
Fall 2014

No Responsibility for the Responsibility to Protect: How Powerful States Abuse the Doctrine, and Why Misuse Will Lead to Disuse

Brighton Haslett

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No Responsibility for the Responsibility to Protect: How Powerful States Abuse the Doctrine, and Why Misuse Will Lead to Disuse

Cover Page Footnote

International Law; Commercial Law; Law

No Responsibility for the Responsibility to Protect: How Powerful States Abuse the Doctrine, and Why Misuse Will Lead to Disuse.

Brighton Haslett[†]

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I. Introduction

The responsibility to protect appears to be a relatively new doctrine, its current form established by the Report of the International Commission on Intervention and State Sovereignty (the ICISS) in December 2001.¹ However, the doctrine has roots extending deep into international law traditions.² The idea of humanitarian intervention has been documented as early as the 1600s, when Hugo Grotius advocated for action if a ruler inflicted inhumane treatment upon his subjects.³ In modern history, international conflicts since the 1940s, and especially several atrocities in the 1990s, led some in the international community to cry out for a doctrine that would allow member states of the United Nations (U.N.) to “[act] in defense of our common humanity.”⁴

Out of these conflicts was born the responsibility-to-protect doctrine, placing a burden on the international community to take action when necessary to end human suffering.⁵ In 2000, the ICISS was established and tasked with addressing the tension between respecting state sovereignty and the concept of humanitarian intervention.⁶ The ICISS published its report entitled “The Responsibility to Protect” in 2001, in which it introduced the

¹ Int’l Comm’n on Intervention and State Sovereignty, *The Responsibility to Protect* (2001), available at <http://www.responsibilitytoprotect.org/ICISS%20Report.pdf> [hereinafter ICISS Report].

² See Carsten Stahn, *Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?*, 101 AM. J. INT’L L. 99, 111 (2007).

³ HUGO GROTIUS, ON THE LAW OF WAR AND PEACE, 247–48 (A.C. Campbell trans., Batoche Books 2001) (1625). See Stahn, *supra* note 2 at 111.

⁴ ICISS Report, *supra* note 1, at §1.6.

⁵ *Id.* at XII.

⁶ See Jamie Herron, *Responsibility to Protect: Moral Triumph or Gateway to Allowing Powerful States to Invade Weaker States in Violation of The U.N. Charter?*, 26 TEMP. INT’L & COMP. L.J. 367, 372 (2012).

responsibility to protect doctrine, reframing humanitarian intervention as furnishing a human right of protection, rather than a right of states to intervene.⁷ The responsibility to protect rests on principles of prevention and peacefulness, and requires that all peaceful means of human protection be exhausted before military intervention is considered.⁸ Only the most massive human rights violations, such as genocide, justify military intervention.⁹ By focusing on prevention and means of least intrusion, the doctrine aims to balance the protection of human rights with the sovereignty of each state.¹⁰ The responsibility to protect does not diminish the responsibility of each state to its own citizens, but imports a responsibility to protect into the concept of state sovereignty; the doctrine is only triggered when a state cannot or will not act to protect its citizens.¹¹

This comment will focus on the military intervention aspect of the responsibility-to-protect, and expose the flaws of the doctrine discoverable only through an examination of specific instances of intervention and inaction. Upon examination, it becomes evident that the decision whether or not to intervene and the way in which intervention itself is carried out do not truly turn on humanitarian concerns, but rather are guided by strategic and economic interests. While the doctrine does not preclude weighing of strategic and economic interests,¹² it does require that the primary purpose of intervention be to end human suffering.¹³ Although the use of falsified human rights violations to justify intervention is cause for concern, the recent inaction and inconsistency of states in the face of clear and massive human rights violations are more revealing.

Part I will provide a brief history of the international conflicts and humanitarian interventions that led to the founding of the

⁷ ICISS Report, *supra* note 1, § 2.29.

⁸ *Id.* at XII.

⁹ *Id.*

¹⁰ *See id.* §§ 1.32–36.

¹¹ *Id.* at XI.

¹² In fact, the doctrine likely requires consideration of these factors: “There must be a reasonable chance of success in halting or averting the suffering which has justified the intervention, with the consequences of action not likely to be worse than the consequences of inaction.” ICISS Report, *supra* note 1, at XII. A thorough analysis of the likelihood of success will include economic and strategic considerations.

¹³ *Id.*

ICISS and the establishment of the responsibility to protect doctrine.¹⁴ Part II will explain the modern conception of humanitarian intervention and the responsibility to protect, specifically describing the process by which the international community may take action under the responsibility to protect doctrine.¹⁵ Part III will identify specific instances in which responsibility-to-protect intervention strayed from the ideals set out in the ICISS report, and will use these case studies to examine the international community's inconsistency in taking action under the responsibility to protect and identify ulterior motivations underlying state action and inaction.¹⁶ Part IV will explore the sociological and legal implications of military interventions that abuse the doctrine and misapply responsibility-to-protect principles.¹⁷

II. Development of the Responsibility-to-Protect

While humanitarian intervention is not a novel concept, the recent promulgation and apparent acceptance of the responsibility to protect doctrine into modern international law mark a significant change in the foundational principles of international law.¹⁸ Humanitarian intervention has gained some support in the past, but prior to the report by the ICISS it was (and to an extent still is) viewed by many as a violation of state sovereignty and the United Nations Charter.

A. The Legal Climate Post-World War II and the Creation of the United Nations

Even before the United Nations Charter went into effect in 1945,¹⁹ and as demonstrated by the Nuremberg Trials, the international community understood intrastate conflicts not to be

¹⁴ See *infra* pp. 168–72.

¹⁵ See *infra* pp. 172–84.

¹⁶ See *infra* pp. 184–200.

¹⁷ See *infra* pp. 200–208.

¹⁸ The United Nations incorporated the responsibility to protect in Resolution 60/1, 2005 World Summit Outcome, adopted by the United Nations General Assembly in 2005. 2005 World Summit Outcome, G.A. Res 60/1, ¶¶ 138–39, U.N. Doc. A/RES/60/1 (Oct. 24, 2005).

¹⁹ *History of the United Nations*, UNITED NATIONS, <https://www.un.org/en/aboutun/history/> (last visited Sept. 14, 2014).

matters of international concern.²⁰ Though the human rights violations and genocide committed by the Nazi party began before the commencement of World War II, the charges brought against the Nazis in the Nuremberg Trials were limited to actions that took place during the war, once the matter had become an international conflict.²¹ When the U.N. Charter became effective in 1945, it gave sound legal effect to the understanding that intrastate conflicts were not of international concern: Article 2 of the U.N. Charter provides that “[a]ll members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations. . . .”²² “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 or shall require the Members to submit such matters to settlement under the present Charter”²³

The only exception to the prohibition on the use of force against another state is Article 51, which addresses the right to self-defense against an armed attack.²⁴

B. Creation and Evolution of the North Atlantic Treaty Organization

The North Atlantic Treaty Organization (NATO) was founded in 1949 as an alliance established primarily for military purposes.²⁵ In the 1950s, NATO was considered a defensive organization; upon its founding, the treaty provided that should one of the member states suffer an attack, all member states would respond.²⁶ NATO’s strategic doctrine of the 1950s was “massive retaliation,” a doctrine that reflected the fear and tension of the period.²⁷ In

²⁰ See Leila Nadya Sadat, *Redefining Universal Jurisdiction*, 35 NEW ENG. L. REV. 241, 245 (2001).

