, "ISIS Committed Genocide Against Yazidis in Syria and Iraq, U.N. Panel Says," *New York Times*, 17 June, accessed March 1, 2017, http://www.nytimes.com/2016/06/17/world/middleeast/isis-genocide-yazidi-un.html?partner=bloomberg; and Arielle Mullaney, 2016, "Wiping out an entire religion: How ISIS will inevitably eliminate an ancient culture unless the united states employs military and diplomatic intervention," *Suffolk Transnational Law Review* 39 (1).

regional developments."[154] Aside from evidence of recent abuses, the ongoing dogmatic

language and a decade of experience and careful fact-based analysis together suggests

that there was a pre-existing disposition on the part of the Syrian government to commit

atrocities. The longer the conflict has continued, from weeks to months to years, the

numbers of dead have grown from hundreds to thousands, and now to hundreds of

thousands. Therefore, as the conflict escalated, the legitimacy for intervention, based on

just cause, only became stronger.

iii.   *Right intention*. From 2011 to the present, there has been division within the

Security Council regarding the primary purpose of an intervention in Syria. Just as any

discussion of the evolution of R2P cannot be divorced from action and inaction in

Somalia, Rwanda or Kosovo, the Syrian conflict does not exist in a bubble. Decisions

regarding intervention in the Security Council cannot be disassociated from the rapid

mission creep towards regime change in Libya. Any attempt by Western powers to

intervene militarily to stop the atrocities has been vetoed by Russia and China. The

Russian position was made clear in the discussion after it voted against military action:

"A real threat to regional security, in our view, could arise from outside interference in

Syria's domestic situation, including attempts to promote ready-made solutions or to take

sides."[155] "Ready-made solutions" is indicative of Russia's belief that mixed motives

existed among Western states to pursue regime change in Syria as was done in Libya.

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[154] Human Rights Watch, n.d., "A Wasted Decade: Human Rights in Syria during Bashar al-Assad's First Ten Years in Power," *hrw.org,* accessed January 18, 2017, https://www.hrw.org/report/2010/07/16/wasted-decade/human-rights-syria-during-bashar-al-asads-first-ten-years-power. See also: Borgen Magazine, Staff Reporter, 2013, "Syria's History of Human Rights Violations," *Borgen Magazine*, 13 September, accessed March 18, 2017, http://www.borgenmagazine.com/syrias-history-human-rights-violations/; Stephen Jones, 2009, "Syria: An Introduction," *United Kingdom, House of Commons, Library*, International Affairs and Defence Section, SN/IA/05111, 19 June, 7-9, accessed March 18, 2017, http://researchbriefings.files.parliament.uk/documents/SN05111/SN05111.pdf;
[155] United Nations Security Council, *Document S/PV.6524*, 7.

Russia is not alone, South Africa abstained from one vote, indicating that military

intervention may be "part of a hidden agenda aimed at once again instituting regime

change, which has been an objective clearly stated by some."[156] These perceptions are not

unfounded, as a leaked email from Secretary of State Hillary Clinton dated November 15,

2015, stated:

> success in Syria would be a transformative event… Not only would
> another ruthless dictator succumb to the mass opposition on the streets, but
> the region would be changed for the better… The resulting regime in Syria
> will see the United States as a friend, not an enemy.[157]

Russia also argued that the rebels in Syria were purposefully exacerbating the situation in

order to draw international attention, secretly attempting to play the helpless victim so

that liberal democratic states would feel obligated by R2P to assist: "It is increasingly

clear that some demonstrators, both in Syria and other countries, hope that the

deteriorating situation could force the international community to help them and to take

sides." [158] Mark Lynch et al support the Russian argument, stating: "[t]he early Syrian

uprising… [hoped] to attract a NATO intervention like Libya's."[159] A humanitarian

operation under the auspices of R2P, based on misinformation by a group purposefully

inflating, or worse, encouraging attacks on innocent victims, in order to draw support for

their cause would be illegitimate.

It was due to the potential for ambiguity of motives that the ICISS required that

three criteria be taken into account in the evaluation of military action, precisely in order

to deny states the ability to purposely plan and implement military operations with the

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[156] United Nations Security Council, *Document S/PV.6627*, 11.
[157] Dedenfensa.org, 2016, "Notes sur une note d'Hillary Clinton," *dedefensa.org*, 24 March, accessed February 15, 2017, http://www.dedefensa.org/article/notes-sur-une-note-dhillary-clinton.
[158] United Nations Security Council, *Document S/PV.6524*, 7.
[159] Marc Lynch, et al, "Syria in the Arab Spring," 1.

goal of altering borders, conducting regime change or advancing the claims of a particular group. For this reason, any action should always be collective. In the case of Syria, there is no doubt that there was the willingness of several states, including the US, the UK, and France to participate in a military intervention in August of 2012 and 2013.[160] In particular, in 2012, when the US had moved thousands of troops off the coast of Syria in response to President Obama's "Red Line" pledge regarding the use of chemical weapons, NATO states, such as Canada, pledged to contribute forces, should a military option be exercised.[161]

Second, an assessment of the support by those who would benefit from the intervention, is not unlike Libya, where there are two different groups needing to be addressed: the armed rebels and the peaceful protestors. In 2011 and 2012 both groups had requested some sort of international military intervention.[162] A humanitarian intervention that ended the conflict in 2012 may not have met the political goals of these two entities, such as regime change or democracy, but it may have met the tenet of R2P by preventing the immense death toll and humanitarian crisis that exists today.

[160] BBC, 2013, "Syria crisis: David Cameron makes case for military action," *bbc.co.uk,* 29 August, accessed January 11, 201, http://www.bbc.com/news/uk-politics-23883427; BBC, 2013, "US ready to launch Syria strike, says Chuck Hagel," *bbc.co.uk*, 27 August, accessed January 11, 2017. http://www.bbc.com/news/world-us-canada-23847839; Vivienne Walt, 2013, "France's Case for Military Action in Syria," *Time,* 31 August, accessed January 10, 2017, http://world.time.com/2013/08/31/frances-case-for-military-action-in-syria/.

[161] CTVNews.ca, 2011, "Canada ready to join NATO coalition if chemical weapons used in Syria," *CTVNews.ca,* 11 December, accessed January 11, 2017, http://www.ctvnews.ca/canada/canada-ready-to-join-nato-coalition-if-chemical-weapons-used-in-syria-1.1074500; Jean Guisnel, 2012, "Les Français se préparent à intervenir en Syrie," *LePoint,* 12 April, accessed January 11, 2017, http://www.lepoint.fr/editos-du-point/jean-guisnel/les-francais-se-preparent-a-intervenir-en-syrie-04-12-2012-1539285_53.php.

[162] Micah Zenko, 2011, "Some Syrian Oppositions Groups Want Intervention—Sort Of," *The Atlantic,* 29 November, accessed January 21, 2017, https://www.theatlantic.com/international/archive/2011/11/some-syrian-oppositions-groups-want-intervention-sort-of/249161/; Kim Sengupta, 2012, "Exclusive: UK military in talks to help Syria rebels," *theindependant.co.uk*; 10 December, accessed January 11, 2017, http://www.independent.co.uk/news/world/middle-east/exclusive-uk-military-in-talks-to-help-syria-rebels-8399658.html; Jonathan Schanzer, 2012, "US Refuses to Help Syrian Rebels Until After Election," *defenddemocracy.org*, 16 July, accessed January 11, 2017, http://www.defenddemocracy.org/media-hit/us-refuses-to-help-syrian-rebels-until-after-election/.

Third, in the case of Syria, taking into account support from regional states is highly complex, as the Syrian civil war has morphed into a larger cross road of conflict for many differing regional state and sub-state actors. Thus, finding a solution to meet the expectations of all regional players became next to impossible. Turkey, Iran, Saudi Arabia, Iraq, and Israel all have significant influence and interests in Syria. Considerable analysis and effort were conducted to pursue regional options. Indeed, in 2011, the Arab League briefed the Secretary-General Ban Ki-Moon on their plan to resolve the conflict in Syria. This plan, presented to the Security Council on October 4, 2011, in the form of a draft resolution, was supported by the US, the UK, and France, but was vetoed by Russia and China.[163] In the ensuing discussion, the delegate from France indicated that France would "continue to work with the Arab League."[164] In Syria, not only were regional viewpoints accounted for, they were also pursued as a viable solution.[165]

Intent is difficult to determine, especially in an ongoing conflict. In the case of Syria, two members of the P5 exercised their veto while non-permanent members raised concern through abstentions. By evaluating the three criteria that establish a mechanism to justify humanitarian interventions, despite the evidence of mixed motives, all three criteria were satisfied to *some* degree. Particularly, the collective action proposed, assistance was welcomed by the victims, and regional support was satisfied.

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[163] The Guardian, 2012, "Syria crisis: west seeks support for UN resolution against Assad," *theguardian.com,* 24 January, accessed January 11, 2017, https://www.theguardian.com/world/2012/jan/24/west-seeks-support-syria-crisis; United Nations Security Council, *Document S/PV.6524.*

[164] United Nations Security Council, *Document S/PV,* 4.

