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## An Analysis of the Responsibility to Protect Program in Light of the Conflict in Syria

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# AN ANALYSIS OF THE RESPONSIBILITY TO PROTECT PROGRAM IN LIGHT OF THE CONFLICT IN SYRIA

## I. INTRODUCTION

Following numerous humanitarian brutalities committed throughout the 1990s around the world, the United Nations sought to create a protocol that would allow the international community to prevent further mass atrocity crimes. After many debates and compromises, the Responsibility to Protect program was created. Consisting of three ideological “pillars,” the protocol allows other nations to interfere if a country is committing one of four mass atrocity crimes against its own populace. Such interference can range from an official reprimand to military intervention. This program has already been employed in Libya and the Côte d’Ivoire; however, its lack of use in the ongoing Syrian conflict speaks to a level of deficiency in the program itself. While members of the international community have had varying criticisms of the program, the Responsibility to Protect program suffers most from the political realities and strategic alliances that permeate the United Nations Security Council. Although several reforms of the Responsibility to Protect have been suggested, ranging from adopting national programs to political compromise, no reform seems imminent. It appears that this groundbreaking program is here to stay—for better or for worse.

## II. BACKGROUND AND COMPOSITION OF THE RESPONSIBILITY TO PROTECT (“R2P”)

### A. *Buildup to the R2P*

In 2000, Kofi Annan, then Secretary-General of the United Nations, gave his Millennium Report to the General Assembly. Spurred by a decade of humanitarian atrocities that include abuses in Kosovo, Bosnia, Somalia, and the Rwandan Genocide,<sup>1</sup> a substantial part of Annan’s report addressed the issue of humanitarian intervention and peacekeeping operations.<sup>2</sup> Recognizing the seemingly insurmountable divide between

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1. For an analysis of the Rwandan Genocide, see ALISON LIEBHAFSKY DES FORGES, *LEAVE NONE TO TELL THE STORY: GENOCIDE IN RWANDA* (1999).

2. U.N. Secretary-General, *We the Peoples: The Role of the United Nations in the Twenty-First Century: Rep. of the Secretary-General*, ¶¶ 215–19, U.N. Doc. A/54/2000 (Mar. 27, 2000).

state sovereignty and human rights, Annan proclaimed, “no legal principle—not even sovereignty—can ever shield crimes against humanity.”<sup>3</sup>

Apparently moved by Annan’s speech, the Canadian government created the International Commission on Intervention and State Sovereignty (“ICISS”) in 2001.<sup>4</sup> Tasked with the job of tackling the problem of humanitarian intervention, the committee wrote a report titled *The Responsibility to Protect* (“ICISS Report”).<sup>5</sup> The committee decided to eliminate the notion of humanitarian intervention,<sup>6</sup> and instead adopt a “responsibility to protect” one’s own nation.<sup>7</sup> Failure to protect one’s own nation would then shift the responsibility to the international community.<sup>8</sup> Furthermore, six criteria must be met before there can be international intervention: (1) military intervention must be motivated by the right intention—to prevent or stop human suffering;<sup>9</sup> (2) military intervention must be the last resort; (3) military intervention must be proportional to prevent or stop human suffering; (4) a reasonable chance to end suffering must exist; (5) an extraordinary level of human suffering must exist for the threatened harm to be considered sufficiently clear and serious; and (6) United Nations Security Council authorization should be sought prior to military intervention.<sup>10</sup>

The ICISS Report was considered during the 2005 World Summit, when world leaders met to discuss, among other things, the concept of a

3. *Id.* ¶ 219.

4. INT’L COMM’N ON INTERVENTION & STATE SOVEREIGNTY, THE RESPONSIBILITY TO PROTECT VII (2001), available at <http://www.iciss.ca/pdf/Commission-Report.pdf> [hereinafter ICISS Report]. See generally ANNE ORFORD, INTERNATIONAL AUTHORITY AND THE RESPONSIBILITY TO PROTECT (2011).

5. See ICISS Report, *supra* note 4.

6. Steven Haines, *Humanitarian Intervention: Genocide, Crimes Against Humanity and the Use of Force*, in THE ASHGATE RESEARCH COMPANION TO MODERN WARFARE 307, 322–23 (George Kassimeris ed., 2010).

7. *Id.* at 323.

8. Jonah Eaton, Note, *An Emerging Norm? Determining the Meaning and Legal Status of the Responsibility to Protect*, 32 MICH. J. INT’L L. 765, 774 (2011). Jonah Eaton notes that this responsibility shift mirrors that of the “surrogate protection” theory of international refugee law. *Id.* at 774 n.52. This theory states that the international community can directly intervene in the affairs of a given state if a group of people have sought protection, suffered persecution, and have fled as a result of said persecution. *Id.* at 774. The ICISS Report noted that military intervention should only occur during large-scale loss of life, genocide, ethnic cleansing, or serious violations of humanitarian law. See *id.* at 775–76.

9. This “right intention” language will be critiqued *infra* Part IV.

10. ICISS Report, *supra* note 4, ¶¶ 4.18–4.19, 4.23, 4.32–4.43.

responsibility to protect.<sup>11</sup> After deliberation and compromise, paragraphs 138 and 139 were written into the World Summit Outcome document (“Summit Outcome”).<sup>12</sup>

Most importantly, paragraph 139 stated “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 [United Nations] Charter, to help protect populations from *genocide, war crimes, ethnic cleansing and crimes against humanity*”<sup>13</sup> (“Mass Atrocity Crimes”).<sup>14</sup> Two points are important to recognize. First, the Summit Outcome only recognizes peaceful means of enforcing this responsibility.<sup>15</sup> Second, regardless of the interpretation of unilateral action or military intervention, the Summit Outcome eliminated any notion of absolute state sovereignty.<sup>16</sup>

However, this Summit Outcome was not instantly adopted. After being drafted, it was subject to debate, and, while generally lauded by numerous countries, came under intense criticism from others. These criticisms, as

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11. Nations had differing expectations for when another sovereign could intervene. See Carlo Focarelli, *The Responsibility to Protect Doctrine and Humanitarian Intervention: Too Many Ambiguities for a Working Doctrine*, 13 J. CONFLICT & SEC. L. 191, 201–05 (2008).

12. 2005 World Summit Outcome, G.A. Res. 60/1, U.N. Doc. A/RES/60/1 (Sept. 16, 2005) [hereinafter Summit Outcome]. This document is a General Assembly Resolution detailing the conclusions of the 2005 World Summit. Paragraph 138 stated, “[e]ach individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. . . . The international community should, as appropriate, encourage and help States to exercise this responsibility. . . .” *Id.* ¶ 138.

13. *Id.* ¶ 139 (emphasis added).

14. For the purposes of this Note, “ethnic cleansing” will take the place of the term “crime of aggression.”

15. Mehrdad Payandeh has noted that the Summit Outcome does not recognize any specific responsibilities of the Security Council, does not mention the possibility of unilateral or collective action on behalf of the General Assembly, and has dropped any criteria needed for an authorization of the use of force. Mehrdad Payandeh, Note, *With Great Power Comes Great Responsibility? The Concept of the Responsibility to Protect Within the Process of International Lawmaking*, 35 YALE J. INT’L L. 469, 476 (2010); but see Alica L. Bannon, Comment, *The Responsibility to Protect: The U.N. World Summit and the Question of Unilateralism*, 115 YALE L.J. 1157, 1162–63 (2005) (arguing that there are instances where unilateral action is justified, such as when the Security Council is deadlocked); see also Carsten Stahn, Comment, *Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?*, 101 AM. J. INT’L L. 99, 109 (2007) (interpreting the absence of text precluding unilateral action as evidence that unilateral action can be utilized).

16. Such beliefs had previously been broken, or at least severely weakened, through the United Nations’ mandates and constitutive documents for tribunals, such as the Rome Statute establishing the International Criminal Court. It should be noted, however, that countries who have opposed the Rome Statute have supported the Responsibility to Protect (“R2P”), including the United States and Russia. See *The States Parties to the Rome Statute of the ICC*, INT’L CRIM. COURT (last updated Feb. 15, 2013), [http://www.icc-cpi.int/en\\_menus/asp/states%20parties/Pages/the%20states%20parties%20to%20the%20rome%20statute.aspx](http://www.icc-cpi.int/en_menus/asp/states%20parties/Pages/the%20states%20parties%20to%20the%20rome%20statute.aspx); see also Luke Glanville, *The Responsibility to Protect Beyond Borders*, 12 HUM. RTS. L. REV. 1, 3, 12–13 (Mar. 2012).

well as responses such as those made in Ban Ki-moon's 2009 report "Implementing the Responsibility to Protect"<sup>17</sup> will be addressed in Part IV.<sup>18</sup>

### B. Adoption of the R2P

During the Sixty-third Session of the General Assembly in 2009, the General Assembly debated the merits of the Secretary-General's Report.<sup>19</sup> Many nations supported a responsibility to protect principle,<sup>20</sup> and these states discussed implementation of such a responsibility. Eventually, the General Assembly adopted a resolution that reaffirmed the principles of the U.N. Charter,<sup>21</sup> highlighting the importance of the prevention of serious crimes and the responsibility of the international community to hold states accountable for committing such offenses.<sup>22</sup> Finally, the Responsibility to Protect ("R2P") initiative was adopted as a United Nations resolution.<sup>23</sup>

17. U.N. Secretary-General, *Implementing the Responsibility to Protect: Rep. of the Secretary-General*, ¶ 2, U.N. Doc. A/63/677, (Jan. 12, 2009) [hereinafter Secretary-General's Report].