²¹ *Id.*

²² U.N. Charter art. 2, para. 4.

²³ *Id.* at art. 2, para. 7.

²⁴ *Id.* at art. 51.

²⁵ *A Short History of NATO*, NORTH ATLANTIC TREATY ORGANIZATION, <http://www.nato.int/history/nato-history.html> (last visited Sept. 14, 2014).

²⁶ *Id.*

²⁷ See *id.*

short, the massive retaliation doctrine provided that should the Soviet Union attack, NATO would retaliate with nuclear weapons.²⁸ As tensions began to cool in the 1960s, NATO began to evolve, and by 1967 NATO was moving toward a model that encouraged dialogue between international adversaries.²⁹ By the time the Cold War ended in the early 1990s, new international conflicts had arisen.³⁰ NATO's participation in several pre-responsibility-to-protect humanitarian interventions in the 1990s, beginning with its aid to the U.N. in ending the Yugoslav conflict, solidified its role in the international community as a "tool for [] stabilization."³¹

C. The Influence of Intrastate Conflicts and International Action in the 1990s

In introducing the doctrine, the ICISS points specifically to four major international incidents in the 1990s that set the stage for the establishment of the responsibility to protect – Somalia, Rwanda, Bosnia, and Kosovo.³² In early 1992, the U.N. deemed the civil war in Somalia to be a threat to international security, and the U.N. Security Council authorized humanitarian action.³³ Over fourteen months the U.N. continued its efforts by signing multiple resolutions calling for combatants to cease fire and sending troops to oversee conflict resolution.³⁴ The failure of the U.N. to successfully resolve the conflict in Somalia is generally attributed to disorganization and obscure policy directives.³⁵

As the U.N. withdrew from Somalia, civil war broke out in newly-formed Bosnia-Herzegovina (Bosnia).³⁶ The U.N. was initially involved in the peace-keeping efforts in Bosnia,

²⁸ *Id.*

²⁹ *See id.*

³⁰ *See A Short History of NATO*, *supra* note 25.

³¹ *Id.*

³² ICISS Report, *supra* note 1, §§ 1.1–4.

³³ *See, e.g.*, S.C. Res. 794, ¶¶ 1–12, U.N. Doc. S/RES/794 (Dec. 3, 1992).

³⁴ *See id.*

³⁵ *See id.*; Ved P. Nanda, Thomas F. Muther, Jr., & Amy E. Eckert, *Tragedies in Somalia, Yugoslavia, Haiti, Rwanda, and Liberia – Revisiting the Validity of Humanitarian Intervention Under International Law – Part II*, 26 DENV. INT'L J. L. & POL'Y 827, 837 (1998) [hereinafter *Revisiting the Validity of Humanitarian Intervention*].

³⁶ *Revisiting the Validity of Humanitarian Intervention*, *supra* note 35, at 839–40.

authorizing no-fly zones and imposing sanctions in the region.³⁷ However, due to a lack of resources and political will on the part of the U.N., the reconciliation efforts in Bosnia were primarily led by the United States and NATO.³⁸

In 1994, human rights violations in Rwanda made waves on an international scale.³⁹ Despite the fact that the U.N. Security Council knew that genocide was looming in Rwanda and had the ability to prevent or mitigate the genocide, the U.N. refused to sanction military intervention that could have halted the killings.⁴⁰ More than 800,000 people were killed,⁴¹ and 1.5 million people were displaced.⁴²

In the mid-1990s, as NATO finished its mission in Bosnia, tensions rose in Kosovo.⁴³ In 1996 the terrorist group Kosovo Liberation Army began attacks on Serb authorities that continued well into 1997.⁴⁴ Throughout 1998, the United States threatened military action against Serbia, and in March of 1998, the U.N. approved Resolution 1160, imposing sanctions on Yugoslavia.⁴⁵ As the attacks continued through the summer of 1998, thousands of Albanian civilians were displaced and took refuge in other states.⁴⁶ In September 1998, the U.N. passed Resolution 1199 calling for a cease-fire, and when the violence continued, NATO started preparing for airstrikes in Kosovo.⁴⁷ After a final peace talk failed, NATO began airstrikes in Kosovo in March 1999.⁴⁸ After seventy-eight days, the President of Serbia and the Kosovo

³⁷ *Id.* at 840.

³⁸ *Id.* at 841.

³⁹ See ICISS Report, *supra* note 1, § 1.1.

⁴⁰ *Id.*; *Revisiting the Validity of Humanitarian Intervention*, *supra* note 35, at 851.

⁴¹ *Genocide in Rwanda*, UNITED HUMAN RIGHTS COUNCIL, http://www.unitedhumanrights.org/genocide/genocide_in_rwanda.htm (last visited Sept. 14, 2014).

⁴² *Revisiting the Validity of Humanitarian Intervention*, *supra* note 35, at 848.

⁴³ See *A Kosovo Chronology*, PBS, <http://www.pbs.org/wgbh/pages/frontline/shows/kosovo/etc/cron.html> (last visited Sept. 14, 2014).

⁴⁴ *Id.*

⁴⁵ *Id.* See S.C. Res. 1160, ¶¶ 8–9, U.N. Doc. S/RES/1160 (Mar. 31, 1998).

⁴⁶ *Id.*; *Timeline: Kosovo*, BBC NEWS (Jan. 24, 2012, 15:32 GMT), http://news.bbc.co.uk/2/hi/europe/country_profiles/3550401.stm.

⁴⁷ S.C. Res. 1199, ¶¶ 3–6, U.N. Doc. S/RES/1199 (Sept. 23, 1998). See *A Kosovo Chronology*, *supra* note 43.

⁴⁸ *A Kosovo Chronology*, *supra* note 43; *Timeline: Kosovo*, *supra* note 46.