[165] Notable Peace plans that included regional viewpoints are: the Arab League attempt to mediate an end to the conflict in the fall of 2011 and Spring of 2012; the Kofi Annan Peace Plan attempt to reach a cease-fire agreement in 2012; and the 2012-2014 United Nations delegation led by Lakhar Brahimi to mediate an end to the conflict. Magnus Lundgren, 2016, "Mediation in Syria: Initiatives, Strategies, and Obstacles, 2011-2016," *Contemporary Security Policy*, 37(2), 30 April, 3-5, accessed March 18, 2017, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2787157.

iv.   *Last resort*. In the early stages of the conflict, al-Assad's removal by military

action was viewed as an essential factor to resolve the situation. In the case of Syria,

military action was not the last resort; rather diplomacy has been, at least thus far.[166]

It is important to note that serious diplomatic efforts only occurred *after* the initial

October 4, 2011, draft resolution was rejected as a template for regime change. Jess

Gifkins agrees, arguing that the road to diplomacy was the result of the deadlock after

coercive measures failed; "[t]he dissenters particularly rejected the inclusion of sanctions,

and wanted a specific clause stating that military intervention would not be conducted in

Syria."[167]

Since 2012, there has been an exhaustive exploration, or evaluation, of alternative

means by Western forces. Given the US example, "[a]fter initially calling for Assad to

step down, the Obama administration actively engaged since 2012 in multilateral efforts

to reach a negotiated settlement…"[168] Despite the deadlock of the Security Council, other

entities, such as the Arab League and the European Union, as well as 49 individual states,

have exerted sanctions and pressure to end the conflict through diplomatic means.

Notably, the "Kofi Annan Peace Plan," a March 2012, diplomatic effort sponsored by the

UN and the Arab League, failed to broker a peace deal.[169] The Geneva communiqué,

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[166] The April 7, 2017, US military strike of 59 Tomahawk missiles as a response to the Syrian government's April 4, 2017, use of sarin nerve agent, appears to reinforce the primacy and immediacy of military action over exploring other means of conflict resolution. Aaron Mehta, 2017, "Mattis offers blurred line on chemical weapons in Syria," *Defense News*, 11 April, accessed April 11, 2017, http://www.defensenews.com/articles/mattis-offers-blurred-line-on-chemical-weapons-in-syria;

[167] Jess Gifkins, 2012, "The UN Security Council divided: Syria in crisis," *Global Responsibility to Protect 4 (3),* 384.

[168] Carla E. Humud et al, "Armed Conflict in Syria," 15.

[169] The "Kofi Annan Peace Plan" is the colloquial term that has been used to describe the peace plan for Syria drafted by former UN Secretary-General Kofi Annan when he was appointed Joint Special Envoy to the UN and League of Arab States in 2012. His plan was accepted by the Syrian government on March 25, 2012, and authorized by UNSCR 2042 on April 14, 2012. It consisted of the following six-point plan: 1) commitment to work with the envoy within a Syria-led political process to address legitimate aspirations and concerns of Syrians; 2) commitment to a cessation of armed hostility; 3) ensuring humanitarian

sponsored by the US and Russia, has also failed to achieve any lasting ceasefire.[170] The

latest initiative, a Russia and Turkey co-sponsored peace initiative passed on December

31, 2016, UNSCR 2336, has reduced the degree of violence.[171] However, multiple

violations have occurred and the Syrian government and principle rebel groups have not

begun negotiations.[172]

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assistance; 4) increasing the release of detained persons; 5) ensuring freedom of movement and non-discrimination for journalist; and 6) respecting the right to legal demonstration. The Kofi Annan Peace Plan would establish the United Nations Supervision Mission in Syria (UNSMIS) authorized by UNSCR 2043 on April 21, 2012. United Nations Security Council, 2012, *Resolution 2042 (2012)*, New York: United Nations, 14 April, Annex A; United Nations Security Council, 2012, *Resolution 2043 (2012)*, New York: United Nations, 21 April; United Nations, n.d., "UNSMIS: United Nations Supervision Mission in Syria," *un.org*, accessed April 6, 2017,
https://www.un.org/en/peacekeeping/missions/past/unsmis/background.shtml.
Kofi Annan's replacement as UN Special Envoy for Syria was Lakhdar Brahimi, a former Algerian statesman, on August 17, 2012. Brahimi's was then replaced by the current envoy on July 10, 2014, Staffan de Mistra, an Italian statesman. Rick Gladstone, 2012, "Veteran Algerian Statesman to Succeed Annan as Special Syrian Envoy," *The New York Times*, 17 August, accessed May 1, 2017,
http://www.nytimes.com/2012/08/18/world/middleeast/lakhdar-brahimi-algerian-statesman-to-succeed-kofi-annan-as-special-syrian-envoy.html; United Nations, Meetings Coverages and Press Releases, 2014, "Secretary-General appoints Staffan de Mistra Special Envoy for Syria, Ramzy Ezzeldin Ramzy Deputy Special Envoy for Syria," *un.org*, July 10, accessed May 1, 2017,
https://www.un.org/press/en/2014/sga1480.doc.htm.
[170] The 'Geneva Communiqué' was a joint statement issued on June 30, 2012, chaired by the Joint Special Envoy of the United Nations and the League of Arab States for Syria as part of the Action Group for Syria. Membership included: China, France, Russia, United Kingdom, United States, Turkey, Iraq, Kuwait, Qatar, and the European Union High Representative for Foreign and Security Policy. The communiqué identifies measures to meet the six-point Kofi Annan Peace Plan, including: a cessation of armed violence regardless of the actions of others with sustained, immediate, credible and visible actions, respect for the UNSMIS, and access for humanitarian relief, terms for a political transition, and guidelines for external support of the peace process. United Nations, Action Group for Syria, 2012, "Action Group for Syria: Final Communiqué, 30.06.2012," *un.org*, 30 June, accessed April 6, 2017,
http://www.un.org/News/dh/infocus/Syria/FinalCommuniqueActionGroupforSyria.pdf.
[171] UNSCR 2336 is a December 31, 2016, re-affirmation by the United Nations Security Council of the mediation efforts that Russia, Turkey and Iran had conducted to facilitate a ceasefire in Syria. It welcomes the joint Russia-Turkey initiative, built upon the foundation of the Geneva Communiqué, to jumpstart a political process to end the conflict. United Nations Security Council, 2016, *Resolution 2336 (2016)*, New York: United Nations, 31 December.
[172] Simon Adams, 2015, "Failure to Protect: Syria and the UN Security Council," *Global Centre for the Responsibility to Protect*, 12, accessed January 26, 2017,
http://www.globalr2p.org/media/files/syriapaper_final.pdf; Christopher M. Blanchard, Carla E. Humud, and Mary Beth D Nikitin, 2015, "Armed Conflict in Syria: Overview and U.S. Response," *Current Politics and Economics of the Middle East 6 (3)*, 531, accessed January 26, 2017,
http://search.proquest.com/docview/1841323724/fulltextPDF/7801F583BB11443FPQ/1?accountid=9867; Carla E. Humud, Christopher M. Blanchard, and Mary Beth D. Nikitin, 2017, "Armed Conflict in Syria: Overview and U.S. Response," *Congressional Research Service*, 6 January, 12-13, accessed January 26, 2017, https://fas.org/sgp/crs/mideast/RL33487.pdf; and United Nations Security Council, *Resolution 2336 (2016)*.

v.   *Proportional means*. Although there has not been a military *humanitarian*

intervention, there have been military interventions by Russia, Israel, Turkey, and the US

within Syria. The Russian military response, aimed at solidifying al-Assad's forces, has

been disproportionate, utilizing air power and heavy bombardments to target comparably

weak rebel fighters, as well as non-military targets.[173] Israel has avoided the principal

conflict and has intervened defensively, albeit rarely, in Syria with air strikes, targeting

limited offensive equipment as well as arms shipments between Lebanon and Syria.[174]

Turkey has not focused on the main conflict in Syria but has focused peripherally on

fighting Daesh (Islamic State) and Kurdish forces close to its border. Turkey views such

actions as defensive, and has used special operations and air power to attack Daesh and

Kurdish targets.[175] The US has provided training and equipment to anti-government

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[173] Carla E. Humud et al, "Armed Conflict in Syria," 7-8; Kareem Shaheen, 2016, "Turkey sends tanks into Syria in operation aimed at Isis and Kurds," *The Guardian*, 24 August, accessed March 2, 2017, https://www.theguardian.com/world/2016/aug/24/turkey-launches-major-operation-against-isis-in-key-border-town; and Nursin Atesoglu Guney, 2013, "A new challenge for turkey: Civil war in Syria," *Insight Turkey* 15 (4), 51-59.

[174] Muriel Asseburg and Heiko Wimmen, 2012, "Civil War in Syria: External Actors and Interests as Drivers of Conflict," *SWP Research Paper*, Berlin: Stiftung Wissenschaft und Politik German Institute for International and Security Affairs, accessed January 30, 2017, https://www.swp-berlin.org/fileadmin/contents/products/comments/2012C43_ass_wmm.pdf. Although Israel has not involved itself directly in the Syrian civil war, a complete cessation of hostilities between Israel and Syria has not occurred either. Israel's interests regarding the Syrian conflict include: the "peace and stability across its northern border, in preventing weapons of mass destruction… from Hezbollah or other terrorist organizations, and in preventing jihadi elements from establishing themselves north of the Golan Heights…." Itamar Rabinovich, 2012, *Israel's view of the Syrian Crisis*, Washington: The Brookings Institution, The Saban Center, accessed April 6, 2017, https://www.brookings.edu/wp-content/uploads/2016/06/Rabinovich-web-final.pdf. Israel has adopted a "minimalist strategic posture," by reinforcing its border in the Golan Heights, only responding to direct security threats, and refraining from international discussions on conflict cessation or post-conflict structures. Eran Etzion, 2016, "Israel on the Outer in Syria's Civil War," *The Middle East Institute*, 19 July, accessed April 6, 2017, http://www.mei.edu/content/article/israel-outer-syria-s-civil-war. Despite the desire for the status quo, military action has been pursued in some instances by Israel, however, these actions are but a small escalation to a border dispute that are rooted in the 1967 war, regional tensions, and insecurities over terrorist threats operating inside Syria. Miriam Dagan, 2016, "Israel warily watches Syria," *dw.com*, 19 December, accessed April 6, 2017, http://p.dw.com/p/2UXV4.