18. Importantly, the Secretary General called for restraint in the use of a Security Council veto. *Id.* ¶ 61.

19. *Outcome of July GA Debate: Adoption of First UN Resolution on RtoP*, INT'L COALITION FOR THE RESPONSIBILITY TO PROTECT (Sept. 14, 2009), <http://responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs-topics/2550-adoption-of-first-un-resolution-on-rtop>.

20. Of particular note, the African Union (AU) spearheaded support for a responsibility to protect program, likely the result of the numerous aforementioned atrocities that had occurred there. Among other declarations, the AU welcomed a responsibility to protect as a way to prevent mass atrocities. See AU Executive Council, *The Common African Position on the Proposed Reform of the United Nations: "The Ezulwini Consensus"*, AU Doc. Ext/EX.CL/2 (VII) (Mar. 7–8, 2005), available at [http://www.africa-union.org/News\\_Events/Calendar\\_of\\_%20Events/7th%20extra%20ordinary%20session%20ECL/Ext%20EXCL2%20VII%20Report.doc](http://www.africa-union.org/News_Events/Calendar_of_%20Events/7th%20extra%20ordinary%20session%20ECL/Ext%20EXCL2%20VII%20Report.doc).

21. For our purposes, the reaffirmation of Chapters VI and VIII of the U.N. Charter is of particular relevance. These Chapters give the Security Council the power to take action that it deems appropriate and determines that the Security Council must allow any proposed enforcement action. See U.N. Charter chs. VI, VIII.

22. G.A. Res. 63/308, U.N. Doc. A/RES/63/308 (Oct. 7, 2009). See also GLOBAL CTR. FOR THE RESPONSIBILITY TO PROTECT, IMPLEMENTING THE RESPONSIBILITY TO PROTECT: THE 2009 GENERAL ASSEMBLY DEBATE: AN ASSESSMENT 1 (2009), available at [http://www.globalr2p.org/media/files/gcr2p\\_general-assembly-debate-assessment.pdf](http://www.globalr2p.org/media/files/gcr2p_general-assembly-debate-assessment.pdf); INT'L COALITION FOR THE RESPONSIBILITY TO PROTECT, REPORT ON THE GENERAL ASSEMBLY PLENARY DEBATE ON THE RESPONSIBILITY TO PROTECT 1 (2009), available at [http://www.responsibilitytoprotect.org/ICRtoP%20Report-General\\_Assembly\\_Debate\\_on\\_the\\_Responsibility\\_to\\_Protect%20FINAL%202009\\_22\\_09.pdf](http://www.responsibilitytoprotect.org/ICRtoP%20Report-General_Assembly_Debate_on_the_Responsibility_to_Protect%20FINAL%202009_22_09.pdf).

23. G.A. Res. 63/308, *supra* note 22. It must be acknowledged that the adoption of this resolution does not make the R2P law, but its status is rather that of a norm, one that can be observed and honored, but that does not have any binding effect on the international community. Instead, this norm is incorporated into other tools that exist to deal with atrocities. See Aidan Hehir, *The Responsibility to Protect and International Law Critical Perspectives on the Responsibility to Protect: Interrogating Theory, Practice*, in CRITICAL PERSPECTIVES ON THE RESPONSIBILITY TO PROTECT: INTERROGATING THEORY AND PRACTICE (Philip Cunliffe ed., 2011).

The newly-minted R2P consisted of three ideological pillars.<sup>24</sup> The purpose of the first pillar is to manage the legitimacy of statehood itself, and to ensure that the state protects its populace from Mass Atrocity Crimes.<sup>25</sup> To assist a state in this function, neighboring states adhere to the second pillar.

The second pillar of the R2P is meant to create “mutual commitment and an active partnership between the international community and the State.”<sup>26</sup> This pillar essentially acts as oversight to ensure that the state is protecting its people from Mass Atrocity Crimes. The language further states that such assistance can be either confidential or public, and can come in the form of training, education, assistance, mediation, and/or dialogue.<sup>27</sup>

The crux of the third pillar deals with international intervention, should the home sovereign state fail to act during humanitarian crises.<sup>28</sup> The

24. Secretary-General’s Report, *supra* note 17, ¶ 11 (delineating R2P into a “three-pillar strategy”). The first pillar is meant to capture the underlying principle of the R2P:

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.

*Id.* ¶ 13 (quoting Summit Outcome, *supra* note 12, ¶ 138).

25. *See id.* ¶ 11. As the text says, it is a state’s job to protect its populations. Should the sovereign state protect its populations, there would be no need for international intervention.

26. *Id.* ¶ 28. To achieve this end, the R2P suggests one of four forms:

- (a) encouraging States to meet their responsibilities under pillar one (para. 138);
- (b) helping them to exercise this responsibility (para. 138);
- (c) helping them to build their capacity to protect (para. 139); and
- (d) assisting States ‘under stress before crises and conflicts break out’ (para. 139).

*Id.*

27. *Id.* ¶¶ 28–29, 44–45. Should either of these two pillars be enacted, the home nation retains control. *See* INT’L COALITION FOR THE RESPONSIBILITY TO PROTECT, CLARIFYING THE THIRD PILLAR OF THE RESPONSIBILITY TO PROTECT: TIMELY AND DECISIVE RESPONSE (2011), available at <http://responsibilitytoprotect.org/Clarifying%20the%20Third%20Pillar.pdf>; *see also* Secretary-General’s Report, *supra* note 17. However, if the sovereign state decides to disregard these two pillars, then the U.N.-proposed third pillar will be imposed, the most contentious pillar, the one that is enshrouded by debate, as well as the topic of this Note.

28. Pillar three states the following: “[T]he 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 [UN] Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. . . .” Summit Outcome, *supra* note 12, ¶ 139.

The second sentence of paragraph 139 underscores that a wider range of collective actions, either peaceful or non-peaceful, could be invoked by the international community if two conditions are met: (a) “should peaceful means be inadequate,” and (b) “national authorities are manifestly failing to protect their populations” from the four specified crimes and violations. In those two cases, paragraph 139 affirms that “we are prepared to take collective

language in pillar three refers this power to the Security Council.<sup>29</sup> In theory, any Security Council member with veto power (the “P5”) could stop the combined efforts of the other fourteen Security Council members to act under this pillar. The ICISS Report suggested that the P5 create a “code of conduct” that determines when they should use their veto power.<sup>30</sup> However, the P5 could not agree on any suggested language for this “code of conduct,” and as a result, no such guideline exists.<sup>31</sup>

### C. *Effects of the R2P*

In order to fully comprehend the reach of the third pillar (or lack thereof), certain realities need to be addressed. The first practicality is that any intervention must occur only as a result of a Mass Atrocity Crime.<sup>32</sup> The very definitions of these Crimes, however, can cause considerable confusion. The vagueness of the term “genocide,” for instance, can stymie a nation wanting to intervene but unsure whether genocide is actually being committed.<sup>33</sup> Crimes against humanity, meanwhile, has a very strict definition.<sup>34</sup> Because of this narrow phrasing, horrific offenses often do

*action, in a timely and decisive manner, through the Security Council . . . on a case-by case basis and in cooperation with relevant regional organizations as appropriate.”*

Secretary-General’s Report, *supra* note 17, ¶ 49 (emphasis added).

29. “In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.” U.N. Charter art. 24, para. 1. In order to take action, the Security Council must receive an affirmative vote from nine of its fifteen members, and the action cannot be vetoed by any of the five permanent members: China, France, Russia, the United Kingdom, and the United States (“P5”). See THOMAS G. WEISS, *MILITARY-CIVILIAN INTERACTIONS: HUMANITARIAN CRISES AND THE RESPONSIBILITY TO PROTECT* (2005).

30. ICISS Report, *supra* note 4, ¶¶ 6.20–6.21.

31. Anne Peters, *Humanity as the A and Q of Sovereignty*, 20 EUR. J. INT’L L. 513, 539–40 (2009). As this Note will illustrate, this creates enormous difficulties in taking action under the current structure of the R2P.

32. This limitation is quickly apparent when one realizes that the four Mass Atrocity Crimes have both vague and strict definitions, and can often be difficult to show. One example is genocide. In order for genocide to exist, there must be “deliberate and systematic destruction, in whole or in part, of an ethnic, racial, religious or national group.” T. MARCUS FUNK, *VICTIMS’ RIGHTS AND ADVOCACY AT THE INTERNATIONAL CRIMINAL COURT* 46–50 (2010).