Liberation Army agreed to withdraw and disarm.⁴⁹

D. The Establishment of the International Commission on Intervention and State Sovereignty

The ICISS places strong emphasis on the influence of the 1999 intervention in Kosovo – “NATO’s intervention in Kosovo in 1999 brought the controversy [over humanitarian intervention] to its most intense head”⁵⁰ – and the timeline supports that.⁵¹ In September 1999, the same month that the intervention in Kosovo came to an end, Kofi Annan, the Secretary General of the United Nations General Assembly at the time, implored the U.N. to provide a means by which the international community could act to protect human rights and security.⁵² When he repeated his plea a year later, his requests were heeded, and Canada established the International Commission on Intervention and State Sovereignty in September 2000.⁵³

The purpose of the ICISS was “generally to build a broader understanding of the problem of reconciling intervention for human protection purposes and sovereignty; more specifically, it was to try to develop a global political consensus on how to move from polemics – and often paralysis – towards action within the international system, particularly through the [U.N.]”⁵⁴

The ICISS was comprised of individuals with cultural and geographic diversity in order to fairly represent the wide range of opinion and practice worldwide, and was tasked with considering legal, moral, operational, and political issues.⁵⁵ The ICISS published its report in December 2001, presenting its findings, and advocating for an approach to humanitarian intervention that has now become commonly known as the responsibility to protect.⁵⁶

III. Modern Conception of the Doctrine

The responsibility to protect broadly provides that when a state

⁴⁹ *Timeline: Kosovo*, *supra* note 46.

⁵⁰ ICISS Report, *supra* note 1, at VII.

⁵¹ *See id.* at 2; Herron, *supra* note 6, at 371.

⁵² ICISS Report, *supra* note 1, § 1.6.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at VII, §§ 1.7–8.

⁵⁶ *Id.* at VIII.

cannot or will not take responsibility for the safety and protection of its citizens, the international community bears a responsibility to act to prevent or curtail serious human suffering.⁵⁷ The action warranted depends on the nature and character of the suffering,⁵⁸ but prevention is the cornerstone of the responsibility to protect. Peaceful means of protection should always be exhausted before forceful or military interventions are considered; avoiding intrusion is a top priority of the responsibility to protect.⁵⁹

A. Legal Foundations for the Responsibility to Protect

Despite there being no formal law on the matter, the ICISS found that the legal foundation for the responsibility to protect is derived from several sources.⁶⁰ First, the concept of state sovereignty includes a state's responsibility not only to respect other states' sovereignty, but also to respect the humanity of its own citizens.⁶¹ Second, Article 24 of the U.N. Charter charges the U.N. Security Council with the "responsibility for maintenance of international peace and security."⁶² Third, several bodies of international law govern human rights,⁶³ including the U.N. Charter,⁶⁴ the Universal Declaration of Human Rights,⁶⁵ and the International Covenant on Civil and Political Rights.⁶⁶ Finally, the ICISS claims that at the time it wrote its report, the practices of both states and the Security Council showed an emerging pattern that, while not quite an established doctrine, indicated a developing principle that is now known as the responsibility to protect.⁶⁷ The responsibility to protect has since been incorporated in Resolution 60/1, 2005 World Summit Outcome, adopted by the

⁵⁷ ICISS Report, *supra* note 1, at XI.

⁵⁸ *See id.* at XII.

⁵⁹ *Id.* at XI.

⁶⁰ *Id.* at XI, §§ 2.21–.23.

⁶¹ *Id.* § 1.15.

⁶² U.N. Charter art. 24, para. 2; *See* ICISS Report, *supra* note 1, at XI.

⁶³ ICISS Report, *supra* note 1, §§ 1.16–.17.

⁶⁴ *See* U.N. Charter, Preamble, art. 1, para. 3.

⁶⁵ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/Res/3/217 A (Dec. 10, 1948).

⁶⁶ Int'l Covenant on Civil and Political Rights Dec. 16, 1966, 999 U.N.T.S. 171 (1967).

⁶⁷ ICISS Report, *supra* note 1, §§ 2.24–.27.

U.N. General Assembly in 2005.⁶⁸ While not binding, the resolution provides evidence that the responsibility to protect is an emerging legal norm that may be gaining acceptance as customary international law.⁶⁹ The Resolution reflects the responsibilities and principles provided by the ICISS in its 2001 report, and adds “[w]e 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 [United Nations] Charter and international law.”⁷⁰

This reflects the notion that the responsibility to protect is still a developing area of law.⁷¹

B. Perspectives of Responsibility to Protect

The ICISS found differing perspectives of the doctrine, falling into roughly three categories: one concerned with human rights, one concerned with the misuse of power, and one concerned with operations.⁷² Those who take the human rights perspective generally view intervention as an “internationalization of the human conscience,”⁷³ see human rights as more important than principles of sovereignty, and feel that the international community should intervene more often.⁷⁴ Those concerned with the misuse of power see intervention as “an alarming breach of an international state order”⁷⁵ and as a manipulation of human rights principles to allow major powers to disrespect sovereignty principles.⁷⁶ Finally, those who subscribe to the operational approach see matters of legality and effectiveness as the most important.⁷⁷

⁶⁸ 2005 World Summit Outcome, G.A. Res. 60/1, *supra* note 18, at ¶¶ 138–39; Stahn, *supra* note 2, at 100.

⁶⁹ See Stahn, *supra* note 2, at 100–01.

⁷⁰ 2005 World Summit Outcome, GA Res. 60/1, *supra* note 18, at ¶ 139.

⁷¹ See Stahn, *supra* note 2, at 108–09.

⁷² See ICISS Report, *supra* note 1, §§ 1.1–8.

⁷³ *Id.* at VII.

⁷⁴ *Id.* §§ 1.1–8.

⁷⁵ *Id.* at VII.

⁷⁶ *Id.* § 1.5.

⁷⁷ ICISS Report, *supra* note 1, at VII, § 1.5.

1. Three Elements of the Responsibility to Protect

Three distinct responsibilities make up the responsibility to protect: the responsibility to prevent, the responsibility to react, and the responsibility to rebuild.⁷⁸ The ICISS notes that these responsibilities lie primarily with the state itself.⁷⁹ The responsibility to prevent reaffirms that the responsibility to protect is primarily aimed at peacekeeping and should work to solve the causes of conflict; the responsibility to react outlines the kind of action that can be taken under the responsibility to protect and provides guidelines for military action; and the responsibility to rebuild describes the steps that should be taken by the international community to help the target state recover and ensure lasting peace after a responsibility-to-protect mission.⁸⁰

a. The Responsibility to Prevent

The first priority of the responsibility to protect is always prevention.⁸¹ Taking preventative action is not only required before the international community may take further steps, such as intervention, but the preventative effort adds credibility to actions taken beyond preventative measures.⁸² However, the point at which the international community should begin taking preventative measures is not always clear; the responsibility to prevent human rights violations lies with the state itself, and the responsibility of the international community to act is not triggered until it is clear that the state is “unwilling or unable” to act on its own to avert “serious harm.”⁸³ But stalling international action until it is clear that a state is unwilling or unable to act may allow the time for prevention to pass, especially in cases in which the state’s own government is the entity responsible for committing human rights violations. The tension caused by this ambiguity is best addressed by one of the three conditions the ICISS found to be essential for successful prevention efforts—“early warning,” or knowledge of the conflict situation.⁸⁴ Several non-governmental

⁷⁸ *Id.* at XI.

⁷⁹ *Id.* § 3.2.

⁸⁰ *Id.* at XI.

⁸¹ *Id.*

⁸² ICISS Report, *supra* note 1, § 3.3.

⁸³ *Id.* at XI.