[175] Carla E. Humud et al, "Armed Conflict in Syria," 10.

rebels in an attempt to reach a negotiated settlement.[176] However, the bulk of American

military intervention lays with coalition efforts against Daesh, again focused on the

periphery of the Syrian civil war with Special Forces, in effect, via a "train and assist"

mission.[177]

Perhaps, more important than the military response, is the non-military action led

by Saudi Arabia to support the rebels in Syria by providing financial and military support

as well as to diplomatically reduce Iran's influence on al-Assad.[178] As the dominant

Sunni power in the Middle East, it has lobbied other Arab states and endorsed a religious

campaign for "pious Muslims to strive against [the Syrian regime]."[179]

With regards to an R2P intervention, it is, of course, impossible to discern

whether a Western military humanitarian intervention would have targeted al-Assad's

government forces with a proportionate or disproportionate force. However, based on

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[176] Missy Ryan, 2015, "U.S. begins training Syrian rebel force," The Washington Post, 7 May, accessed March 2, 2017, https://www.washingtonpost.com/world/national-security/us-begins-training-of-syrian-rebel-force/2015/05/07/5c5ac026-f4f0-11e4-bcc4-e8141e5eb0c9_story.html?utm_term=.85f3240bed06; Julian Borger and Nick Hopkins, 2013, "West training Syrian rebels in Jordan," *The Guardian*, 8 March, accessed March 2, 2017, https://www.theguardian.com/world/2013/mar/08/west-training-syrian-rebels-jordan; Ariel Zirulnick, 2011, "Cables reveal covert US support for Syria's opposition," *CSMonitor.com*, 18 April, accessed March 2, 2017, http://www.csmonitor.com/World/terrorism-security/2011/0418/Cables-reveal-covert-US-support-for-Syria-s-opposition; Raf Sanchez, 2013, "First Syria rebels armed and trained by CIA 'on way to battlefield,'" *The Telegraph*, 3 September, accessed March 2, 2017, http://www.telegraph.co.uk/news/worldnews/middleeast/syria/10283758/First-Syria-rebels-armed-and-trained-by-CIA-on-way-to-battlefield.html.

[177] Carla E. Humud et al, "Armed Conflict in Syria," 15-16. One recent exception to US policy is the April 7, 2017, limited strike of 59 tomahawk cruise missiles on the Syrian military's Shayrat airbase as a response to the alleged use of sarin gas by government forces on April 4, 2017. These actions have been established as limited and aimed only at deterring the use of further chemical weapons and was confirmed by US government officials that it was not a signal of US policy shift to embark into an intervention, or humanitarian intervention, into the Syrian Civil War. Spencer Ackerman, Julian Borger, David Smith, 2017, "US defence chief says they want to deter more chemical weapons, not oust Assad," *The Guardian*, 11 April, accessed April 11, 2017, https://www.theguardian.com/world/2017/apr/11/us-defense-syria-chemical-weapons-attacks-assad-regime.

[178] BBC, 2015, "Syria crisis: Where key countries stand," *bbc.com*, 30 October, accessed January 30, 2017, http://www.bbc.com/news/world-middle-east-23849587.

[179] Joshua Jacobs, 2012, "The danger that Saudi Arabia will turn Syria into an Islamist hotbed," *csmonitor.com*, April 12, accessed January 30, 2017, http://www.csmonitor.com/Commentary/Opinion/2012/0412/The-danger-that-Saudi-Arabia-will-turn-Syria-into-an-Islamist-hotbed.

best available evidence, in all of the cases except Russia, a proportional response *has*

occurred as part of the non-humanitarian interventions. However, these actions have only

perpetuated the conflict and have not reduced the scale of the humanitarian crisis. As of

April 2017, Russia's disproportionate means has strengthened governmental forces in a

decisive manner, but this has come at the cost of international legitimacy on the question

of proportionality.

vi.   *Reasonable prospects*. There are two emerging camps of scholarly opinion on this

issue. Zach Beauchamp argues that R2P demands that intervenors stay out of Syria as the

resulting harm would outweigh the good, whereas Ann Marie Slaughter argues that R2P

is necessary to end the conflict.[180] Primarily, the complexity regarding reasonable

prospects is that multiple factions in Syria are contesting for power in, or in the resolution

of, the conflict. Thus, multiple international interests are all influencing proposals for an

end-state in Syria that conforms to their paradigm, or in a manner that enhances their

regional power. Combine this challenge with the fractured rebel groups drawn from

differing cultural and religious lines both internally and externally, along with the

presence of foreign fighters, make the prospects for enduring peace in the region almost

untenable. Furthermore, it has been incredibly difficult for the media, governments, and

the UN to determine what *exactly* has occurred in Syria. Aside from the fog of war and

multiple conflicting interests, the facts are veiled given the dangers associated with

sending in observers and the Syrian government's restrictive access and tight media

control. In one example, the Chairman of the Independent International Commission of

Inquiry on the Syrian Arab Republic concluded that "they were unable to determine who

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[180] Eric A. Heinze and Brent J. Steele, "The (D)evolution of a Norm: R2P, the Bosnia Generation and Humanitarian Intervention in Libya," in Hehir and Roberts, *Libya: The Responsibility to Protect and the Future of Humanitarian Intervention*, 153.

had committed the massacre, although they suspected government forces." [181] However,

there is evidence that, unlike the conflict in Libya, where critics have blamed the

international intervention for creating more suffering, in Syria, the *lack* of international

consensus has directly increased the suffering. After the February 4, 2012, draft UNSCR

was vetoed, the killing rate in Syria dramatically increased from 1,000 to 5,000 people a

month. Additionally, the alleged sudden use of the nerve agent sarin by the Syrian

military on April 4, 2017, appears to confirm this fact, as the attack was executed shortly

after US President Donald Trump's administration reversed policies on the Syrian

conflict from former President Obama, distancing US policy from regime change. As

Sean Spicer, the White House Press secretary stated: "With respect to Assad, there is a

political reality that we have to accept." [182] Simon Adams explains, "[w]ith each failure

of the Security Council to hold the Syrian government accountable for its actions,

President Bashar al-Assad's forces deployed more extreme armed force." [183] In Syria,

reasonable prospects for achieving peace through humanitarian intervention have

decreased with time. As of April 2017, there is no viable solution to the conflict.

In Syria, a lack of consensus within the UNSC resulted in a lack of legal

authorization, or right authority, preventing military action by the international

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[181] Jess Gifkins, 2012, "The UN Security Council divided: Syria in crisis." *Global Responsibility to Protect 4 (3)*, 392; and Human Right Council, 2012, "Report of the Independent International Commission of Inquiry on the Syrian Arab Republic," *Human Right Council*, 21st session, Agenda item 4, A/HRC/21/50, 16 August.
[182] Michael R. Gordon, 2017, "White House Accepts 'Political Reality' of Assad's Grip on Power in Syria," *The New York Times*, 31 March, accessed April 11, 2017, https://www.nytimes.com/2017/03/31/us/politics/trump-bashar-assad-syria.html; Anne Barnard, 2017, "The Grim Logic Behind Syria's Chemical Weapons Attack," The New York Times, 6 April, accessed April 11, 2017, https://www.nytimes.com/2017/04/06/world/middleeast/syria-bashar-al-assad-russia-sarin-attack.html; Michael Petrou, 2017, "Assad had every reason to believe he would get away with another chemical attack. But Trump surprised him," The National Post, 7 April, accessed April 11, 2017, http://news.nationalpost.com/news/world/assad-had-every-reason-to-believe-he-would-get-away-with-another-gas-attack-but-trump-surprised-him.
[183] Adams, "Failure to Protect: Syria and the UN Security Council," 5.

community. Despite strong evidence of war crimes, providing a just cause, Russia and China raised concern that the US, the UK, and France lacked the right intention, seeking regime change. A military option was not sought as a last resort, but was antecedent to diplomatic measures, solidifying the divide within the Security Council. Because intervention was prevented, it is impossible to determine proportional means. However, evidence suggests that an earlier military response could have had reasonable prospect to alleviate much of the suffering and atrocities on both sides of the protracted conflict. Ultimately, a lack of consensus surrounding the facts of the conflict, disagreement over the correct application of R2P, as well as the divergent motives and contrasting perspectives of the P5, resulted in deadlock and inaction.