33. Ignoring the obvious abstraction that constitutes the phrase “in part,” this definition of genocide limits how general violence against a group of people can be categorized. *See id.* Should a sovereign state violently quash demonstrations, an argument would be made that although the action was deliberate, it was spontaneous and therefore not systematic, thereby eliminating any qualification for the crime of genocide.

34. “Crimes against humanity cover those specifically listed prohibited acts when committed as part of a widespread or systematic attack directed against any civilian population.” *See generally* Tamfuh Y.N. Wilson, *The International Criminal Court: Creation, Competence, and Impact in Africa*, 3 AFR. J. CRIMINOLOGY & JUST. 85, 95 (2008).

not fall under the strict definition.<sup>35</sup> These examples are meant to show the utter confusion many nations face when deciding if they can act under the R2P.<sup>36</sup>

Another necessary observation regarding the R2P is the specification that military intervention be used only as a last resort.<sup>37</sup> Numerous nations utilize this practice, and the U.N. has issued condemnations for such sovereign practices in the past.<sup>38</sup> These sanctions are generally not deemed to violate a nation's sovereignty under the R2P.<sup>39</sup> Due to fear of U.N. denunciation, however, some nations worry that military intervention will come too late if they must wait until all other options have been expended.<sup>40</sup> Finally, it must be noted that the political and economic interests of the P5 often align against one another.<sup>41</sup>

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35. Should a soldier be killed during an aforementioned protest, the crime would not constitute a crime against humanity. Although crimes against humanity can apply to military personnel as well as to civilians, this attack would most likely not be systematic. *See* YAVUZ AYDIN, REPUBLIC OF TURKEY MINISTRY OF JUSTICE, THE DISTINCTION BETWEEN CRIMES AGAINST HUMANITY AND GENOCIDE FOCUS MOST PARTICULARLY ON THE CRIME OF PERSECUTION 8, available at [http://www.justice.gov.tr/e-journal/pdf/Genocide\\_Crimes.pdf](http://www.justice.gov.tr/e-journal/pdf/Genocide_Crimes.pdf).

36. For more information on the limitations of these categories, *see generally* U.N. GAOR, 63d Sess., 98th plen. mtg. at 7, 8, 17, U.N. Doc. A/63/PV.98 (July 24, 2009) (referencing Singapore and South Africa); U.N. GAOR, 63d Sess., 97th plen. mtg. at 23–24, U.N. Doc. A/63/PV.97 (July 23, 2009) (referencing Costa Rica).

37. Although the R2P did not adopt the six criteria set forth in Canada's ICISS report, the R2P did specify that all other possibilities should be attempted before military intervention. TAYLOR B. SEYBOLT, HUMANITARIAN MILITARY INTERVENTION: THE CONDITIONS FOR SUCCESS AND FAILURE 2–4 (2007). This notion has created two results. First, the notion of political, economic, and judicial sanctions is relatively uncontroversial when compared to military intervention. Second, military intervention can only be justified “in humanitarian terms if the intervention does more good than harm.” *Id.*; *see also* ICISS Report, *supra* note 4, ¶ 4.2.

38. MALCOLM N. SHAW, INTERNATIONAL LAW 794–96 (6th ed. 2008).

39. *See* Stahn, *supra* note 15, at 109.

40. Nations worry that the Security Council would be forced to “‘patiently wend its way through diplomatic measures and economic sanctions’ before it could use military measures to end genocide.” Payandeh, *supra* note 15, at 497 (quoting W. Michael Reisman, Report, *Tenth Commission: Present Problems of the Use of Armed Force in International Law, Sub-group on Humanitarian Intervention*, 72 ANNUAIRE DE L’INSTITUT DE DROIT INTERNATIONAL 237, 244 (2007)). For these nations, the threat to national sovereignty is trivialized when compared to atrocities committed in that nation. This worry is often exacerbated when a P5 member decides to impede any intervention, let alone a military option. This topic will be discussed in depth *infra* Part IV.

41. For example, when voting on a resolution, the United States, the United Kingdom, and France (G3) often vote to intervene in a nation's action, but often find themselves vetoed by Russia and/or China (G2).

### III. PRIOR USES OF THE R2P AND A CASE STUDY INVOLVING SYRIA

#### A. *Prior Uses of the R2P*

##### 1. *Côte d'Ivoire*

There had been a longstanding conflict in the Côte d'Ivoire<sup>42</sup> when the U.N. created an international peacekeeping force ("UNOCI") to oversee an effort to end the armed conflict.<sup>43</sup> The force proved unsuccessful, and an increase in violence occurred immediately following the 2010 presidential election.<sup>44</sup> Upon being briefed by the UNOCI, the U.N. adopted a resolution formally declaring that Ouattara (the challenger) had won, and urged both parties to accept that result. It was not accepted.<sup>45</sup> Then, in March 2011, the Security Council unanimously adopted Security Council Resolution 1975 ("Resolution 1975"), which recognized Ouattara as president, condemned Gbagbo (the incumbent) for his refusal to accept or negotiate a settlement, and authorized the UNOCI to protect civilians from "the use of heavy weapons" by "all necessary means."<sup>46</sup> Gbagbo's forces were defeated by the UNOCI and the French, and Gbagbo was ultimately arrested.<sup>47</sup>

42. For a more comprehensive history of the Côte d'Ivoire conflict, see Alex J. Bellamy & Paul D. Williams, *The New Politics of Protection? Cote d'Ivoire, Libya and the Responsibility to Protect*, 87 INT'L AFF. 825 (2011).

43. The United Nations Operation in Côte d'Ivoire (UNOCI) was tasked with protecting "civilians under imminent threat of physical violence" and was authorized to use "all necessary means to carry out its mandate, within its capabilities and its areas of deployment." S.C. Res. 1528, ¶¶ 1, 6(i), 8, U.N. Doc. S/Res/1528 (Feb. 27, 2004).

44. Among declarations of vote-rigging and canceled votes, violent clashes proceeded in earnest between armed supporters of incumbent President Laurent Gbagbo and challenger Alassane Ouattara. *The Crisis in Côte d'Ivoire*, INT'L COALITION FOR THE RESPONSIBILITY TO PROTECT, <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-ivory-coast> (last visited Sept. 19, 2013).

45. John F. Murphy, *R2P Comes of Age?: Responsibility to Protect (R2P) Comes of Age? A Sceptic's View*, 18 ILSA J. INT'L & COMP L. 413, 435 (2011–12). During the civil war that followed, approximately 1,000 people were killed in the town of Duékoué alone, according to a U.N. spokesman. Press Release, U.S. Embassy to Abidjan, Côte d'Ivoire, American Embassy's National Daily Press Review (May 27, 2011) (available at <http://abidjan.usembassy.gov/dprpg05272011.html>).

46. S.C. Res. 1975, ¶ 6, U.N. Doc. S/RES/1975 (Mar. 30, 2011).

47. Ange Aboa & Loucoumane Coulibaly, *Ivory Coast's Gbagbo Held After French Troops Move In*, REUTERS, Apr. 11, 2011, available at <http://www.reuters.com/article/2011/04/11/ozatp-ivorycoast-idAFJ0E73A01F20110411>.

Interestingly, although Resolution 1975 was unanimously adopted by the Security Council, nations had very different reactions to its scope and meaning.<sup>48</sup> Professor John Murphy notes:

[The] use of force by U.N. peacekeepers and French troops blurred the lines between human protection and regime change and raised questions about the role of the U.N. in overriding Cote d'Ivoire's Constitutional Council, about the proper interpretation of Resolution 1975, and about the place of neutrality and impartiality in U.N. peacekeeping.<sup>49</sup>

## 2. *Libya*

Following successful movements that overturned the rulers of Tunisia and Egypt, a rebellion commenced against Muammar Gaddafi in February 2011.<sup>50</sup> Around this time, the Security Council cited the R2P doctrine by calling on the Libyan Government to meet its responsibility to protect its population.<sup>51</sup> Libya did not respond. The Human Rights Council then convened a special session and adopted Human Rights Council Resolution S-15/1, calling for the Libyan government to “meet its responsibility to protect its population [and] to immediately put an end to all human rights violations,” while concurrently recommending that the General Assembly consider the expulsion of Libya from the Security Council.<sup>52</sup> Nonetheless, despite condemnation from the Arab League and the African Union, the

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48. Murphy noted that while the United Kingdom read Resolution 1975 to give “robust power” to the UNOCI, China viewed it radically different:

China always believes that United Nations peacekeeping operations should strictly abide by the principle of neutrality. We hope that the United Nations Operation in Cote d'Ivoire will fulfill its mandate in a strict and comprehensive manner, help to peacefully settle the crisis in Cote d'Ivoire and avoid becoming a party to the conflict.

Murphy, *supra* note 45, at 436 (quoting U.N. SCOR, 66th Sess., 6508th mtg. at 7, U.N. Doc. S/PV.6508 (Mar. 30, 2011)).