⁸⁴ *Id.* § 3.6.

organizations (NGOs) have been created specifically to provide early warning of conflict situations warranting prevention efforts, and Article 99 of the U.N. Charter requires the Secretary-General to "bring to the attention of the Security Council any matter that in his opinion may threaten the maintenance of international peace and security."⁸⁵

The ICISS is candid about the weaknesses in early warning methods.⁸⁶ First, early warning efforts are often unstructured, misguided, and incomplete.⁸⁷ Second, a variety of organizations and entities participate in early warning efforts, but there is little or no coordination among the groups, and the quality of information is inconsistent.⁸⁸ Finally, even when the early warning information about a conflict situation is available, the information must be analyzed and put to use in planning prevention efforts.⁸⁹ This "analysis and translation" phase is, according to the ICISS, the crux of the problem.⁹⁰ One suggestion for improving the early warning system is involvement of state governments, but the ICISS expresses concern over whether states would be willing to share information and whether that information could be trusted.⁹¹ Further, as new technologies continue to develop, it is impossible to predict the ease with which any entity, be it an NGO, a state government, or a party of the U.N., is able to determine the status of a conflict situation.

The second of the three conditions the ICISS found to be essential for successful prevention efforts is the "preventive toolbox," or an "understanding of the policy measures available that are capable of making a difference."⁹² The ICISS divides prevention efforts into two categories: those directed at preventing root causes of conflict and those directed at preventing direct

⁸⁵ *Id.* § 3.14; U.N. Charter art. 99.

⁸⁶ ICISS Report, *supra* note 1, § 3.12.

⁸⁷ *See id.* § 3.13. ("Preventive action is founded upon and proceeds from accurate prediction, but too often preventive analysis, to the extent that it happens at all, fails to take key factors into account, misses key warning signs, (and hence misses opportunities for early action), or misreads the problem (thereby resulting in application of the wrong tools).")

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ ICISS Report, *supra* note 1, §§ 3.13–24.

⁹² *Id.* § 3.9.

causes of conflict.⁹³ Root causes are those underlying the conflict, such as poverty, while direct causes are those that spark the conflict.⁹⁴ In both categories, the measures available fall into four spheres: political and diplomatic, economic, legal, and military.⁹⁵ Preventative measures aimed at resolving the root causes of conflict work towards promoting and instilling peace in the abstract.⁹⁶ Such measures include encouraging reform of legal and military institutions, promoting equitable distribution of resources, and support for local action promoting human rights and conflict resolution.⁹⁷ Preventative measures designed to address direct causes of conflict work toward more concrete goals than do those aimed at resolving root causes.⁹⁸ Those measures include political or legal sanctions, economic inducements, and adjudication through the International Criminal Court or some other international tribunal.⁹⁹

Even when serious conflict is apparent, some entities with the capabilities and resources to take preventative measures delay action in the hopes that the conflict will resolve itself.¹⁰⁰ This issue is confronted by the third of the three essential conditions for successful prevention efforts—"political will."¹⁰¹ A state or entity's lack of political will to take action can stem from a number of factors, including "size and power, geography, and the nature of the political institutions and culture[.]"¹⁰² The more powerful the state or entity, the less inclined it is to cooperate in multilateral action.¹⁰³ The farther away the conflict, the less likely a state or entity will be affected by the conflict; thus, more distance leads to less cooperation.¹⁰⁴ Various cultures will respond differently to the quandaries of a suffering population based on

⁹³ *Id.*

⁹⁴ *Id.* § 3.10.

⁹⁵ *Id.* §§ 3.11–12.

⁹⁶ See ICISS Report, *supra* note 1, §§ 3.18–24.

⁹⁷ *Id.* §§ 3.23–24.

⁹⁸ See *id.* § 3.25.

⁹⁹ *Id.* §§ 3.26–28.

¹⁰⁰ *Id.* § 3.10.

¹⁰¹ ICISS Report, *supra* note 1, § 3.9.

¹⁰² *Id.* § 8.9.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

similarities the two cultures share, such as language or religion.¹⁰⁵

Hesitancy to take preventative action has proven to be very costly.¹⁰⁶ In the 1990s, the international community took part in seven major interventions,¹⁰⁷ costing an estimated \$200 billion.¹⁰⁸ Stalling in those cases nearly tripled the cost of the interventions; had the international community employed a "more effective preventative approach," it could have saved \$130 billion of what was spent on conflict management.¹⁰⁹

The ICISS discusses four interests to which the international community may appeal in order to influence a state to support a responsibility-to-protect effort: moral interest, financial interest, national interest, and partisan interest.¹¹⁰ The moral interest in acting to end human suffering is relatively straight forward; even if the administration of a particular state is disinterested in the human suffering within another state, the administration's constituents may be sufficiently interested such that it is in the administration's best interest to act.¹¹¹ However, this tactic makes several assumptions that may not apply to the majority of states worldwide.¹¹² The ICISS asserts that in appealing to a state's

¹⁰⁵ *Id.*

¹⁰⁶ See ICISS Report, *supra* note 1, § 3.7 ("The result, according to the Carnegie Commission on Preventing Deadly Conflict, was that the international community spent approximately \$200 billion on conflict management in seven major interventions in the 1990s (Bosnia and Herzegovina, Somalia, Rwanda, Haiti, the Persian Gulf, Cambodia and El Salvador), but could have saved \$130 billion through a more effective preventive approach.")

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* §§ 8.13–17.

¹¹¹ ICISS Report, *supra* note 1, § 8.9.

¹¹² "Political leaders often underestimate the sheer sense of decency and compassion that prevails in their *electorates*, at least when people's attention is engaged (just as they also underestimate the public willingness, when well informed, to accept the risk of casualties in a well designed military intervention aimed at alleviating that suffering). Getting a moral motive to bite means, however, being able to convey a sense of urgency and reality about the threat to human life in a particular situation." *Id.* § 8.13 (emphases added). First, for an appeal to the morality of an administration's constituents to be successful, the administration must be one that relies on the votes, or some other voluntary support, of the citizens of its state. If a political leader is not accountable to his or her subjects, it is unlikely that public outcry will have any meaningful effect upon that leader's actions. Even where a leader would be moved to action by public outcry, the constituents must have access to the information that would trigger a moral

financial interests in influencing the state to act, it would be prudent to point out that “earlier action is always cheaper than later action.”¹¹³ But again, this appeal rests on assumptions that may be fatally flawed—that the state will eventually act, and that the state does not have existing financial incentives not to act.¹¹⁴

To act too late is to allow the time for preventative measures to pass; to act too soon is to violate the sovereignty of another state, and without adequate justification under the responsibility to protect. This is the tension inherent in the responsibility to prevent.

b. The Responsibility to React

When preventative measures fail to adequately address human suffering within a state unwilling or unable to act, the responsibility to protect provides that the international community bears a responsibility to take action.¹¹⁵ Actions taken in each case will vary depending on the nature of the human suffering, but generally fall within categories similar to those in the realm of preventative measures—political, economic, judicial, and military.¹¹⁶ When action is taken under the responsibility to protect, less intrusive and coercive actions are favored, and should be exhausted before more intrusive and coercive actions are taken.¹¹⁷ One such non-intrusive action is the imposition of sanctions.¹¹⁸ However, some blanket sanctions can exacerbate human suffering.¹¹⁹ In deciding what action to take, the international community should consider whether the action would

response. This may be influenced by the administration itself, as well as the income level and education of the citizens. Still, it must be actually and apparently feasible for the state to act, otherwise the potential for backlash in response to inaction, which is presumably what motivates the administration to action, is significantly reduced.