CHAPTER IV: IRREGULAR EMPLOYMENT

Libya and Syria share many commonalities – in history and regarding their recent conflicts. However, one stark contrast is the manner in which R2P was used, misused, or not used, in order to resolve the conflicts. By analyzing the minimum standard for achieving legitimacy of an intervention in Libya and Syria, additional conclusions regarding the effectiveness of R2P's implementation are advanced in this chapter. Moreover, the prospects for further implementation of R2P given the predominance of state sovereignty in the international arena are to be examined.

A. United Nations Security Council

Syria and Libya both demonstrate that the UNSC's operationalization of international humanitarian operations, under the banner of R2P, currently suffers from the same detrimental flaw to international action outlined in the 2001 ICISS report: deadlock. Studying the criteria of right authority, right intention, and reasonable prospects, however, this deadlock can be explained.

If Libya and Syria are evaluated, not from a singular perspective, but as temporally and geographically linked events, there remains a strong divide in the Security Council, particularly among the P5, concerning humanitarian intervention and the operationalization of R2P. The Security Council was able to take action in Libya, but the action was not as advertised. The end-state of the intervention primarily focused on regime change and not protecting vulnerable civilians from atrocities. With respect to Syria, Russia and China used their veto to block intervention, supported the abstentions of non-permanent members, *because* of the precedent related to regime change that was

set in Libya.[184] The members of the Security Council demonstrated that they do not trust

the "right" intention of its own members to make ethically or legally correct decisions

while implementing R2P. In the case of Syria, Russia and China did not believe the

primary motive of Western states was the protection of civilians. Based on Libya, they

suspected the intent was another regime change. This position is outlined by Mohammed

Nuruzzaman:

> The breakdown of consensus on R2P post-Libya has seen its
> manifestations in the Security Council over Syria. Two issues that sharply
> divided the permanent members of the Security Council were the West's
> policy of regime change in Libya, and taking side with the rebel fighters.
> Instead of abiding by the mandate of Resolution 1973, NATO acted as the
> air force of the anti-Gaddafi rebels and bombed the civilian population. It
> looked more like a NATO war against the Gaddafi government. China and
> Russia, who have obvious strategic and commercial interests in Syria,
> used such abuses to defeat two Security Council resolutions on Syria.[185]

Conversely, the US, the UK, and France criticize Russia for upholding and enabling the

al-Assad regime, whose larger goal is to retain Russian naval influence in the region and

valuable defence contracts with the established al-Assad government.[186] These opposing

views have led to the current standstill, inhibiting further Security Council action.[187] The

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[184] Michael Small, 2014, "An Analysis of the Responsibility to Protect Program in Light of the Conflict in Syria," *Washington University Global Studies Law Review 13 (1)*, 190.

[185] Mohammed Nuruzzaman, 2013, "The "Responsibility to Protect" Doctrine: Revived in Libya, Buried in Syria," *Insight Turkey 15 (2)*.

[186] Brian Michael Jenkins, 2014, "The Dynamics of Syria's Civil War," *RAND Corporation*, 7, accessed January 30, 2017, http://www.rand.org/content/dam/rand/pubs/perspectives/PE100/PE115/RAND_PE115.pdf.

[187] The negative effects of a lack of consensus within the Security Council has recently been demonstrated by the April 4, 2017 alleged sarin attack and April 7, 2017 US missile response. Both the US and Russia have criticized each for their actions related to the incidents and are divided and entrenched in their views. This tension has exacerbated the situation, bringing more instability and escalation to an already divided conflict. See: Matthew Nussbaum, 2017, "White House slams Moscow for defending Assad on gas attack," *Politico*, 11 April, accessed April 11, 2017, http://www.politico.com/story/2017/04/white-house-criticize-moscow-syria-chemical-attack-237113; Louise Nelson, 2017, "Putin: Russia wants UN to investigate Syrian chemical attack," *Politico*, April, accessed April 11, 2017, http://www.politico.eu/article/putin-russia-wants-u-n-to-investigate-syrian-chemical-attack/; Robert Burns and Lolita C. Baldor, 2017, "U.S. official: Russia knew Syrian chemical attack was coming," *The New York Times*, 11 April, accessed April 11, 2017, http://www.seattletimes.com/nation-world/us-official-russia-knew-syrian-chemical-attack-was-coming/; BBC, 2017, "Syria chemical 'attack': Russia faces fury at UN Security Council," *bbc.com*, 5

resulting deadlock is related not only to individual state interest but also to the criterion of reasonable prospects, as both diplomatic posturing and retrenchment has been used by both sides of the divide. In the case of Libya, the West was able to intervene in short order but the intervention resulted in thousands of deaths while failing to mend a fractured state. In the case of Syria, non-military, or indirect military avenues through Special Forces training and assist operations have been pursued to no avail, with the loss of hundreds of thousands of lives. Equally, in Syria, there is evidence that international inaction has directly emboldened the Syrian regime to use more extreme force.[188] The two conflicts were similar in genesis but different in implementation, and yet, both the intervention in Libya and the inaction in Syria have been assessed by critics to have *directly* contributed to massive losses of life and atrocities. Each of these cases strengthens the arguments of the opposing factions in the P5, as the contradictory data leaves no ability for one side to effectively critique the other; other than on a dogmatic or ideological plane. The tragic Catch 22 is that, in the end, both R2P-related action *and* inaction have resulted in instability and ongoing violence.

The Security Council's divide, in the case of Libya and Syria, demonstrates that there is an irregular implementation of policy and at best an imprecise and uneven scorecard regarding international humanitarian operations. The divide in the Security Council is rooted in the biases related to each state's independent interests. Ideologies and identities are separated by the populist nature of the conflicts, the type of government

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April, accessed April 11, 2017, http://www.bbc.com/news/world-middle-east-39500319; Henry Meyer, Ilya Arkhipov and Stepan Kravchenko, 2017, "Russia accuses Donald Trump of being 'too hasty' in response to Syria gas attack," *The Sydney Morning Herald*, 7 April, accessed April 11, 2017, http://www.smh.com.au/world/russia-accuses-donald-trump-of-being-too-hasty-in-response-to-syria-gas-attack-20170406-gvfjuv.html.
[188] Adams, "Failure to Protect: Syria and the UN Security Council," 5.

in each conflict state, and regional economic interests. In the end, neither Libya nor Syria can independently demonstrate the potential for either success or failure of the Security Council authorizing an R2P mission.

B. Mixed Motives

The deadlock in the Security Council strongly corroborates the conclusion that individual state interests are a detriment to operationalizing R2P. State self-interests are in play through the study of all six of the ICISS's criteria for assessing the legitimacy of a humanitarian operation, and further indicate the adverse effect that mixed motives play on the application of R2P as a response to gross human rights violations, mass atrocities, and war crimes. Mixed motives led NATO states to exceed their authority granted by the Security Council and to steer their military campaign towards regime change in Libya. The concern of regime change in Syria prompted China and Russia to veto any substantive legislation to authorize military action.

Although R2P does not *require* an intervening force to remain unbiased in its intent to intervene, it does require an intervention to disrupt an established conflict-state government as little as possible. That is why proportionality is so critical. Equally, the use of military action is only to be used as a last resort. In Libya, the AU was actively pursuing a regional effort to negotiate a peace settlement between Gaddafi and the rebels when such efforts were crippled by NATO's imposition of a no-fly zone and subsequent military action. In Syria, only after initial military and coercive methods were vetoed did the US, the UK, and France seek a negotiated settlement. In both cases, the mixed motives of states regarding regime change became a prime factor in the initial military intervention plans. R2P does not demand that all avenues other than military action be

exhausted, nor is regime change forbidden, but the immediacy at which alternative

resolutions were rejected in favor of regime change is indicative itself of such competing

motives.

Ideological bias also played a role in the motivations of intervening states. An

intense pro-democracy motive existed in the justification to intervene in Libya and

Syria.[189] In both conflicts, initial reports of war crimes by the state governments were

taken as fact in order to justify military action. There was little doubt on the part of

Western governments that Gaddafi and al-Assad had abused state power and used

excessive force to punish non-violent popular and ostensive "democratic" uprisings.

However, it has been determined that most of the initial violence in Libya and Syria was

not as widespread or as one sided as initially conveyed, negating the justification to

support the rebels over the governments. Those states that supported and lobbied for

intervention sided with the populist movements as they represented a challenge to the

authoritarian regimes. By arming and supporting the rebels, intervening states

perpetuated and increased the use of violence and war crimes on both sides of the

conflict. In the case of Libya and Syria, a bias aimed at assisting the rebels achieve a

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[189] Benjamin H. Friedman, 2016, "No, the Libya Intervention Wasn't a Humanitarian Success," *CATO Institute*, 7 April, accessed March 2, 2017, https://www.cato.org/publications/commentary/no-libya-intervention-wasnt-humanitarian-success; Christopher Fermor, 2012/2013, "NATO's decision to intervene in Libya (2011): Realist principles or humanitarian norms?," *Journal of Politics & International Studies*, Vol. 8 (Winter), 341, accessed March 2, 2017, http://www.polis.leeds.ac.uk/assets/files/students/student-journal/ug-winter-12/130217-win12-chris-fermor-9.pdf; Adam Taylor, 2016, "Poll: Most Americans support U.S. military action in Syria — but only want a limited amount," *The Washington Post*, 15 August, accessed March 2, 2017, https://www.washingtonpost.com/news/worldviews/wp/2016/08/15/poll-most-americans-support-u-s-military-action-in-syria-but-only-want-a-limited-amount/?utm_term=.e4b82c84615d; For a historical synopsis of the US foreign policy regarding democracy and military intervention see: James Meernik, 1996, "United States Military Intervention and the Promotion of Democracy," *Journal of Peace Research*, Vol. 33, No. 4, November, 391-402, accessed March 2, 2017, http://www3.nccu.edu.tw/~lorenzo/Meernik%20Military%20and%20Democracy.pdf; and Sean M. Lynn-Jones, 1998, "Why the United States Should Spread Democracy," *Belfer Center for Science and International Affairs, Harvard Kennedy School,* March, accessed March 2, 2017, http://www.belfercenter.org/publication/why-united-states-should-spread-democracy.

representative government, misguided the planning and the implementation of humanitarian operations.