49. *Id.* (quoting Bellamy & Williams, *supra* note 42, at 835). Although different nations interpreted Resolution 1975 in different manners, this intervention utilizing the R2P did not create as much direct interference as the earlier response in Libya.

50. Calling the rebels “cockroaches,” Gaddafi threatened to “cleanse” Libya house to house, acknowledging that the deaths of thousands of rebels and protesters was possible. Adrian Blomfield, *Libya: More Than 1,000 Dead*, DAILY TELEGRAPH (London) (Feb. 23, 2011), <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8342543/Libya-more-than-1000-dead.html>.

51. The Security Council declared that the Libyan Government needed to “act with restraint, [in order] to respect human rights and international humanitarian law. . . .” Press Release, Security Council, Security Council Press Statement on Libya, U.N. Press Release SC/10180 (Feb. 22, 2011).

52. H.R.C. Res. S-15/1, Rep. of the Human Rights Council, 15th Sess., Feb. 25, 2011, UN Doc. A/HRC/RES/S-15/1, ¶¶ 2, 4 (Feb. 25, 2011).

violence in Libya escalated rather than subsided.<sup>53</sup> Following regional criticisms, which had no observable effect on the fighting, the Security Council met March 17, 2011, to implement what would be the first use of the R2P.<sup>54</sup>

The Security Council first called for “all necessary measures” to be taken in order to protect civilians and civilian-occupied areas that were threatened by attack in Security Council Resolution 1973.<sup>55</sup> Two days after Resolution 1973 was passed, NATO forces began bombing Libyan Government positions—including air defense systems and command and control centers; these bombing missions increased throughout the civil war.<sup>56</sup> Meanwhile, calls for further support began to surface from Libyan fighters, who were the soldiers NATO was trying to aid.<sup>57</sup> To help these fighters, NATO shifted its focus from one of pure military objectives to that of destroying the Libyan infrastructure and removing Gaddafi’s organization—making way for the establishment of the rebel regime.<sup>58</sup> Once Gaddafi’s regime was destroyed, the Security Council’s main focus became turning control of the nation over to the victorious rebels.<sup>59</sup>

53. For a more thorough analysis on the kinds of atrocities committed, see Karin Laub, *Libyan Estimate: At Least 30,000 Died in the War*, GUARDIAN (Sept. 8, 2011), <http://www.guardian.co.uk/world/feedarticle/9835879>.

54. After acknowledging the numerous condemnations against Libya from a variety of nations and alliances, the Security Council authorized the North Atlantic Treaty Organization (“NATO”) to use force in two separate ways via Resolution 1973. These methods are discussed in the following text.

55. S.C. Res 1973, ¶ 4, U.N. Doc S/RES/1973 (Mar. 17, 2011).

56. Barry Neild & Xan Rice, *Gaddafi’s Son Killed in NATO Air Strike, Say Libyan Officials*, GUARDIAN (May 1, 2011), <http://www.theguardian.com/world/2011/may/01/libya-muammar-gaddafi-son-nato1>. This military continuation, however, led to disagreements between NATO and both UN forces and Libyan rebel forces. Spencer Zifcak notes that, in particular, Russia began to have reservations about the targets NATO forces were attacking, specifically calling the attack that killed Gaddafi’s son a “disproportionate use of force.” Spencer Zifcak, *The Future: The Responsibility to Protect After Libya and Syria*, 13 MELBOURNE J. INT’L L. 59, 65 (quoting U.N. SCOR, 66th Sess., 6528th mtg., UN Doc. S/PV.6528 (May 4, 2011)).

57. The rebel fighters complained that they lacked both military discipline and firepower, and, without more intensive NATO bombings, they would be unable to control the ground war. C.J. Chivers & David D. Kirkpatrick, *Libyan Rebels Complain of Deadly Delays Under NATO’s Command*, N.Y. TIMES (Apr. 4, 2011), [http://www.nytimes.com/2011/04/05/world/africa/05libya.html?\\_r=0](http://www.nytimes.com/2011/04/05/world/africa/05libya.html?_r=0).

58. Zifcak, *supra* note 56, at 66.

59. As the Chinese delegation noted, in order for the R2P to be considered a success:

First, stability and order should be restored to the country as soon as possible . . . Secondly, the aspirations and choices of the Libyan people must be respected. Libya’s sovereignty, independence, unity and territorial integrity must be genuinely respected . . . Thirdly, an inclusive political process should be launched as soon as possible . . . enabling Libya to embark swiftly on the path of national reconciliation . . . Fourthly, in assisting Libya in its reconstruction, the United Nations and the Security Council should play a leading role in accordance with the purposes and principles of the United Nations Charter.

In essence, the U.N., and specifically the R2P had debatably played their part.<sup>60</sup> As Professor Spencer Zifcak noted, “success in Libya came without the imposition of ‘boots on the ground’ . . . . This success, and the strategies employed to achieve it, may similarly hold important lessons for any future Pillar 3 interventions.”<sup>61</sup>

*B. Non-Use of the R2P: The Events and Non-Action During the Syrian Civil War*

With the success of the R2P in the Côte d’Ivoire and—perhaps more impressively—Libya, why is the R2P not utilized during the Syrian civil war? To solve this query, an examination of the effects of the program on present conflicts and future possibilities is needed. The logical place to begin is with the civil war in Syria.

After relatively standard protests<sup>62</sup> occurred from late-January to mid-March 2011, demonstrations began to grow both in size and number. The Syrian government began to respond with stronger and more severe showings of force.<sup>63</sup> During this time, the actions taken by the Syrian government arguably met the standard of Mass Atrocity Crimes.

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*Id.* at 67 (quoting U.N. SCOR, 66th Sess., 6620th mtg. at 4–5, U.N. Doc. S/PV.6620 (Sept. 16, 2011)) (omissions in original).

60. Despite objections that the military methods went beyond the scope that was needed for the situation, the military victory that was presented in Libya was enough to validate the R2P program. Ramesh Thakur, *R2P, Libya and International Politics as the Struggle for Competing Normative Architectures*, in *THE RESPONSIBILITY TO PROTECT: CHALLENGES AND OPPORTUNITIES IN LIGHT OF THE LIBYAN INTERVENTION* 12, 13 (2011), available at <http://www.e-ir.info/wp-content/uploads/R2P.pdf>.

61. Zifcak, *supra* note 56, at 69.

62. Although shocking and disturbing, isolated actions such as self-immolation, random beatings, and random arrests are not actions upon which the international community can act under the R2P. See *supra* notes 32–36.

63. By mid-April, protestors were calling for the removal of the current Syrian regime, reflective of other protests around the region such as the aforementioned protest in Libya. Anthony Shadid, *Amid Crackdown, Big Protest is Planned in Syria*, N.Y. TIMES (Apr. 20, 2011), <http://www.nytimes.com/2011/04/21/world/middleeast/21syria.html>. Around this time, the Syrian government began to use extreme force to quell and repress the protests. Based on reports from U.N. agencies, Under-Secretary-General Lynn Pascoe reported to the Security Council that the Syrian government had reportedly used “artillery fire against unarmed civilians, door-to-door arrest campaigns, the shooting of medical personnel who attempt to aid the wounded, raids against hospitals, clinics and mosques and the purposeful destruction of medical supplies and arrests of medical personnel.” U.N. SCOR, 66th Sess., 6524th mtg. at 2, U.N. Doc. S/PV.6524 (Apr. 27, 2011). Further atrocities included the government cutting off electricity, water, and communications to demonstrating cities, as well as mass arrests and torture of protesters, and professionals such as lawyers, journalists, and human rights defenders. *Id.* at 3.

The Security Council met to discuss Syria at the end of April 2011, and Western nations sought to intervene.<sup>64</sup> By contrast, Russia disagreed with the Western assessment of the situation.<sup>65</sup> Though the Security Council, and later the Human Rights Council, condemned Syria, the violence escalated until more than 1,000 people had died and 8,000 more had been arbitrarily detained.<sup>66</sup> When Security Council members discussed utilizing the R2P to intervene, both Russia and China raised objections citing how Resolution 1973 had been used too liberally in Libya, and stated their reservations for employing a document that could be expanded to such a degree, as had been the case in Libya.<sup>67</sup> Meanwhile, the crisis continued.

After five months of conflict, France, Germany, and the United Kingdom created a resolution and introduced it to the Security Council.<sup>68</sup> Although nine members voted in favor of the bill and four non-P5 members abstained, China and Russia both voted against the proposal, ultimately vetoing and killing the resolution.<sup>69</sup>

64. The United Kingdom proposed four measures: (1) the violence had to end immediately; (2) the Syrian regime had to immediately respond to the legitimate demands of its people calling for a genuine reform; (3) those responsible for the violence should be made accountable for their actions by the Syrian government; and (4) the international community should speak with one voice condemning the killings and abuses of human rights, essentially eliminating the multiple and contradictory points of view held by various nations about the situation in Syria. *Id.* at 5.