¹¹³ ICISS Report, *supra* note 1, § 8.14.

¹¹⁴ For example, Russia and China both have financial interests in preventing an intervention in Syria. *See infra* Part IV, section c. Not only would a financial argument *not* convince either state to take action in Syria, it may actually reinforce the states’ opposition to action in Syria.

¹¹⁵ ICISS Report, *supra* note 1, §§ 4.1–2.

¹¹⁶ *Id.* § 4.5. *See id.* § 3.25.

¹¹⁷ *Id.* at XI.

¹¹⁸ *See id.* §§ 4.3–6.

¹¹⁹ *Id.* § 4.5 (“Blanket economic sanctions in particular have been increasingly discredited in recent years as many have noted that the hardships exacted upon the civilian population by such sanctions tend to be greatly disproportionate to the likely impact of the sanctions on the behaviour of the principle players.”).

have a greater effect on civilian populations or those causing the human suffering.¹²⁰ Action should be targeted against those causing the suffering, and should cause as little harm to civilian populations as possible.¹²¹ Responsibility-to-protect action should do more to help than to harm the population; if the consequences of action are likely to be worse than the consequences of inaction, international action is not justified by the responsibility to protect.¹²²

While the principles guiding the execution of responsibility-to-protect action seem clear, there is little guidance on when preventative measures are deemed to have failed, and give way to the responsibility to react.¹²³ The ICISS emphasized that military action, discussed below, is a last resort; the non-intervention principle is a default rule, which gives way to responsibility-to-protect intervention only in the direst of circumstances.¹²⁴ But guidance on when to apply the less intrusive actions, such as sanctions, is limited to "[w]hen preventive measures fail to resolve or contain the situation"¹²⁵ While it would be impossible to craft a formula appropriate for every conflict situation that arises, the lack of direction for responsibility-to-protect action, together with the uncertainty about when preventative measures should begin, leaves the international community on uneven footing as it tries to determine the extent of its role in combating human rights violations.¹²⁶

c. The Responsibility to Rebuild

In the extreme cases when the international community intervenes militarily, the responsibility to protect does not end when the intervention action is complete. Further action must be

¹²⁰ ICISS Report, *supra* note 1, § 4.6.

¹²¹ *Id.*

¹²² *Id.* at XI, § 4.6.

¹²³ See generally *id.* § 4.1 ("When preventative measures fail to resolve or contain the situation and when a state is unable or unwilling to redress the situation, then interventionary measures by other members of the broader community of states may be required.").

¹²⁴ See generally *id.* §§ 4.10–43 ("In extreme and exceptional cases, the responsibility to react may involve the need to resort to military action.").

¹²⁵ ICISS Report, *supra* note 1, § 4.6.

¹²⁶ See *id.*

taken to ensure that peace is lasting and sustainable.¹²⁷ Intervention often focuses on the direct causes of conflict, while efforts to rebuild should be focused on remedying the root causes of the conflict.¹²⁸ The central aims of any rebuilding effort are peacebuilding, security, justice and reconciliation, and development.¹²⁹ Peacebuilding efforts include grass-roots efforts such as “rebuilding housing, [and] planting and harvesting,”¹³⁰ as well as humanitarian efforts aimed at reconciling former adversaries, promoting unity and inclusiveness, and reintegrating “displaced persons,” like refugees and ex-combatants.¹³¹ Security should be provided to all members of a population, and specific efforts should be made to prevent enemy populations from carrying out revenge killings.¹³² Security efforts should also be directed at disbanding and rebuilding existing local security forces.¹³³ Justice and reconciliation efforts are directed at implementing a judicial system to adjudicate further human rights violations and safeguard the legal rights of the displaced persons as they return.¹³⁴ Finally, development efforts, including promoting economic growth and lifting any responsibility-to-protect economic sanctions or inducements, are aimed at ensuring the state will recover successfully.¹³⁵

C. Intervention Under The Responsibility to Protect

It is important to note that the responsibility to protect focuses on human rights violations occurring in other states, and is entirely distinct from a state’s actions in response to being attacked.¹³⁶ In the latter case, several bodies of existing international law govern a state’s action.¹³⁷ The ICISS report was “largely completed” prior

¹²⁷ See *id.* §§ 5.1–.6.

¹²⁸ See *id.* § 5.3 (“The objective of such a strategy must be to help ensure that the conditions that prompted the military intervention do not repeat themselves or simply resurface.”).

¹²⁹ *Id.* §§ 5.1–.7.

¹³⁰ ICISS Report, *supra* note 1, § 5.4

¹³¹ *Id.* §§ 5.1–.6.

¹³² *Id.* § 5.6.

¹³³ *Id.*

¹³⁴ *Id.* §§ 5.13–.18.

¹³⁵ ICISS Report, *supra* note 1, §§ 5.19–.21.

¹³⁶ *Id.* at VII.

¹³⁷ The ICISS Report discusses the power of self-defense granted by Article 51 of

to the September 11th attacks in 2001, and the ICISS notes that it has "no difficulty in principle with focused military action being taken against international terrorists and those who harbour them."¹³⁸ However, the ICISS explicitly qualifies that statement, adding that any such military action should comply with precautionary principles that guide all military intervention.¹³⁹

International action taken under the responsibility to protect does not always include military intervention.¹⁴⁰ The non-intervention principle is a default rule, which gives way to military action under responsibility to protect only in the direst of circumstances.¹⁴¹ The ICISS seeks to "shift the terms of debate" from a "right to intervene" to a "responsibility to protect," in an effort to emphasize the importance of prevention over invasion.¹⁴² In addition to emphasizing prevention, this language is aimed at shifting focus from the rights of intervening countries to the needs of the victimized population.¹⁴³ The needs of the victimized population must be great to justify military action: under the "just cause threshold," military intervention is warranted only when a population is suffering, or is imminently likely to suffer, a real or perceived "large-scale loss of life" or "large scale 'ethnic cleansing,'"¹⁴⁴ The suffering need not be caused by a deliberate act of the state to justify intervention.¹⁴⁵

When military intervention is warranted, four precautionary principles guide its execution.¹⁴⁶ First, the military intervention must be primarily directed at ending human suffering.¹⁴⁷ Second,

the U.N. Charter and Resolutions 1368 and 1373, in which "the Security Council left no doubt as to the scope of measures that states could and should take in response." *Id.* at VIII, §§ 4.26–27.