The proportional military response was indicative of the overall effect of mixed motives. Libya began as a no-fly zone but rapidly evolved into an air campaign focused on degrading Gaddafi's overall military arsenal and not protecting civilians and rebels from disproportionate government force. The primary method to empower government opposition was through Special Forces operations in a "support and assist" capacity.[190] In Syria, Special Forces also played and continue to play a significant role in empowering anti-government forces. The method of intervention is indicative of the primacy of political and domestic realities of the intervening states.[191] In both cases, regular force ground troops were not used, favoring the use of air power and/or Special Forces to mask its military presence from its domestic population. In developing a plan to end atrocities, the minimum and most appropriate use of force are supposed to be used by intervening forces. In the first months of both conflicts, atrocities were conducted by all sides, but a choice was made to empower rebels through a "support and assist," small footprint intervention, instead of deploying armed ground forces to act as peacemakers. In the case of Syria, Russia and China accused the US, the UK, and France of seeking a quick military resolution, rather than conducting a comprehensive study of the complex problem before a developing a military solution.

As well, mixed motives have directly contributed to an irregular employment and understanding of the application of R2P. As Aidan Hehir suggests, "[s]tatements by the

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[190] Carla E. Humud et al, "Armed Conflict in Syria," 15-16.

[191] *Ibid*.; Gregory Korte, 2016, "16 times Obama said there would be no boots on the ground in Syria," *USA Today*, 31 October, accessed January 31, 2017, http://www.usatoday.com/story/news/politics/onpolitics/2015/10/30/16-times-obama-said-there-would-no-boots-ground-syria/74869884/.

P5 on Libya highlight that they will continue to treat each case put before the Security

Council on a case-by-case basis following evaluation of their respective interests."[192]

Regime change, ideological biases, and the methods and haste of the call for intervention

blurred R2P's role in the Libyan intervention. These same factors also created the

deadlock that prevented humanitarian military action in Syria. In the end, due to their

divergence, neither case can be used as a precedent for R2P's operationalization within

the Security Council.

C. R2P as a norm

To be a norm, R2P must be a policy that is considered and habitually used by

states. However, the use of the term R2P, as well as the continuing debate on the

relationship between state sovereignty and international obligation, demonstrates that

there remains a profound lack of consensus, and indeed ideological and pragmatic divide

regarding the implementation of R2P as a reaction to mass atrocities and war crimes.

Although this study has focused only on two cases, the larger dilemma raised by Libya

and Syria reveal much deeper insecurities and contradictions.

The intervention in Libya is regarded by R2P supporters as "especially important

because it is the first time that the Security Council has authorized the use of military

force for human protection purposes against the wishes of a functioning state." [193]

However supportive this position is, it is inconsistent due to the lack of use of the term

"R2P" during the intervention. NATO member representatives avoided using the term

R2P to describe or justify their military actions. Justin Morris, studying the Libyan

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[192] Aidan Hehir, 2013, "The Permanency of Inconsistency: Libya, The Security Council and the Responsibility to Protect," *International Security*, 38/1 (Summer), 150.
[193] Alex J. Bellamy, 2011, "Libya and the Responsibility to Protect: The Exception and the Norm," *Ethics and International Affairs*, Vol. 25, No. 3 (Fall), 263.

intervention's Security Council deliberations, determined that the members did not

actively contemplate R2P whilst negotiating an appropriate response to events in Libya:

> The official record of the UNSC's deliberations over Resolution 1973
> gives little support to assertions that R2P was a major influencing factor
> on decisions over the most appropriate form of intervention... R2P wasn't
> applied in Libya, precisely so that it wouldn't have to be applied in cases
> like Syria.[194]

The phrase "responsibility to protect its citizens" was only found in the *initial* Security

Council Resolution, which did not authorize military actions but only condemned

Gaddafi's forces for abuses.[195] An inference to R2P would not be repeated by Western

states after UNSCR 1973 authorized military force.

In Syria, the term R2P was used by Western states at the *outset* of the

deliberations in the Security Council and was incorporated into the draft Resolution on

October 4, 2011. However, as with Libya, over time the term R2P would vanish from the

lexicon. Once deadlock set into the Security Council, military action would not be

authorized, the term was dropped in order to set apart non-military efforts to help the

population and to establish an international consensus to stop the violence and forge a

peace plan. In other words, R2P became a hurdle to assisting the peace process and

curbing violence as it only created international division, especially among the P5.[196]

In the case of Libya, the language of R2P was omitted after military operations

began. In Syria, R2P was disavowed in order to move forward on developing a solution

to the conflict and at least minimize casualties and refugees. In both cases the term was

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[194] Mark Kersten, 2016, "The Responsibility to Protect doctrine is faltering. Here's why," *The Washington Post,* 8 December, accessed January 30, 2016, https://www.washingtonpost.com/news/monkey-cage/wp/2015/12/08/the-responsibility-to-protect-doctrine-is-failing-heres-why/?utm_term=.ddf8fec3191b.
[195] United Nations Security Council, *Resolution 1970 (2011)*.
[196] United Nations Security Council, *Document S/PV.6627*; and David Petrasek, 2013, "R2P – hindrance not a help in the Syrian crisis," *opendemocracy.net*, 13 September, accessed February 6, 2017, https://www.opendemocracy.net/openglobalrights/david-petrasek/r2p-%e2%80%93-hindrance-not-help-in-syrian-crisis.

not used, demonstrating that current use of R2P is irregular and unbalanced. As a result,

R2P suffers from a lack of legitimate precedents.

Division within the Security Council hardened over the ideological divide

concerning R2P and regime change. This issue remains unsettled in the application of

R2P, despite being advertised to end the uncertainty and to solidify the responsibilities of

the state and the international community regarding human security. In Libya, regime

change occurred; altering the governing structure within the state and generating

profound and ongoing instability. In Syria, China resisted a repeat, arguing that the

conflict was under the domestic jurisdiction of the state, committing to the "respect for

the sovereignty of Syria and resolving the crisis there through political dialogue."[197] This

sentiment was outlined by the Syrian delegate to the Security Council discussion on April

18, 2013:

> The crude and excessively compliant and aggressive propaganda that
> some Governments are seeking to promote is intended to justify their
> attempts to interfere in Syria's domestic affairs — in breach of Syria's
> sovereignty — on pretexts such as humanitarian intervention, imposing
> no-fly zones, establishing safe humanitarian corridors and the concept of
> the responsibility to protect."[198]

When R2P was invoked in the initial decision to condemn Gaddafi, it was interpreted as a

legitimate response to the disproportioned violence of the state against its own people.

However, the moral authority of R2P was compromised by NATO when it exceeded the

UNSC's mandate by ousting Gaddafi. The normative, legal, and practical line between

the power of the international community and the sanctity of the state had been crossed in

the eyes of Russia and China. When R2P was invoked a second time regarding Syria,

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[197] Dan Bilefsky, 2011, "New Move to Condemn Syria in U.N.," *nytimes.com,* June 8, accessed February 6,
2017. http://www.nytimes.com/2011/06/09/world/middleeast/09nations.html?_r=0.
[198] United Nations Security Council, *Document S/PV.6949*, 11.

Russia vetoed the Resolution in order to protect the "national sovereignty and territorial integrity of Syria as well as the principle of non-intervention, including military, in its affairs."[199] Within the Security Council, France, the UK, and the US remained on one side of the ideological divide, promoting human security, while Russia and China remained committed to the preservation of sovereignty. Considering R2P's purpose was to both redefine and affirm the balance between state obligation and international responsibilities, Libya and Syria suggest failure. The balance, such as it is, remains unstable.

Alex Bellamy describes the intervention in Libya as successful but "exceptional" given the clarity, speed, and participation of the UN, the facts on the ground, UN decision-making, and the eventual response.[200] In doing so, R2P's status as a norm is undermined: "decisions about military intervention to prevent atrocities will always be taken in a context of deep uncertainty about their effects and will be driven by the specific political context. As such, they tend to be inconsistent and imperfect…"[201] In Syria, another "exceptional" situation that seemed to mirror Libya unfolded but instead resulted in international inaction and deadlock. R2P was not seen as appropriate, but rather a hindrance to solving an emerging humanitarian crisis. The irregular use of R2P and lack of consensus regarding the role of R2P actually *delegitimizes* its potential normative status and suggests a policy that is neither accepted nor habitual.