65. Russia stated that both the government and the opposition had committed violence, and that the dispute was an internal matter. *Id.* at 7.

66. *Update Report: Syria*, SECURITY COUNCIL REPORT (May 16, 2011), <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Update%20Report%2026%20May%202011%20Syria.pdf>; see also Khalid Ali, *Woman and Child Among Up to 26 Bodies 'Found in Mass Graves' Outside City*, INDEPENDENT (May 18, 2011), <http://www.independent.co.uk/news/world/middle-east/woman-and-child-among-26-bodies-found-in-mass-graves-near-syrian-city-2285524.html>; The Current Human Rights Situation in the Syrian Arab Republic in the Context of Recent Events, H.R.C. Res. S-16/1, U.N. Doc. A/HRC/RES/S-16/1 (May 4, 2011).

67. Henry Meyer, Brad Cook & Ilya Arkhipov, *Russia Warns U.S., NATO Against Military Aid to Syria Protests After Libya*, BLOOMBERG (June 2, 2011), <http://www.bloomberg.com/news/2011-06-01/russia-warns-u-s-nato-against-military-aid-to-syria-protests-after-libya.html>. Due to this deadlock in the Security Council, the President of the Security Council (which was India in August 2011) issued a presidential statement expressing “grave concern” about the crisis in Syria and condemned the atrocities that were occurring there. S.C. Pres. Statement 2011/16, at 1, U.N. Doc. S/PRST/2011/16 (Aug. 3, 2011); see also Jayshree Bajoria & Robert McMahon, *The Dilemma of Humanitarian Intervention*, COUNCIL FOR. REL. (June 12, 2013), <http://www.cfr.org/humanitarian-intervention/dilemma-humanitarian-intervention/p16524>.

68. The resolution condemned “the continued grave and systematic human rights violations and the use of force against civilians by the Syrian authorities,” called for “an inclusive Syrian-led political process conducted in an environment free from violence, fear, intimidation and extremism,” and included the threat of sanctions should Syria not resolve the conflict quickly and peacefully. *Russia and China Veto Draft Security Council Resolution on Syria*, U.N. NEWS CENTRE (Oct. 4, 2011), <http://www.un.org/apps/news/story.asp?NewsID=39935#UJ3B517V0Wc>.

69. *Id.*; see also Press Release, Security Council, Security Council Fails to Adopt Draft Resolution Condemning Syria’s Crackdown on Anti-Government Protestors, Owing to Veto by Russian Federation, China, U.N. Press Release SC/10403 (Oct. 4, 2011). Russia gave four reasons:

Two subsequent events further weakened the Russian argument, but Russia has not changed its position.<sup>70</sup> The first occurred in mid-November 2011 and stemmed from Arab League intervention.<sup>71</sup> The second event happened when the Human Rights Council issued a report dispatching a Commission of Inquiry<sup>72</sup> at the end of November.<sup>73</sup> Following several meetings of the Security Council, the Arab League drafted a resolution that was presented in January of 2012.<sup>74</sup> Despite much international pressure and increasing isolation within the Security Council, Russia again effectively vetoed the resolution by stating that revision of the resolution was necessary before they would vote in favor of it.<sup>75</sup> Morocco presented a

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(1) the resolution overshadowed Syria's right to national sovereignty and territorial integrity; (2) the resolution was founded on confrontation, rather than peaceful dialogue between the Syrian government and the rebels; (3) the violence in Syria was inflicted by both sides, and the Syrian government was confronted by terrorist attacks (essentially echoing earlier Syrian press releases); and (4) the intervention in Libya extended into areas that the R2P was not meant to reach. Russia feared this type of overextension would occur in Syria. U.N. SCOR, 66th Sess., 6627th mtg. at 3-4, U.N. Doc. S/PV.6627 (Oct. 4, 2011) (statement of Amb. Vitaly Churkin). The United States retorted that the proposed military intervention and Libyan response were not at issue, but rather Russia's desire to sell arms to the Syrian regime trumped Russia's desire to stand up for the Syrian people. *Id.* at 8 (statement of Amb. Susan Rice).

70. Zifcak, *supra* note 56, at 79.

71. The Arab League suspended Syria as a member of the League and imposed sanctions after giving the regime three days to comply with their wishes. These sanctions were imposed so as to force a cessation of violence, an immediate commencement of political reforms, a release of political prisoners, genuine dialogue with the Syrian opposition, and the inclusion of Arab League observers during these peace talks. Although Arab League observers were allowed into Syria by the end of 2011, the violence had not stopped, and the Syrian regime and not complied with further Arab League wishes. See Dominic Evans, *Arab League Team Arrives in Syria as Violence Goes On*, REUTERS, Dec. 22, 2011, available at <http://www.reuters.com/article/2011/12/22/us-syria-arabs-idUSTRE7BI0H520111222>; see also *Syria Unrest: Arab League Monitors' Advance Team Arrives*, BBC (Dec. 22, 2011), <http://www.bbc.co.uk/news/world-middle-east-16296255>; Alice Fordham, *Arab League Team Goes to Syria*, WASH. POST, Dec. 23, 2011, at A12.

72. The Commission of Inquiry was formed by the Human Rights Council. See H.R.C. Res. S-17/1, Rep. of the Human Rights Council, 17th Spec. Sess., Aug. 22-23, 2011, at 3-4, U.N. Doc. A/HRC/S-17/2 (Oct. 18, 2011); see generally *Syrian Arab Republic*, U.N. OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, <http://www.ohchr.org/en/countries/menaregion/pages/syindex.aspx> (last visited Mar. 13, 2014).

73. The devastating report concluded that the Syrian Government had been responsible for the commission of crimes against humanity and that the Syrian military and security forces had committed gross violations of human rights. See Zifcak, *supra* note 56, at 79-81 for a more thorough summary.

74. The Arab League's plan called for a transfer government in Syria, a new regime that would hold parliamentary elections, which would be supervised by both an Arab and international presence. Failure to follow this plan would result in further international sanctions and further pressure. *UN Draft Resolution on Syria*, WASH. POST (Jan. 31, 2012), [http://articles.washingtonpost.com/2012-01-31/world/35437994\\_1\\_syrian-government-syrian-authorities-peaceful-resolution](http://articles.washingtonpost.com/2012-01-31/world/35437994_1_syrian-government-syrian-authorities-peaceful-resolution).

75. Russia vetoed the bill for two reasons. First, they claimed that a removal of President al-Assad constituted an incursion upon Syrian sovereignty. Second, they cited a slippery-slope argument, essentially stating that this was one step further than the Libyan intervention, and that such interventions would only intensify in the future. These notions will be examined and critiqued later. See *Soviet Hangover Turned Headache: Syria and Russia*, GUARDIAN, Feb. 1, 2012, at 30.

new, hastily written resolution to the Security Council, which sought to intervene to a lesser extent.<sup>76</sup> On the eve of voting on the resolution, fighting erupted in Syria, and more than 210 people were killed.<sup>77</sup> The following day, thirteen Security Council members voted in favor of the resolution. Russia and China vetoed it.<sup>78</sup> At the time of this Note's publication, Syria is still engaged in conflict.

#### IV. CRITICISM OF THE RESPONSIBILITY TO PROTECT AND A RESPONSE

##### A. *Criticism of the R2P*

###### 1. *Infringing on a Nation's Sovereignty*

Between the Security Council's failure to act during the conflict in Syria, and the imposition of military intervention in Libya, the international community was left with a critical view of the R2P. One of the most common arguments against the R2P is the concept that imposition of military—or even diplomatic—sanctions on an independent nation would violate that nation's sovereignty.

A basic tenant of statehood is a nation's sovereignty, meaning that a nation should be allowed to govern its own affairs, including the laws by which its citizens live.<sup>79</sup> One key aspect of national sovereignty is the right

76. The transition of power, which was detailed in the Arab League's original resolution, was removed, as was the provision encouraging the international community to impose sanctions on Syria if the regime continued in violence. It further specified that the resolution was not meant to be a coercive measure against Syrian autonomy, but instead called for a cease-fire and access for international humanitarian assistance, as well as political dialogue. U.N. SCOR, 67th Sess., U.N. Doc. S/2012/77 (Feb. 4, 2012).

77. Ben Quinn, *Syria: More Than 200 Dead After 'Massacre' in Homs*, GUARDIAN (Feb. 3, 2012), <http://www.guardian.co.uk/world/2012/feb/04/syria-report-homs-killings>.

78. Following the failure of the resolution, Security Council members bitterly debated one another. The American Ambassador described the United States as "disgusted," while the British Ambassador mused "[t]hose who blocked Council action today must ask themselves how many more deaths they are prepared to tolerate before they support even modest and measured action." Zifcak, *supra* note 56, at 83, (quoting Press Release, Security Council, Security Council Fails to Adopt Draft Resolution on Syria as Russian Federation, China Veto Text Supporting Arab League's Proposed Peace Plan, U.N. Press Release SC/10536 (Feb. 4, 2012)). Russia countered by claiming that the resolution would undermine the possibility of a political settlement, while China called the resolution a prejudiced attempt to pressure Syrian authorities. *Id.* at 84.