¹³⁸ *Id.* at IX.

¹³⁹ *Id.*

¹⁴⁰ See ICISS Report, *supra* note 1, at XII.

¹⁴¹ See generally ICISS Report, *supra* note 1, §§ 4.10–43 (Military intervention should only be used in extreme cases. Criteria to consider include the "right authority, just cause, right intention, last resort, proportional means and reasonably prospects." *Id.* § 4.16).

¹⁴² See *id.* §§ 2.28–33.

¹⁴³ See *id.*

¹⁴⁴ *Id.* at XII.

¹⁴⁵ *Id.*

¹⁴⁶ ICISS Report, *supra* note 1, at XII.

¹⁴⁷ *Id.*

military intervention must only be exercised as a last resort, after all non-military means of protection have been exhausted.¹⁴⁸ Third, the military intervention must be as narrow as possible in scale, duration, and intensity to achieve the goal of the intervention.¹⁴⁹ Finally, the military intervention must be reasonably likely to succeed and not likely to cause more harm than the default of inaction would cause.¹⁵⁰

To satisfy the final two requirements, the military intervention must be authorized by proper authority,¹⁵¹ and it must follow proper operation principles.¹⁵² The ICISS Report states that the U.N. Security Council is the best and most appropriate body to authorize military intervention.¹⁵³ The U.N. Security Council is still accepted as the designated body for granting authorization, but NATO has played a central role in many of the interventions since the 1990s and is equally involved in operational principles.¹⁵⁴ Proper operational principles described by the ICISS include: precision, clarity, unambiguity, proportionality, clear communication, unity, coordination, and adherence to international law.¹⁵⁵

While the 2001 stance of the ICISS expressly designated military intervention as a last resort,¹⁵⁶ NATO adopted a new Strategic Concept for crisis management in 2010 that recommended member states invest in and help develop “the capabilities necessary to defend against ballistic missile attacks and cyber attacks.”¹⁵⁷ In a post-9/11 world,¹⁵⁸ in which rapid

¹⁴⁸ See *id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ ICISS Report, *supra* note 1, at XII

¹⁵² *Id.* at XIII.

¹⁵³ See *id.* at XII. The report describes the procedures both to be followed by one wishing to obtain authorization, and by the Council to grant authorization. *Id.* at XII-XIII.

¹⁵⁴ See *A Short History of NATO*, *supra* note 25.

¹⁵⁵ ICISS Report, *supra* note 1, at XIII.

¹⁵⁶ *Id.* at XII.

¹⁵⁷ *NATO Adopts New Strategic Concept*, NORTH ATLANTIC TREATY ORGANIZATION (Nov. 19, 2010), available at http://www.nato.int/cps/en/natolive/news_68172.htm.

¹⁵⁸ See generally *10 Ways The World Has Changed Since 9/11*, THE WASHINGTON POST (Sept. 10, 2013), http://www.washingtonpost.com/national/10-seismic-changes-since-911/2013/09/10/4499cf18-19b4-11e3-82ef-a059e54c49d0_gallery.html#photo=1

technological advancement creates an environment of uncertainty—and even fear—a recommendation to be vigilant in developing and maintaining defense tactics is neither surprising nor necessarily inconsistent with the last-resort approach to military action. As technology advances, military capabilities will far surpass what was imaginable even in 2000 when the ICISS was writing their report.¹⁵⁹ Preparation is key to the success of any international action, especially for a prevention-based approach.¹⁶⁰ However, the international community should remain wary of an approach that too eagerly anticipates an attack so as not to resort to military action that surpasses what is allowed by the responsibility to protect.

IV. Modern Application of the Doctrine

A serious concern about military intervention under the responsibility to protect is the inconsistency of application.¹⁶¹ One perspective of intervention is that a state should only intervene when its vital national interests are at stake.¹⁶² A conflicting view is that action under the responsibility to protect should be “unsullied by [a state’s] interests.”¹⁶³ Max Boot, Senior Fellow at

(recounting the ways the United States has changed since Sept. 11, 2001, particularly a technological and intelligence boom and participation in the War on Terror prominently in the Middle East).

¹⁵⁹ For example, the use of armed drones in military action is a relatively new practice and has led to much controversy and discussion. See John Sifton, *A Brief History of Drones*, THE NATION (Feb. 7, 2012), <http://www.thenation.com/article/166124/brief-history-drones#>. Though drone technology existed when the ICISS report was written, drones were unarmed and used for non-aggressive purposes, like surveillance, at the time. *Id.* The first use of a drone by the CIA in a targeted killing took place in early 2002. *Id.* Drone technology has continued to evolve since 2002, and it will continue to evolve in the future. See Anna Mulrine, *Not Your Average Drone: New Technology the US Military is Developing*, THE CHRISTIAN SCIENCE MONITOR (Dec. 6, 2013), <http://www.csmonitor.com/World/Security-Watch/2013/1206/Not-your-average-drone-new-technology-the-US-military-is-developing-video>.

¹⁶⁰ See ICISS Report, *supra* note 1, § 3.9.

¹⁶¹ ICISS Report, *supra* note 1, §§ 1.10–23.

¹⁶² See *Great Decisions in Foreign Policy: Intervention Calculation* (Foreign Policy Association 2013) (streamed using Netflix) (perspective of Max Boot, Council on Foreign Relations) transcript available at <http://www.greatdecisionsonpbs.com/watch/the-intervention-calculation/max-boot/>.

¹⁶³ See *id.*, (quoting Danielle Pletka, American Enterprise Institute) transcript available at <http://www.greatdecisionsonpbs.com/watch/sacred-cow-defending-american-a-budget/danielle-pletka/>.

the Council on Foreign Relations, suggests that—at least from the standpoint of action taken by the United States—the vitality of an interest is not as important in determining whether to intervene as the plausibility of success.¹⁶⁴ For a “less capable” adversary, the United States is faster to intervene; to take on a powerful adversary like China, Boot believes the threat to interests would need to be “close to Armageddon” to prompt a U.S.-led military intervention.¹⁶⁵

Putting aside the difficulties in defining a “vital” national interest,¹⁶⁶ it is impossible to ignore the relationship between a state’s economic and strategic interests, and the state’s willingness to follow through with a responsibility-to-protect intervention.¹⁶⁷ Former National Security Advisor James Jones sees intervention as having three pillars: security, economics, and governance and rule of law.¹⁶⁸ Even though the Right Intention Principle¹⁶⁹ demands that the primary purpose of responsibility-to-protect intervention be to end human suffering, economic and strategic interests often match, if not overshadow, the humanitarian interests motivating intervention.¹⁷⁰ Indeed, when the economic and strategic interests of powerful states do not align, a state that would suffer economically or strategically if intervention were carried out may take specific steps to impede an intervention, despite dire need for humanitarian aid.¹⁷¹

Economic and strategic interests should not be ignored, and these interests are acknowledged by the ICISS report in its

¹⁶⁴ Max Boot, *supra* note 162.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Great Decisions in Foreign Policy: Intervention Calculation* (Foreign Policy Association 2013) (streamed using Netflix) (perspective of Jonathan Tepperman, Economist) transcript available at <http://www.greatdecisionsonpbs.com/watch/power-to-the-people-the-new-egypt/jonathan-tepperman/>.