The ICISS original undertaking was to resolve the uneven balance between the role of the state and the international community regarding the protection of human lives from abuses and war crimes. In introducing R2P, six criteria were offered to establish the

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[199] United Nations Security Council, *Document S/PV.6627*, 3.
[200] Bellamy, "Libya and the Responsibility to Protect," 264-266.
[201] *Ibid*., 269.

legitimacy of any international humanitarian operation, but deliberation was to occur through existing institutional bodies. Libya and Syria both illustrate the continued suspicion within the Security Council regarding the motivations of states, as well as the actual mixed motives of states that cause deadlock. Furthermore, the lexicon of R2P was not used in either conflict, meaning that no consensus has been reached regarding the understanding of state and international responsibilities regarding humanitarian intervention. This analysis indicates that the irregular employment of R2P has had a stagnating effect on its progression from principle to norm, as well as confirms the enduring existence of the Westphalian state-centric system. State sovereignty and domestic jurisdiction still exert a strong ideological and practical check on the normative development and pragmatic implementation of international intervention as a response to genocide, war crimes, ethnic cleansing, and crimes against humanity.

CHAPTER V: CONCLUSIONS - IMPLICATIONS FOR IR THEORY

Mixed motives and irregular employment have been detrimental to the effectiveness of R2P's operationalization. However, what remains to evaluate is the significance of such practice for the current understanding of international relations theory. The following chapter will look at three prominent IR theories, realism, liberal internationalism, and constructivism, in order to determine how mixed motives and irregular employment affect each theory's ability to explain what has occurred.

A. Realism

The realist perspective was the most dominant point of view throughout the Cold War. Despite critics who argue that realism paints "a rather grim picture of world politics," it continues to be a dominant theory among international relations scholars.[202] Realists view the world as state-centric where the state makes rational decisions in order to respond to an anarchical environment, struggling for power, or gains, in order to survive. The state thus is outwardly focused and exists in order to perpetuate its own survival and to protect the wellbeing of its own citizens.[203] It does so by exercising its power through various political, economic or other means; military power remains its primary focus.[204] For a realist, the state must always weigh the positives and negatives for each action, focused on its own self-interest.[205] The most significant factor affecting state

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[202] John J. Mearsheimer, 1994/1995, "The False Promise of International Institutions," *International Security,* 9; Stephen M Walt, 1998, "International relations: One world, many theories," *Foreign Policy* (Spring), 1.

[203] Nadine Riccabona, 2013, "Responsibility to Protect and Regime Change: An Analysis of the Intervention in Libya," *Universität Wien*, Masterstudium Politikwissenschaft, 54, accessed February 8, 2017, http://othes.univie.ac.at/27739/1/2013-04-03_0410507.pdf.

[204] E. H. Carr, Intro Michael Cox, 2016, *The twenty years' crisis, 1919-1939: Reissued with a new preface from Michael Cox*, London: Palgrave Macmillan, 102.

[205] John A. Vasquez, 2005, "Ethics, foreign Policy, and Liberal Wars: the role of Restraint Moral Decision Making," *International Studies Perspectives* 6, 310, accessed February 8, 2017, http://onlinelibrary.wiley.com/doi/10.1111/j.1528-3577.2005.00209.x/epdf.

decision-making is its position within a continuously jockeying, or balancing, finite distribution of international power.[206]

To realists, such as Mearsheimer, international organizations, including the UN, "have mattered rather little in the past…" and have not changed the nature of the state-centric world.[207] Those states that participate in institutions do so because they have something to gain or maintain. Hegemonic states use international systems to retain their power, while great powers use nationalism to subvert that power in order to increase their own.[208] R2P, in the sense of an international norm, contradicts the anarchical world order and, as an interventionist tool, is juxtaposed against the overarching concern for a state's own security and citizenship. When states intervene in humanitarian operations they do so for their own benefit: "beware whenever states claim they are doing something for someone else. Such claims are mere smokescreens, ideological props that are intended to legitimate their more primeval foreign policy goals."[209]

Regarding Libya and Syria, a realist explanation for the use of a humanitarian justification, within the framework of the UN Security Council Resolution, would only be a means to solidify support for intervening states to meet or extend their national intent, expressed in terms of a zero-sum calculus of power. With the approval of the Security Council, interventionists ensured a safe position to pursue military operations and exert their power without fear of reprisal or challenge. In the case of Libya, the NATO-led mission would increase power or at a minimum maintain the stability in an oil-rich,

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[206] Kyle M. Lascurettes, "REALISM (INTERNATIONAL RELATIONS)," in Edward J. Blum et al, 2016, *America in the World, 1776 to the Present*, Farmington Hills, MI: Charles Scribner's Sons.
[207] Mearsheimer, "The False Promise of International Institutions," 13.
[208] Carr, *The twenty years' crisis, 1919-1939*: 79.
[209] Michael Barnett, 2012, "Duties beyond borders," in Steve Smith et al, 2012, *Foreign Policy, Theories, Actors, Cases, 2nd Ed*, Oxford: Oxford University Press, 226.

strategically significant, region.[210] However, realism cannot explain why Russia and China did not veto military action in Libya. Increased power or stability for NATO states is irreconcilable to realism's concept of state competition. In Syria, realism allows for a fulsome explanation as to why intervention was vetoed. Al-Assad's regime could not be divorced from Russia, a key ally, because of its naval port and lucrative weapons contracts. As the last remaining regional state in an alliance, it allowed Russia, a re-emerging world power, to project its influence in the Middle East. Equally, as China and Russia each attempt to gain relative power against the US, blocking its freedom of action in Syria was a method to chip away at the international influence of the lone hegemon. Conversely, realism suggests that initial attempt at intervention by Western states in Syria was to limit Russian and Iranian influence in the region so as to maintain, and increase, their own stability.

Realism, in the end, cannot account for the concept of mixed motives, as there is no "mixing" of motivations. State primacy and state interest are considered absolute. In crude form, the perception of mixed motives is but a ruse to mask a state's true intentions. Equally, realism cannot explain the international action taken by states to resolve or minimize the basic human security of Syrians, either through humanitarian aid or the intake of millions of refugees. According to realists, unless directly affected, a state should only be focused on the well-being of its own citizenship and not on the global community.

The irregular employment of R2P solidifies the realist argument that the international community is one of anarchy rather than smooth-functioning global governance. Given the base invalidity of R2P: "it lies out of the scope of foreign policy to

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[210] Fermor, "NATO's decision to intervene in Libya (2011)," 338-344.

implement a normative concept of universal rights, human dignity and moral duties to prevent severe violations of human life only for the benefit of humanity."[211] R2P, if relevant at all, is only one tool in the box to achieve a state's aim. In this study of Libya and Syria, R2P was only used by states in order to solidify a beneficial foreign policy position.

B. Liberal Internationalism

Liberal internationalism, like realism, also assumes state interests are primary. However, state interests are not static or homogeneous, but variable, and can change or evolve with societal shifts.[212] This approach suggests that the state is no longer primarily focused on short-term gains through competition or conflict, but longer term development through international frameworks and mutual cooperation.[213] The state is no longer the only influential actor in the global arena because it freely absolves a portion of its power and independence to the community in return for shared benefits: collective security and absolute gains overall. The development of international institutions has fundamentally altered the role of the state within the global interstate system by reducing the effects of anarchy and constraining state behaviour through "the rescaling of political authority, the juducilization of inter-state relations, the institutionalization of the [international organization], and the structural internationalization of the state."[214] The role of international institutions is to establish, norms and legal precedents, facilitate state interactions, develop implicit or explicit social contracts and arbitrate conflicts. Liberal

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[211] Riccabona, "Responsibility to Protect and Regime Change," 55.
[212] *Ibid.*, 57.
[213] John Baylis, Steve Smith, and Patricia Owens, 2014, *The Globalization of World Politics*, Oxford: Oxford University Press, 121. Chris Brown, 2002, "Sovereignty, Rights and Justice," *International Political Theory Today*, 62.
[214] Nitsan Chorev, 2005, "The institutional project of neo-liberal globalism: The case of the WTO," *Theory and Society 34 (3)*: 317.

internationalism seeks peace through the democratization, free trade, and human rights. However, despite the view that the liberal democratic state is the most evolved and only peaceful government structure, it upholds the primacy of national self-determination.[215]

Liberal internationalism supports humanitarian intervention at least to some degree and for limited purposes. In that, "a state exists to protect the rights of its citizens, and if it violates those rights it loses its moral rationale and therefore its immunity from foreign interference."[216] Sovereignty is the right of any state until it fails to meet its obligations to its citizens. Human security is not limited to a state's citizenship or national borders, and is centered on the "belief in the right of the individual regardless of status as foreigner or citizen."[217]

Mixed motives, in a liberal interpretation of just war theory, are not a significant issue, as "a humanitarian act is defined by its intention, not its motive."[218] If the act of conducting a humanitarian action is justifiable, it will be an ethical decision regardless of what motivates a state to intervene. Pro-interventionists in Libya and Syria focused on a particular autonomic form of democratization and thus regime change. Favoring arming and assisting rebel forces in order to end the violence and abuses also served this larger ideological goal. However, one inconsistency related to mixed motives that liberal internationalism *cannot* explain is that externally-sponsored regime change is ultimately incompatible with self-determination. Even accepting that the intention outweighs motive, R2P only applies to *ending* the atrocities and preserving human security. Once regime change became an end in itself, one liberal ideal was discredited in favor of

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[215] Riccabona, "Responsibility to Protect and Regime Change," 56.
[216] Terry Nardin and Vanessa Williams, *Humanitarian Intervention*, New York: New York University Press, 12.
[217] Riccabona, "Responsibility to Protect and Regime Change," 55-56.
[218] Nardin and Williams, *Humanitarian Intervention,* 11.

another end, regime change, which, in turn, made a mockery of a third principle, self-determination.