79. For a thorough examination of national sovereignty and how it relates to the international community, see Kyle Bagwell & Robert W. Staiger, *National Sovereignty in an Interdependent World* (Nat'l Bureau of Econ. Research, Working Paper No. 10249, 2004), available at <http://www.nber.org/papers/w10249>.

to stop foreign nations from interfering with the way a government manages its nation.<sup>80</sup>

One of the classic critiques of the R2P is that it would be considered an infringement on national sovereignty for one nation to intervene in another's affairs.<sup>81</sup> This argument can be rebutted (or at least justifiably dismissed).<sup>82</sup> However, for many nations, this is not just a worry about mild encroachment on national sovereignty but instead a greater concern of serious interference.

A tangentially related complaint is often, but not exclusively, raised by Russia and China. Essentially, they complain that the "G3" (Britain, France, and the United States) are attempting to impose their power over non-Western nations by unilateral intervention.<sup>83</sup> During the debates about intervening in Kosovo, Russia, and to a lesser extent China, voiced their concerns that the G3 (and particularly the United States) was attempting to force unwanted Western values on other nations.<sup>84</sup> The "G2" nations (Russia and China) are not the only ones to voice this concern. India<sup>85</sup> and Iran<sup>86</sup> have also referenced this concern as a criticism of the R2P. The amount of weight this concern holds as a justification for voting against R2P measures is hard to quantify, especially taking counterarguments into consideration.

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80. "'Sovereignty.' A government which exercises de facto administrative control over a country and is not subordinate to any other government in that country *or a foreign sovereign state*." STROUD'S JUDICIAL DICTIONARY 2461 (5th ed. 1986).

81. Often nations will argue that a resolution will discard the importance of a country's sovereignty in favor of unilateral action. U.N. SCOR, *supra* note 63, at 13. Other nations worry that any unilateral action or imposition of will violates a state's sovereignty and should not be allowed. See Rick Moran, *Libya and the Soros Doctrine*, FRONTPAGE MAG. (Mar. 28, 2011), <http://frontpage.com/2011/rick-moran/libya-and-the-soros-doctrine/>.

82. See Secretary-General's Report, *supra* note 17, at 7–8.

83. See Yuki Yoshida, *From Kosovo to Libya: Theoretical Assessment of Humanitarian Intervention and the Responsibility to Protect*, E-INT'L REL. (Jan. 16, 2013), <http://www.e-ir.info/2013/01/16/from-kosovo-to-libya-theoretical-assessment-of-humanitarian-intervention-and-the-responsibility-to-protect/>.

84. See generally Gareth Evans & Mohamed Sahnoun, *The Responsibility to Protect: Revisiting Humanitarian Intervention*, 81(6) FOREIGN AFF. 99 (2002), available at <http://www.foreignaffairs.com/articles/58437/gareth-evans-and-mohamed-sahnoun/the-responsibility-to-protect>; see also Eiki Berg & Martin Mölder, *Janus-Faced Human Security Discourse: EU and Russia Talking Past Each Other in Kosovo and the Caucasus?*, at 10 (Centre for EU-Russia Studies EU-Russia Papers No. 4, 2012), available at <http://ceurus.ut.ee/wp-content/uploads/2011/06/EU-Russia-Papers-4.pdf>.

85. Mahmood Mamdani, *Responsibility to Protect or Right to Punish?* 4 J. INTERVENTION & STATEBUILDING 53 (2010), available at [http://gpia.info/files/u1449/Mamdani-Responsibility\\_to\\_Protect\\_or\\_Right\\_to\\_Punish.pdf](http://gpia.info/files/u1449/Mamdani-Responsibility_to_Protect_or_Right_to_Punish.pdf). It should be noted that this complaint seems to stem mainly from the ICC's jurisdictional reach in prosecuting individual leaders, and less from the intervention of entire nations in one another's sovereignty. *Id.*

86. Eaton, *supra* note 8, at 789.

## 2. *Scope and Breadth of the Responsibility to Protect*

A further worry, which has existed since the R2P's conception, involves the scope of intervention. Currently, and with the general consensus of U.N. member states, a nation can only become involved under the R2P if one of the four aforementioned Mass Atrocity Crimes take place. However, some nations have called for the expansion of the R2P to include situations such as natural disasters that result in large loss of life because of government neglect.<sup>87</sup> Proponents of this expansion assert that the R2P is not broad enough to protect against this loss of life.

There are other critiques of the R2P, even when there are clear instances of one of the four Mass Atrocity Crimes. As previously noted, no clear indications exist to determine when military force may be used, despite the given guidelines.<sup>88</sup> Although the international community decided during the ICISS not to delineate specific instances when military force should be used, nations continue to complain about the lack of guidelines.<sup>89</sup>

87. A good example of this proposal occurred when a cyclone struck Burma and Myanmar in 2008. Typically, humanitarian groups provide aid for citizens who are devastated by natural disasters. In this instance, however, the governments of Burma and Myanmar denied access to public aid. Since these nations caused further loss of life due to the denial of public aid, there was a call for other nations to interfere. However, as these actions did not fall under Mass Atrocity Crimes, no intervention occurred. For more information, see ASIA-PACIFIC CENTRE FOR THE RESPONSIBILITY TO PROTECT, CYCLONE NARGIS AND THE RESPONSIBILITY TO PROTECT, MYANMAR/BURMA BRIEFING NO. 2 (May 16, 2008), available at <http://www.responsibilitytoprotect.org/index.php?module=uploads&func=download&fileId=539>; see also Annalina Kazickas, *Humanitarian Intervention, The Responsibility to Protect, and the Need to Better Protect Our Citizens* (2011) (unpublished manuscript) (available at <http://www.jmu.edu/mwa/docs/2011/kazickas.pdf>).

88. See the six criteria mentioned *supra* note 10 and accompanying text. These criteria offer situations that must be met in order to intervene militarily, but these criteria are not specific enough for some nations. For example, any military intervention must have "legitimate authority." This language is painfully vague to some critics. Can legitimate authority stem from rebels initiating a coup d'état? What happens when the standing government loses control over part of the nation, as is the case in Syria? For a more detailed examination, see Sean Lynch, Note, *An Invitation to Meddle: The International Community's Intervention in Libya and the Doctrine of Intervention by Invitation*, 2 CREIGHTON INT'L & COMP. L.J. 173 (2012). See also Christopher J. Le Mon, *Legality of a Request by the Interim Iraqi Government for the Continued Presence of United States Military Forces*, AM. SOC'Y INT'L L. (June 2004), <http://www.asil.org/insigh135.cfm>.

89. STANLEY FOUNDATION, ACTUALIZING THE RESPONSIBILITY TO PROTECT: 43RD CONFERENCE ON THE UNITED NATIONS OF THE NEXT DECADE (2008), available at <http://www.stanleyfoundation.org/publications/report/UNND808.pdf>; see also ASIA PACIFIC CENTRE FOR THE RESPONSIBILITY TO PROTECT, FUNDING PROPOSAL: STRENGTHENING THE RESPONSIBILITY TO PROTECT IN THE ASIA PACIFIC (2012), available at <http://www.usaid.gov/pressroom/record-keeping/humanitarian-policy-partnerships/Documents/r2p-asia-pacific-proposal-core-funding.pdf>; see *R2P: Time to Rewrite the Rules, Reforge Consensus*, CONNECTED (Mar. 26, 2013), <http://anodeinthenetwork.wordpress.com/2013/03/26/the-responsibility-to-protect-syria-libya-brics-prevention/>.

### 3. *Differing Interests in the Security Council*

An interesting criticism of the R2P involves the political interests of the P5 members, and the sabotage of many Security Council resolutions as a result. From a skeptical perspective, a perfect example is that Russia abstained from voting on a resolution for military intervention in Libya to form a no-fly zone,<sup>90</sup> but later vetoed a resolution calling for a lesser sanction on Syria.<sup>91</sup> Russia vetoes these resolutions on what it calls principle.<sup>92</sup> However, Russia has significant political, economic, and strategic investment in Syria.<sup>93</sup> An additional illustration is Russia's vetoing any involvement in Chechnya.<sup>94</sup> This power can be used conversely, as well. Russia used the notion of "humanitarian intervention" during their 2008 campaign inside Georgia.<sup>95</sup> Critics of the R2P state that the R2P will never be implemented in all appropriate situations due to the differing interests of the P5 members.

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90. *UN Vote Approves Libya No-Fly Zone; China, Russia Abstain*, INT'L BUS. TIMES (Mar. 17, 2011), <http://www.ibtimes.com/un-vote-approves-libya-no-fly-zone-china-russia-abstain-276107>.

91. Joe Lauria, *Russia, China Veto Syria Resolution at U.N.*, WALL ST. J. (July 19, 2012), <http://online.wsj.com/article/SB10000872396390444097904577536793560681930.html>.