¹⁶⁸ *Id.* (quoting General James Jones, Former National Security Advisor) transcript available at <http://www.greatdecisionsonpbs.com/watch/the-intervention-calculation/general-james-jones/>.

¹⁶⁹ ICISS Report, *supra* note 1, at XII.

¹⁷⁰ See generally *Great Decisions in Foreign Policy: Intervention Calculation* (Foreign Policy Association 2013) (streamed using Netflix) (“It becomes the responsibility of the world community to protect citizens from mass atrocities when an individual government cannot fulfill its obligation; nevertheless, other considerations are vital in deciding whether to take affirmative action, including ability and will.”).

¹⁷¹ See *infra* Part IV, section c.

requirement that military intervention be reasonably likely to succeed.¹⁷² But economic and strategic interests should only be considered once humanitarian interests have prompted a military response, rather than themselves prompting a military response.¹⁷³ Further, the consideration of economic and strategic interests should relate to the feasibility of intervention, and not whether the intervening state or states stand to gain from a political change or recovery of resources in the target nation.¹⁷⁴ Military intervention under the responsibility to protect is not justified by a desire to protect a state's economic or strategic interests.¹⁷⁵ Economist Jonathan Tepperman argues that the economic and strategic interests "are almost inextricably intertwined."¹⁷⁶ He points out that economic and strategic interests were present in the interventions in Kosovo, Bosnia, Somalia, Libya, and Iraq.¹⁷⁷ Specifically, Tepperman notes that the disruption caused by Bosnia in the 1990s was dangerous both politically and economically, making the decision to intervene "an easy call for the U.S."¹⁷⁸ If Tepperman is right, this is a disturbing trend that flies in the face of what the responsibility to protect was designed to do: emphasize peaceful prevention over conflict and protect human security.¹⁷⁹

A. Operation Unified Protector: Successful Intervention in Libya

NATO's 2011 intervention in Libya is widely considered to have been a highly successful intervention.¹⁸⁰ The need for

¹⁷² See ICISS Report, *supra* note 1, at XII.

¹⁷³ See *id.*

¹⁷⁴ See *id.*

¹⁷⁵ See *id.*

¹⁷⁶ *Id.*; Jonathan Tepperman, *supra* note 167.

¹⁷⁷ Jonathan Tepperman, *supra* note 167.

¹⁷⁸ *Id.*

¹⁷⁹ See ICISS Report, *supra* note 1, at XII.

¹⁸⁰ David Rieff, *RESPONSIBILITY TO PROTECT, R.I.P.*, N.Y. TIMES (Nov. 7, 2011), http://www.nytimes.com/2011/11/08/opinion/Responsibility-to-Protect-rip.html?pagewanted=all&_r=1 & ("The decision by the U.N. Security Council and NATO to end military operations in Libya on Oct. 31 concludes what appears to be the most successful foreign humanitarian intervention since the quagmires in Afghanistan and Iraq soured much of the Western public on such undertakings."); See generally Ivo H. Daalder & James G. Stavridis, *NATO's Victory in Libya: The Right Way to R.U.N.an Intervention*,

intervention in Libya went largely unquestioned.¹⁸¹ Muammar el-Qaddafi¹⁸² first took power over Libya in 1969 and almost immediately demanded that states with forces in Libya, including the United States and the United Kingdom, withdraw troops or face war.¹⁸³ In the first 26 years that Qaddafi ruled Libya, he attempted to overthrow Sudan's government,¹⁸⁴ participated in Chad's 20-year civil war,¹⁸⁵ was implicated in terrorist bombings in Rome, Vienna, and Berlin,¹⁸⁶ carried out the bombing of Pan Am Flight 103, killing 270 people,¹⁸⁷ gave refuge to those accused (and later convicted) of carrying out the Pan Am bombing,¹⁸⁸ and exiled Palestinians from Libya, leaving some stranded at sea.¹⁸⁹ In February 2011, Libyan citizens began to revolt.¹⁹⁰ When protests broke out in Benghazi, Qaddafi's regime attacked protestors by aircraft.¹⁹¹ Qaddafi promised the Libyan citizens, "either I rule

91 FOREIGN AFF. 2 (2012), available at <http://www.foreignaffairs.com/articles/137073/ivo-h-daalder-and-james-g-stavridis/natos-victory-in-libya> (hailing the operation as a "model intervention" because it rapidly succeeded in protecting civilians and aiding local forces militarily).

¹⁸¹ *A Short History of NATO*, *supra* note 25 ("In the new Strategic Concept agreed in 2010, the Alliance committed itself to dealing with 'all stages of a crisis – before, during and after' – an all-embracing principle that implies a greater role for cooperative security."); see Rieff, *supra* note 180 ("Qaddafi's threat in March to unleash a bloodbath in rebel-held Benghazi was just the kind of extreme instance that [responsibility to protect]'s framers had in mind."); see generally Ivo H. Daalder & James G. Stavridis, *NATO's Success in Libya*, N.Y. TIMES (Oct. 30, 2011), available at <http://www.nytimes.com/2011/10/31/opinion/31iht-eddaalder31.html> (citing 18 countries that participated in the NATO operation in Libya).

¹⁸² Also spelled Gadhafi. See, e.g., Hannah Allam, Warren P. Strobel, & Jonathan S. Landay, *Obama Orders Freeze on assets of Gadhafi, His Family*, MCCLATCHY DC (Feb. 25, 2011), available at <http://www.mcclatchydc.com/2011/02/25/109465/tripoli-under-siege-as-gadhafis.html>.

¹⁸³ Jeffery Delviscio, Rogene Fisher Jacquette, & Lori Moore, *Timeline: Col. Muammar el-Qaddafi*, N.Y. TIMES (Feb. 24, 2011), http://www.nytimes.com/interactive/2011/02/24/world/middleeast/20110224_qaddafi_timeline.html.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ Delviscio, Jacquette, & Moore, *supra* note 183.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Libya Profile*, BBC NEWS AFRICA (Nov. 25, 2013), available at <http://www.bbc.co.uk/news/world-africa-13755445>.

over you, or I kill you, or I destroy you.”¹⁹² As thousands of protestors closed in on the capital, Qaddafi’s forces opened fire on the crowds, and took protestors as hostages.¹⁹³ Days after Qaddafi’s attacks on protestors began, the U.N. imposed sanctions on Qaddafi and ordered an investigation into potential war crimes in Libya.¹⁹⁴ Two days after the U.N. unanimously imposed sanctions, Qaddafi employed special forces, army troops, and fighter jets to combat the protestors.¹⁹⁵ Estimates of the death toll resulting from the Libyan Civil War range from 10,000¹⁹⁶ to 50,000.¹⁹⁷ Three weeks after the Libyan Civil War began, the Arab League requested that the U.N. establish a no-fly zone over Libya.¹⁹⁸ Four days later, on March 17, 2011, the U.N. authorized military intervention in Libya.¹⁹⁹ Libyan citizens in Benghazi rejoiced.²⁰⁰

Military intervention led by the United States began just two days after the U.N. authorized the international community to take “all necessary measures” to protect Libyan citizens.²⁰¹ On March 27, 2011, NATO assumed control of the intervention, called “Operation Unified Protector”, and by October 31, 2011, the Libyan National Transitional Council had taken control of Libya,

¹⁹² Allam, Strobel, & Landay, *supra* note 182.