Yet, liberal internationalism does explain the process of Security Council Resolutions under the authority of the UN as the legal means to conduct military actions. The use of legal and normative international organizations is a tenet of liberal doctrine and a powerful source of legitimacy. The inaction by Western states in Syria is explained because international authority has not been granted. Therefore, the states seeking intervention had no choice but to surrender this goal to the constraining decision of the Security Council.

However, in Syria, liberal internationalism cannot fully reconcile the norms of internationalism and human rights that are both fundamental to R2P. A parliamentary vote in the UK ultimately determined military inaction in Syria, not the lack of legal authority from the most important institution of global governance, the UN.[219] The UK chose to exercise its state interests through a democratic vote instead of heeding to international legality. So too did the US, as its decision was based on an unwillingness to conduct unilateral action and not the Security Council's legal approval.[220] In April of 2017, when the US intervened in a limited missile strike as a response to the alleged use of chemical weapons by the Syrian military, it did so illegally without the authority of the UNSC.[221] In Libya, NATO's mission creep beyond the protection of human lives exceeded the lawful mandate provided by the UNSC and thus also demonstrates

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[219] BBC, 2013, "Syria crisis: Cameron loses Commons vote on Syria action," *bbc.co.uk*, 30 August, accessed February 9, 2017, http://www.bbc.com/news/uk-politics-23892783.

[220] Michael Scherer and Zeke Miller, 2013, "Unwilling To Act Alone, Obama Pulls Back From Brink Of War," *Time*, 31 August, accessed February 9, 2017, http://swampland.time.com/2013/08/31/unwilling-to-act-alone-obama-pulls-back-from-brink-of-war/.

[221] Jeff Mason and Tom Perry, 2017, "Trump says chemical attack in Syria crossed many lines," *Reuters*, 6 April, accessed April 11, 2017, http://www.reuters.com/article/us-mideast-crisis-syria-idlib-idUSKBN1770YU.

competition and collision of norms within liberal institutionalism. Furthermore, in Syria, a liberal institutionalist approach has been unable to resolve the deadlock in the Security Council. Multiple vetoes by Russia and China cannot be explained as the perpetuation of the conflict in Syria had not only a devastating effect on the state, but a negative impact both regionally and globally. However, this approach does explain that the deadlock within the Security Council, although not ideal, does allow states to communicate and socialize their conflicting opinions to avoid escalation to coercive policies or violent conflict. One could suggest the UNSC deliberately constrained any regional conflict from expanding into a wider global war, thus meeting its most basic institutional task pertaining to preventing great power conflict. Equally, liberal institutionalists may also contest that Russia and China's defective status as liberal democracies is the source of conflict. "Norm shaming" thus explains the US, the UK, and France's public condemnation of Russia and China for their roles in vetoing humanitarian action.

Although liberal internationalism cannot reconcile the Security Council's deadlock based on arguments of collective security or prosperity, such an approach *does* explain the resulting irregular implementation of R2P or humanitarian operations. Liberal internationalism is a philosophy built on norms, social customs, and teleological ideas about progress and governance, but is ever evolving. Liberal institutionalists would suggest that, as an evolving norm and custom, R2P has yet to reach its potential as a fully established habitual practice. Thus, criticism of R2P because of irregular employment is both undue and premature, considering the early stage of its normative life cycle.[222] Norms take time to mature; R2P is still experiencing friction and will continue to suffer

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[222] A. Gallagher, 2015, "The responsibility to Protect Ten Years on from the World Summit: A Call to Manage Expectations," *Global Responsibility to Protect* 7 (3-4), 2-3.

from irregular employment until it fully matures as an international norm both in practice and in international law.

C. Constructivism

Unlike realism and liberal internationalism, constructivism emerged from social and not political theory. Constructivism suggests that in explaining and undertaking state behaviour and practice, it is not enough to focus on actors within the global arena and treat the state as a black box with coherent and unitary interests that are inwardly focused. It is the constructed identities, beliefs, and attitudes of the people that influence states, and other non-state actors, not the principles of military might and the quest for power.[223] Identity, a "relatively stable, role specific understanding and expectations about oneself," is central to the theory.[224] Constructivists look beyond the principles of anarchy and power gains into the state itself. As Alexander Wendt, explains, "anarchy is what states make of it."[225] It is the identity of the state that determines and defines success; it is not a homogeneous or static principle that guides international affairs. In constructivist theory, norms rest on shifting and non-static identities that are continuously evolving through reciprocal interactions at the sub-state, state, and international level. Society requires structural norms, but these norms evolve over time.[226]

From a constructive perspective, R2P is a norm that is based on an evolution of society over the past 150 years.[227] R2P today is a normative evolution related to the

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[223] A. Wendt, 1992, "Anarchy is What States Make of It: The Social Construction of Power Politics," *International Organizations*, Vol. 46 (2), 395.
[224] *Ibid.*, 397.
[225] *Ibid.*, 395.
[226] James G. Mellon, 2009, "Constructivism and Moral Argument in International Relations," *Canadian Political Science Association*, accessed February 22, 2017, https://www.cpsa-acsp.ca/papers-2009/Mellon.pdf.
[227] Martha Finnemore, 1996, "The Culture of National Security - Constructing Norms of Humanitarian Intervention," *ciaonet.org,* accessed March 14, 2017, http://users.metu.edu.tr/utuba/Finnemore.pdf.

British abolitionist movement and to Hugo Grotius' concept of "natural justice." It is a norm that is continually evolving and linked to "a standard of appropriate behavior with[in] a given identity."[228] R2P is linked to the norm of "multilateral cooperation," which has become a necessity in the modern world for justifying humanitarian assistance, or intervention. The use of international organizations, like the UNSC, have not fundamentally changed the nature of governance, but the norms pertaining to multilateral participation for moral and social justifications, have changed governance. Agencies, such as the UN, offer authority and legitimacy to states exercising foreign policy. R2P can therefore be interpreted as the evolution of a norm that is upheld as a reference point within the international arena but finds its roots in the ever-evolving identities of society.

A constructivist approach offers that mixed motives are an evolutionary phenomenon that exists in every decision to conduct an operation, humanitarian intervention, or otherwise, as the state will always conduct an assessment of its competing identities. No decision can be made from an absolute platform, but decision makers must "choose" among conflicting norms. In the case of Libya and Syria, there is no "right" or "wrong" answer regarding what should have been done, as the norm of R2P would have been evaluated against other norms and framed by the identities comprising each state. A constructivist suggests one cannot universalize set motivations and intentions from one decision, or decision-maker, to another. A majority group within the Security Council's P5 should never expect conformity from a minority group. In this way, constructivism offers a viable explanation to the mixed motives problem, which is related to the irregular operationalization of R2P.

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[228] M. Finnemore and K. Sikkink, 1998, "International Norm Dynamics and Political Change," *International Organization*, Vol. 52(4), 891.

The P5, individually, "weigh[ed] the cost and risk of intervention versus their acceptable risk."[229] In the case of Libya, such tolerance was acceptable for all, but in Syria, it was not. The deadlock that has resulted in a Syrian policy is, to a constructivist, certainly not unusual, and sometimes necessary. An impasse can serve to prevent conflict, reject an unwanted norm, or prevent the misapplication of an evolving norm. As Thomas Risse explains:

> … actors have to figure out the situation in which they act, apply the appropriate norm, or choose among conflicting rules. The more norms are contested, the less the logic of the situation can be captured by the statement "good people do X" than by "what 'good' means in this situation?" or even "what is the right thing to do?" But how do actors adjudicate which norm applies? They argue.[230]

R2P's irregular employment is indicative of the acceptability of the norm in some cases, but not others. Furthermore, constructivists argue that in the case of both Libya and Syria the decision to intervene may very well have been influenced by domestic pressures. Constructivism rejects any sharp division between "domestic" and "international" policies. In both conflicts, there was a repugnance to deploy conventional ground forces. Not unlike how the "Mogadishu effect" contributed to risk aversion and inaction in Rwanda in 1994, the overwhelming lack of domestic appetite following recent conflicts in Afghanistan and Iraq impacted the choice to focus operations on air power and Special Forces.[231] The irregularity of R2P reflects multiple and conflicting identities in societies

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[229] *Ibid.*, 891.

[230] Thomas Risse, 2000, ""Let's Argue!": Communicative Action in World Politics," *International Organization* 54, 6.

[231] In Libya, a March 22, 2011, Reuters/Ipsos survey concluded that despite 79% percent of Americans supporting the removal of Gaddafi from power, with 60% favoring a military option, only 7% supported ground operations. When asked what course the US government should take if the air campaign should fail: 20% favored Special Forces, 25% favored UN troops, 23% favored increased air strikes, and the remainder was undecided or did not choose an option. Reuters/Ipsos, 2011, "In US poll, 60 percent back Libya military action," *Reuters*, 24 March, accessed March 3, 2017, http://af.reuters.com/article/topNews/idAFJOE72N00S20110324?pageNumber=1&virtualBrandChannel=0

which wield power at the Security Council. In the end, the irregular employment of R2P

may not be positive *or* negative effect, but rather simply an indication of the current

malleable status of the emerging norm in a given situation, and very different external

and internal contexts.