92. Ellen Barry, *As Nations Line Up Against Syrian Government, Russia Sides Firmly with Assad*, N.Y. TIMES (Jan. 27, 2012), [http://www.nytimes.com/2012/01/28/world/europe/russia-sides-firmly-with-assad-government-in-syria.html?\\_r=0](http://www.nytimes.com/2012/01/28/world/europe/russia-sides-firmly-with-assad-government-in-syria.html?_r=0). Zifcak analyzed this further. According to his examination,

Syria is a major purchaser of exports of Russian arms and defence equipment. The Syrian market is worth six per cent of the overall arms export industry. . . . Syria hosts a strategically positioned Russian naval base at Tartus on the west coast, its only one outside the former Soviet Union. . . . [Russia] has major economic investments in Syria, principally in the business of natural gas extraction. . . . It is unsurprising given these important connections that the Russians do not wish to see them disturbed by the replacement of the al-Assad regime. Its veto at the Security Council provides it with political power it needs to forestall any such possibility.

Zifcak, *supra* note 56, at 91.

93. *Id.*

94. Simply put, Russia sold Chechens arms, mirroring the situation in Syria. *See Is the Main Source of Chechen Rebel Weapons Georgia, or the Russian Army?*, JAMESTOWN FOUND. (Oct. 29, 2010), [http://www.jamestown.org/programs/edm/single/?tx\\_ttnews%5Btt\\_news%5D=37102&cHash=25a179275d](http://www.jamestown.org/programs/edm/single/?tx_ttnews%5Btt_news%5D=37102&cHash=25a179275d).

95. The Russian government argued that Georgia's initial actions against the local population in the Republic of South Ossetia constituted genocide. Of particular relevance is that Russia also has a "responsibility to protect" provision in their own constitution. Critics of Russia merely need to cite the R2P in their argument to demonstrate how Russia can use their P5 membership as a way to manipulate politics on a global scale. *See Gareth Evans, Opinion, Russia and the "Responsibility to Protect"*, L.A. TIMES (Aug. 31, 2008), <http://www.latimes.com/news/opinion/commentary/la-oe-evans31-2008aug31.0,3632207.story>.

## B. Response to Criticism

### 1. Reply to Claims of State Sovereignty Violations

Counterarguments towards state sovereignty violations led to a shift in thinking occurred within the ICISS. Instead of assuming a nation is entitled to state sovereignty and will protect its population, sovereignty is predicated upon a state protecting its own people.<sup>96</sup> Although the revised ICISS was not adopted, its ideology has become more accepted in international law.<sup>97</sup>

To combat the complaint that the Security Council is commanding undue influence on a nation's sovereignty, proponents of the R2P state that in nearly every instance of influence, outside countries are only there to assist, not interfere, with the nation.<sup>98</sup> Intervention will not occur unless a violating nation refuses to change its actions.<sup>99</sup> Although there are several rebuttals to this claim,<sup>100</sup> U.N. officials, and some scholars, voice

96. As one author noted,

The ICISS report [was] innovative. It [made] a compelling case for shifting the focus of the notion of humanitarian intervention from the rights of the interveners to the rights of at-risk populations and the 'duty' of states to protect them. The report maintain[ed] that state authorities are ultimately responsible for protecting their citizens from serious harm and that when they are unable or unwilling to do so, the principle of nonintervention is trumped by the international responsibility to protect.

Jeremy I. Levitt, *The Responsibility to Protect: A Beaver Without a Dam?*, 25 MICH. J. INT'L L. 153, 175 (2003) (reviewing INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY, THE RESPONSIBILITY TO PROTECT (2001)). See generally Payandeh, *supra* note 15, at 485–87. See also David Aronofsky, *The International Legal Responsibility to Protect Against Genocide, War Crimes and Crimes Against Humanity: Why National Sovereignty Does Not Preclude Its Exercise*, 13 ILSA J. INT'L & COMP. L. 317, 318 (2007); Christopher C. Joyner, "The Responsibility to Protect": *Humanitarian Concern and the Lawfulness of Armed Intervention*, 47 VA. J. INT'L L. 693, 718–19 (2007).

97. During the implementation of the R2P in the 2009 session of the General Assembly, the Secretary-General noted that not only had the concept of a nation's responsibility to protect received the consensus of world leaders, but it was also spearheaded by Africa. This observation is crucial; it emphasizes that a "responsibility to protect" is not merely a Western concept. U.N. Secretary-General, *Implementing the Responsibility to Protect: Rep. of the Secretary-General*, U.N. Doc. A/63/677 (Jan. 12, 2009).

98. ICISS Report, *supra* note 4. See also Press Release, U.N. Secretary-General, Annual Report to the General Assembly, U.N. Press Release SG/SM7136 (Sept. 20, 1999). But see Edward Luttwak, *Kofi's Rule: Humanitarian Intervention and Neocolonialism*, 58 NAT'L INT. 57, 60 (1999), for a rebuttal to Annan's remarks.

99. Bannon notes that there is a hierarchy of actions under the scope of the R2P that countries will take against an offending nation. For instance, the UN will act before individual nations enter the situation, and diplomatic actions will always occur before militaristic intervention. Bannon seems to suggest that this gradual hierarchy is meant in part to keep nations from infringing on one another's sovereignty. See Bannon, *supra* note 15, at 1164.

100. See generally Levitt, *supra* note 96.

optimism that nations are not unduly interfering with sovereignty, but instead are offering aid to neighbors in need of help.

## 2. *Reply to Those Calling for the Expansion of the R2P*

There is currently no widespread effort to expand the R2P. Due to this lack of enlargement, little analysis is needed in this Note. During the codification of the R2P in 2009, several member states explicitly reaffirmed that they were adhering to the 2005 R2P parameters.<sup>101</sup> More states went even further, stating that a broader application of the R2P would diminish its effectiveness as a program.<sup>102</sup> Judging between scholarly analysis and general international resistance, it is unlikely that the R2P will be expanded.

## V. THE RESPONSIBILITY TO PROTECT GOING FORWARD

### A. *The Responsibility While Protecting (“RWP”)*

The RWP was born out of a Brazilian concept paper,<sup>103</sup> and introduced to the U.N. General Assembly in late 2011. While the R2P reacts to atrocities carried out by governments, the purpose of the RWP is to promote proactive assistance to avoid potential atrocities.<sup>104</sup> These preemptive measures include preventative diplomacy, as a means to reduce the risk of human atrocities.<sup>105</sup> Other changes to the R2P would

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101. See generally U.N. Secretary-General's Report, *supra* note 17.

102. Elodie Aba and Michael Hammer's briefing outlines several reasons why broadening the scope of the R2P would constitute a deathblow to the program. Among their reasons are that fewer states would commit to the Program, that nations would fight more bitterly before it would be implemented in an international situation, and many more draft resolutions would be vetoed if the R2P's scope could be expanded. See Elodie Aba & Michael Hammer, *Yes We Can? Options and Barriers to Broadening the Scope of the Responsibility to Protect to Include Cases of Economic, Social and Cultural Rights Abuse* (One World Trust Briefing Paper No. 116, 2009), available at [http://www.responsibilitytoprotect.org/files/Yes\\_we\\_can\\_-\\_R2P\\_and\\_ESC\\_Rights\[1\].pdf](http://www.responsibilitytoprotect.org/files/Yes_we_can_-_R2P_and_ESC_Rights[1].pdf).

103. Permanent Rep. of Brazil to the U.N., Letter dated Nov. 9, 2011 from the Permanent Rep. of Brazil to the United Nations addressed to the Secretary-General, U.N. Doc. A/66/551 (Nov. 11, 2011). See also Amelia Mae Wolf, *Features: Responsibility While Protecting—The Impact of a New Initiative on RtoP*, INT'L COALITION FOR THE RESPONSIBILITY TO PROTECT (Sept. 14, 2012), <http://icrtopblog.org/feature/>.

104. FRANCIS M. DENG, SPECIAL ADVISER TO THE SECRETARY-GENERAL ON THE PREVENTION OF GENOCIDE, THE RESPONSIBILITY WHILE PROTECTING (RWP) TALKING POINTS FOR REMARKS (2012), available at <http://www.un.org/en/preventgenocide/adviser/pdf/FD%2021%20February%20remarks%20-%20English.pdf>. See also Wolf, *supra* note 103.

105. Antonio de Aguiar Patriota, *Statement by H.E. Ambassador Antonio de Aguiar Patriota Minister of External Relations of the Federative Republic of Brazil; Informal Discussion at the United Nations on the ‘Responsibility While Protecting,’* PERMANENT MISSION OF BRAZIL TO THE UNITED

enhance the Security Council's procedures of monitoring global situations to better assess any potential problems, and to arrive at the correct proportional solution.<sup>106</sup>

Ultimately, however, the RWP might actually hinder the R2P in the event that the two documents be merged. One immediate criticism is that the RWP leads to a violation of national sovereignty before any actual Mass Atrocity Crime has occurred.<sup>107</sup> Further criticism stems from the fear that while nations lead drawn-out negotiations, potential violators will be incentivized to inflict greater harm in the intermediary.<sup>108</sup> This fear, coupled with a lack of Western enthusiasm,<sup>109</sup> makes it likely that the RWP will ultimately remain separate from the R2P.