The one key failure with constructivism is that it is unable to determine the degree

to which these results have an effect on the future of R2P. Unlike liberal institutionalism

which is at the bottom an optimistic and progressive outlook, constructivism offers

analysis but not prescription.

D. Summation on IR theories

The prior analysis of R2P in the case of Libya and Syria, through the lens of

realism, liberal institutionalism, and constructivism, suggests that *no* individual theory

has predictive power or *fully* provides a reliable explanation. A more fulsome analysis of

all three combined, however, provides a more nuanced understanding of R2P.

Realism suggests that R2P is bound to fail; therefore, irregular employment

should only be expected. States must always weigh the options that will either maintain

or increase their power or security and define interests and determine actions accordingly.

In this regard, the deadlock in the Security Council is a result of state competition for

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; a March 24-28, 2011, GfK Roper Public Affairs & Corporate Communications national poll indicated that 78% disapproved of ground forces, 13% approved, with 8% unsure and 1% neither.
In Syria, a GfK Roper Public Affairs & Corporate Communications, 2011, "AP-GfK Poll, March 24-28, 2011, " March 24-28, in PollingReport.com, n.d., "Lybia," *PollingReport.com*, accessed March 3, 2017, http://www.pollingreport.com/libya.htm; a September 7-8, 2013, McClatchy-Marist Poll concluded that 80% opposed ground forces in Syria, with 13% in favor and 7% unsure; a September 6-8, 2013, GfK Roper Public Affairs & Corporate Communications national poll indicated that 75% opposed ground forces, while 11% favored, 10% answered neither, with 3% unsure, and 2% refusing to answer. McClatchy-Marist, 2013, "McClatchy-Marist Poll, September 7-8, 2013," and GfK Roper Public Affairs & Corporate Communications, 2013, "AP-GfK Poll, September 6-8, 2013, " in PollingReport.com, n.d., "Syria," *PollingReport.com*, accessed March 3, 2017, http://www.pollingreport.com/syria.htm.

power, and mixed motives are actually the hidden or "real" motives of states. Only when

state interests align with R2P, will a normative framework exist:

> In Libya, the moral, legal, political, and military dimensions dovetailed
> under the responsibility to protect. Rather than speaking truth to power,
> R2P's value-added was speaking truth with power. In Syria, only the
> moral dimensions of R2P are apparent, and so unlucky civilians are
> slaughtered and lucky ones flee.[232]

However, for the realist position to be accurate, then one must accept that the US, and its

allies, have played out an extremely lengthy and expensive ruse since 2011, and are not

concerned for the human security of the Syrian or Libyan people, nor the prevention or

war crimes and atrocities. In a realist projection, R2P will disappear whenever it is not a

useful tool to powerful states.

It is not surprising that constructivism also explains the irregular employment of

R2P given the theory is based on adaptive and changing identities and suggests the

continuous evolution of norms due to social pressure. The deadlock of the Security

Council and R2P's failure cannot be viewed as negative per se, just a reality. In this

respect, constructivism as an explanatory tool for understanding state behaviour may be

more "realistic" than realism. Constructivism is not a predictive theory and is thus of no

value in determining the long-term effects of irregular employment of R2P in Libya and

Syria.

Liberal internationalism suffers the most from R2P's irregular employment. When

the US and the UK ignored the Security Council's decision regarding military action in

Syria, basing their decisions on internal interests, and when the NATO mandate was

ignored in Libya, liberal internationalism had no ability to justify those actions without

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[232] Robert W. Murray and Alasdair McKay, 2014, "Into the Eleventh Hour: R2P, Syria and
Humanitarianism in Crisis," Bristol, UK: *E-International Relations*, 36, accessed February 6, 2017,
http://www.e-ir.info/wp-content/uploads/R2P-Syria-and-Humanitarianism-in-Crisis-E-IR.pdf.

modification. Realism and constructivism, on the other hand offer that it was either based on the primacy of state interest or competing societal identities. The liberal interventionist defence is that R2P is not yet a norm, and has yet to become a habitual activity. R2P will continue to be perceived to suffer until "maturity" is reached. This idea is supported by the constructivist argument. While projecting an idealistic assessment of the situation, liberal internationalism is not without merit as the possibility of normative progress is fundamental to explaining and understanding R2P. Although R2P is not a new concept, norms can take a long time to become habitual and accepted.

Examining R2P suggests the limits of International Relations theory, as "[n]either position can fully account for the complex moral challenges and realities we face in humanitarian crises, yet [they all] continue to play an important part in informing subsequent theory and practice."[233] The strengths of realism and constructivism are evident as they offer a rationale for its irregular employment in Libya and Syria; however, liberal internationalism is crucial to understanding R2P as a norm. It is only by studying the three perspectives together that one can *fully* appreciate the actual complexity and multiple competing factors that influence the intervention in Libya and inaction in Syria both within states and among them.

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[233] Misha Seay, 2007, "Realism, Liberalism and Humanitarian Intervention: Is there a Middle Ground?," *IARS International Institute*, 1, accessed February 9, 2017, http://iars.org.uk/sites/default/files/2007_Research%20Essay_%20Humanitarian%20Intervention.pdf.

VI: CONCLUSION

When the International Commission on Intervention and State Sovereignty produced *The Responsibility to Protect*, the idea was to redefine the international normative balance between the responsibility of the state and the responsibility of the international community to prevent, intervene, and react to large-scale loss of life and ethnic cleansing. This paper has studied this issue by focusing on two interconnected issues. First, the case studies of the conflicts in Libya and Syria illustrate how R2P was affected by irregular employment due to the primacy of state interest in shaping the behaviour of the UNSC in the application of the principles of R2P. Second, the irregular employment of R2P demonstrates our ongoing understanding of international relations theory, elaborating how each theoretical approach is partial and incomplete. In the end, very little progress has been made with respect to the operationalization or implementation of R2P for two principle reasons. First, the irregular implementation of policy concerning R2P is directly attributable to the complexity of mixed state motives. Second, individual state self-interest remains primary within the Westphalian system. Additionally, R2P does not support the explanatory or predictive predominance of a single IR theory but indicates that a blending of theories provides a more fulsome approach in understanding the competing pressures facing states.

In the case of Libya, NATO's intervention met only some of the criteria for an R2P response to a legitimate humanitarian crisis. The mission was primarily inhibited due to the mixed motives of the states which, in turn, reduced the legitimacy of the operation because it overstepped the legal authority of UNSCR 1973, shifting its purpose from ceasing atrocities and war crimes to regime change.

In the case of Syria, R2P was never fully applied nor accompanied by any intervention. This was attributable to a lack of consensus within the Security Council due to the multiple interpretations of the facts surrounding the violence, but more importantly, the motives and interests of individual states and non-state actors which exacerbated the conflict instead of working together to resolve it. Mixed motives in Syria have had a deadlocking effect on the Security Council. Furthermore, Security Council deadlock and mixed motives illustrate how irregular employment of R2P also had a significant stagnating effect on its progression from initial policy to a full-fledged norm. Thus, the state-centric Westphalian system still exerts a strong ideological and practical influence on the development and implementation of international intervention as a response to genocide, war crimes, ethnic cleansing, and crimes against humanity.

The major perspectives in IR theory, realism, liberal internationalism and constructivism, offer *some* explanation of R2P. Yet not one theory can *fully* explain the complexity of the R2P in Libya and Syria. The strengths of realism and constructivism are strongest at providing context to the issue of irregular employment in Libya and Syria; however, liberal internationalism is crucial to understanding R2P's normative status. Only when *combined* do they provide a fulsome analysis of the complexity and nuance of individual decision-making.

In order to explore the evolution and effectiveness of R2P and in order for the UN to develop realistic measures of effectiveness, further study of "over-ambitious" expectations that exist surrounding R2P is required. A policy, or emerging norm, based on an unfulfilled framework opens itself to continuous criticism with the focus of human security lost in the process, and with no means of demonstrating its effectiveness. Many

scholars are entrenched in the debate regarding the success or failure of R2P as a norm. A more fulsome understanding and communication by the UN regarding its criteria and measures of effectiveness is necessary to quell the unproductive, dogmatic, and ideological debate. Just as the UN has received continuous criticism for its inability to halt all conflict worldwide, it has thus far fulfilled its primary purpose of preventing World War III. Is R2P meant to end all atrocities and war crimes, or is it to inculcate an international culture of responsibility towards human security?

Finally, it is important to note that liberal internationalism is the only framework that is premised on the progressive betterment of global humanity. One cannot expect an international relations theory to explain every action in every situation. As Robert Murray and Alasdair McKay observe, "[e]xpecting consistency, alas, is a fool's errand. We cannot make the ideal the enemy of the good. Occasional action is preferable to no action anywhere."[234] Just as liberal interventionists argue the normative life of R2P is immature, liberal internationalism itself may not have reached its maturity point. Perhaps R2P may never be adopted as a universal norm guiding state behaviours, but so long as states consider human security, R2P will continue to be of importance for understanding the international relations. As E.H. Carr argued nearly 80 years ago, "[n]o political utopia will achieve even the most limited success unless it grows out of reality."[235] His words hold true to this day; human security has no hope of improvement if states do not make attempts to push normative boundaries beyond their present form in a realistic and meaningful way.

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[234] Murray and McKay, "Into the Eleventh Hour," 36.
[235] Carr, *The twenty years' crisis, 1919-1939,* 9.

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