### *B. A Potential Change and the R2P's Failure*

Looking at the benefits and drawbacks of the R2P, one conceptual suggestion would be a small change to R2P procedure. Essentially, if a P5 member vetoes a draft resolution, the Security Council must still issue a reprimand to the nation in question.<sup>110</sup> Should any specified criteria be met, the action would be officially presented to the General Assembly, although no additional measures could be taken.<sup>111</sup>

NATIONS (Feb. 21, 2012), available at <http://www.un.int/brazil/speech/12d-agp-RESPONSIBILITY-WHILE-PROTECTING.html>.

106. *Id.* See also Chris Kreutzner, *Responsibility While Protecting: Help or Hindrance to R2P*, INT'L L. STUDENTS ASS'N—UNIV. OF OTTAWA (Nov. 16, 2012), <http://ilsauottawa.wordpress.com/2012/11/16responsibility-while-protecting-help-or-hindrance-to-r2p/>.

107. Predictably, China and Russia raised this objection during one of the first discussions of the RWP. See Matias Spektor, *Humanitarian Interventionism Brazilian Style?*, AM. Q. (2012), <http://www.americasquarterly.org/humanitarian-interventionism-brazilian-style>.

108. Thomas Wright, *Brazil Hosts Workshop on 'Responsibility While Protecting'*, FOR. POL'Y (Aug. 29, 2012), [http://bosco.foreignpolicy.com/posts/2012/08/29/brazil\\_backs\\_responsibility\\_while\\_protecting](http://bosco.foreignpolicy.com/posts/2012/08/29/brazil_backs_responsibility_while_protecting).

109. Kreutzner, *supra* note 106.

110. This reprimand would only be available if it meets certain criteria. First, at least thirteen of the fifteen Security Council members must vote in favor of a draft resolution under the scope of the R2P. In addition, four of the five P5 members must have voted affirmatively to pass the resolution, meaning only one veto could have occurred.

111. The reasoning behind this course of action is simple. Currently, P5 members often veto draft resolutions because they are allies with the nation under scrutiny. With this reporting system established, a P5 nation can successfully protect its international interest while the international community can still take some semblance of a measure against the nation committing atrocities, even if it is only a reprimand. One of the interesting aspects of this idea would be the relationship that Russia and China currently share. As previously shown, when examining issues such as national sovereignty and military force, Russia and China often share similar sentiments and theories. Yet when draft resolutions are vetoed, China will either vote for its passage or abstain from voting entirely. It is typically Russia that vetoes the draft resolution. Should this system be implemented, it would create

Unfortunately, neither the G3 nor G2 nations would accept this change to the R2P because it would undermine the entire concept of the Security Council.<sup>112</sup> The only way to change a P5's veto power is to have P5 members unanimously approve the alteration, an event that is highly unlikely.<sup>113</sup>

What is more practical, however, would be an informal agreement where the P5 vows not to veto a R2P measure that would otherwise pass by a majority. Aside from completely eliminating the R2P, this would be the best way to effectively implement the program in more general conflicts.<sup>114</sup> Nonetheless, an informal agreement seems relatively unlikely. Due to political and economic considerations, it is doubtful that P5 nations will forego global alliances in order to make the R2P a more effective doctrine.<sup>115</sup>

It is also unlikely that the U.N. will reject or scrap the R2P. Even opponents of the R2P seem to recognize that the Program is in no danger

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interesting international repercussions. Either Russia and China would band together more closely or tension between the two nations would quickly become imminent

112. The G2 would likely not implement this idea, if for no other reason than it would change the status quo and alliance that is currently found in the Security Council. The G3 would likely never accept it for similar reasons. Finally, none of the P5 members would individually accept it—to do so would be to give up the veto power allotted to them from the creation of the Security Council. One such idea was debated in 2009 and ultimately quashed. See GLOBAL CTR. FOR THE RESPONSIBILITY TO PROTECT, IMPLEMENTING THE RESPONSIBILITY TO PROTECT THE 2009 GENERAL ASSEMBLY DEBATE: AN ASSESSMENT 6 (2009), available at [http://globalr2p.org/media/pdf/GCR2P\\_General\\_Assembly\\_Debate\\_Assessment.pdf](http://globalr2p.org/media/pdf/GCR2P_General_Assembly_Debate_Assessment.pdf)

113. There is no rational reason for the P5 to amend the U.N.'s Charter to decrease their power and prestige by effectively putting them on equal footing with non-permanent SC members. Furthermore, there has been constant fighting over how the amended resolution would even look, before being able to present it to the Security Council. See Sahar Okhovat, *The United Nations Security Council: Its Veto Power and Its Reform* (CPACS Working Paper No. 15/1, 2011), available at [http://sydney.edu.au/arts/peace\\_conflict/docs/working\\_papers/UNSC\\_paper.pdf](http://sydney.edu.au/arts/peace_conflict/docs/working_papers/UNSC_paper.pdf).

114. ARIELA BLÄTTER, CITIZENS FOR GLOBAL SOLUTIONS, THE RESPONSIBILITY NOT TO VETO: A WAY FORWARD (2010), available at [http://globalsolutions.org/files/public/documents/RN2V\\_White\\_Paper\\_CGS.pdf](http://globalsolutions.org/files/public/documents/RN2V_White_Paper_CGS.pdf).

115. Loosely responding to the Global Center for the Responsibility to Protect, Daniel Levine notes that “part of the problem [with the R2P] may be conceptual—R2P is a quasi-judicial concept and the UNSC is a political entity, so the fit will never be perfect.” See Daniel H. Levine, *Some Concerns About “The Responsibility Not to Veto,”* UNIV. OF MD. CENT. FOR INT’L & SECURITY STUD. (Apr. 5, 2011), [http://www.cissm.umd.edu/papers/files/some\\_concerns\\_about\\_the\\_responsibility\\_not\\_to\\_veto.pdf](http://www.cissm.umd.edu/papers/files/some_concerns_about_the_responsibility_not_to_veto.pdf). Such a notion has been raised before. At the same time the R2P was proposed, the overall Security Council was examined and two amendments proposing a change to the structure of the Security Council were authored. Although both proposals sought to expand the size of the Security Council, neither proposal sought to change the veto power of the P5. The panel went so far as to state that they saw “no practical way of changing of changing the existing members’ veto powers.” See Yukio Satoh, *Security Council Reform: The P5’s Responsibility to Act*, WORLD SECURITY NETWORK FOUND. (Oct. 2, 2007), <http://www.worldsecuritynetwork.com/Japan/Satoh-Yukio/Security-Council-Reform-The-P5s-Responsibility-to-Act>.

of being rejected by the international community.<sup>116</sup> It seems—at least for the time being—that the R2P, for better or worse, will not be amended.

## VI. CONCLUSION

After numerous mass atrocities were committed during the 1990s, the U.N. sought to create a program to allow nations to hold one another responsible for the humane treatment of their citizens, and to stop Mass Atrocity Crimes if necessary. After years of discussion, the R2P was created. This document, which was comprised of three pillars, emphasized a nation's duty to its people, and allowed other countries to interfere with conduct considered to be mass atrocities.

The international community did not have to wait long to put the R2P doctrine to use, ultimately intervening in the Côte d'Ivoire and Libya. But because of political considerations, all R2P proposals regarding the Syrian conflict were vetoed by Russia and China. Thus, some glaring issues with the R2P became readily apparent.

Since its inception, the idea of the R2P has come under heavy opposition for various reasons. Most common among these was the fear that the R2P would violate a nation's sovereignty, and vagueness about when the R2P could actually be utilized. However, the most damaging criticism stems from the Security Council's political nature. Due to global alliances, a member of the P5 often vetoes an R2P resolution for political or economic reasons, thus making the R2P ineffective.

Unfortunately, there does not appear to be any simple method of fixing the R2P. Although amendments and theoretical changes have been proposed, it is highly unlikely that the R2P will be amended, even in light of its obvious deficiencies. It appears that the R2P—the groundbreaking, yet flawed system that was established in 2005—will not be utilized to its full potential.

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116. Steven Groves, for example, adamantly opposes the United State's obligation to the R2P, making the classic arguments of national sovereignty and independence. Yet he seems to realize that even a country such as the United States, which thoroughly embraces these ideologies, seems unlikely to reject the R2P outright. Instead, he ends his article by stating that "[t]he United States should . . . continue to treat the responsibility to protect doctrine with grave skepticism." Steven Groves, *The U.S. Should Reject the U.N. "Responsibility to Protect" Doctrine*, HERITAGE FOUND. (May 1, 2008), <http://www.heritage.org/research/reports/2008/05/the-us-should-reject-the-un-responsibility-to-protect-doctrine>.

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