¹⁹³ Delviscio, Jacquette, & Moore, *supra* note 183; Allam, Strobel, & Landay, *supra* note 182.

¹⁹⁴ Delviscio, Jacquette, & Moore, *supra* note 183.

¹⁹⁵ *Id.*

¹⁹⁶ *Libya Death Toll Could Be As High As 30,000: U.S.*, HUFFINGTON POST (Apr. 27, 2011), http://www.huffingtonpost.com/2011/04/27/libya-death-toll-could-be_n_854582.html.

¹⁹⁷ Kim Sengupta, *Rebel Leaders Put Libya Death Toll at 50,000*, THE INDEPENDENT (Aug. 31, 2011), <http://www.independent.co.uk/news/world/africa/rebel-leaders-put-libya-death-toll-at-50000-2346590.html>.

¹⁹⁸ Delviscio, Jacquette, & Moore, *supra* note 183.

¹⁹⁹ *Id.*; Dan Bilefsky, Mark Landler, David D. Kirkpatrick, Kareem Fahim, Helene Cooper, Elisabeth Bumiller, & Steven Lee, *As U.N. Backs Military Action in Libya, U.S. Role is Unclear*, N.Y. TIMES (Mar. 17, 2011), available at <http://www.nytimes.com/2011/03/18/world/africa/18nations.html?pagewanted=all>.

²⁰⁰ Bilefsky, Landler, Kirkpatrick, Fahim, Cooper, Bumiller, & Lee, *supra* note 199.

²⁰¹ Ivo H. Daalder & James G. Stavridis, *NATO’s Victory in Libya: The Right Way to R.U.N. an Intervention*, 91 FOREIGN AFF., 2 (2012), available at <http://www.foreignaffairs.com/articles/137073/ivo-h-daalder-and-james-g-stavridis/natos-victory-in-libya>.

and Qaddafi was dead.²⁰² It is worth noting that Qaddafi lost several key supporters during the intervention, likely contributing to the success of Operation Unified Protector. Three days after NATO assumed control of Operation Unified Protector, the Libyan Foreign Minister, Moussa Koussa, fled to Britain, a move that was called a “significant blow” to Qaddafi.²⁰³ One week after NATO assumed control of Operation Unified Protector, two of Qaddafi’s sons offered a plan for Libya that would involve stripping Qaddafi of power in favor of a constitutional democracy.²⁰⁴ One of the sons was killed weeks later in a NATO airstrike.²⁰⁵ On October 28, 2011, the NATO Secretary General gave an official final statement on the end of Operation Unified Protector.²⁰⁶

The success of the intervention in Libya is often attributed to NATO’s quick response and its coordination with both NATO member states and local states.²⁰⁷ The intervention involved eighteen countries, and the support of the Transitional National Council and the Arab League.²⁰⁸ Past interventions have seen one state play a majority role, with little help from allied states, but Operation Unified Protector was truly a collective effort.²⁰⁹ While the United States played a key role in Operation Unified Protector

²⁰² *Id.*

²⁰³ Thomas Harding & Robert Winnett, *Libyan Foreign Minister Moussa Koussa defects to Britain*, THE TELEGRAPH (Mar. 31, 2011), <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8417350/Libyan-foreign-minister-Moussa-Koussa-defects-to-Britain.html>; Jeffery Delviscio, Rogene Fisher Jacquette, & Lori Moore, *Timeline: Col. Muammar el-Qaddafi*, N.Y. TIMES (Feb. 24, 2011), http://www.nytimes.com/interactive/2011/02/24/world/middleeast/20110224_qaddafi_timeline.html.

²⁰⁴ Delviscio, Jacquette, & Moore, *supra* note 183.

²⁰⁵ *Id.*

²⁰⁶ *NATO Secretary General statement on end of Libya mission*, NORTH ATLANTIC TREATY ORGANIZATION (Oct. 28, 2011), http://www.nato.int/cps/en/natolive/news_80052.htm.

²⁰⁷ Daalder & Stavridis, *supra* note 181.

²⁰⁸ Daalder & Stavridis, *supra* note 180.

²⁰⁹ *Id.* (“[I]n NATO’s war in Kosovo, The United States was responsible for dropping 90 percent of all precision-guided munitions, with other allies responsible for the remaining 10 percent. In Operation Unified Protector, the percentages were reversed: Allies struck 90 percent of the more than 6,000 targets destroyed in Libya.”); *see also Great Decisions*, *supra* note 170 (The United States provides security worldwide, but in the Libya case the interest of U.S. allies outweighed U.S. interests regarding intervention.).

by providing a majority of the intelligence data and jet fuel,²¹⁰ these efforts were important primarily in enabling other states to take part in the intervention.²¹¹ France and Britain together took about a third of the mission's 6,000 targets, and Italy and Greece provided air bases for the hundreds of aircrafts used in the missions.²¹² Even Arab Partners, the United Arab Emirates, Qatar, Jordan, and Morocco participated in the intervention.²¹³ Those who view Operation Unified Protector as a success expect such coordination to continue in future interventions.²¹⁴

B. Operation Unified Protector: A Violation of Responsibility to Protect Principles?

Notwithstanding the perceived success in Libya, the intentions of the United States' Administration may not have been completely pure, and not everyone believes that the intervention in Libya was within the bounds of the responsibility to protect.²¹⁵

²¹⁰ Daalder & Stavridis, *supra* note 181 ("In Libya, Washington provided 75 percent of the intelligence, surveillance, and reconnaissance data employed to protect Libyan civilians and enforce the arms embargo. It also contributed 75 percent of the refueling planes used throughout the mission -- without which strike aircraft could not have lingered near potential targets in order to respond quickly to hostile forces threatening to attack civilians. And U.S. commanders in Europe had to quickly dispatch over 100 military personnel to the NATO targeting center at the outset of the intervention when it became clear that other member states lacked the knowledge and expertise to provide their aircraft with the correct targeting information.").

²¹¹ Daalder & Stavridis, *supra* note 180.

²¹² *Id.*

²¹³ *Id.*

²⁰⁵ Jonathan Tepperman, *supra* note 167 ("I would expect to see more missions like Libya in the years ahead; that is, if there is a stomach for further interventions, they will be NATO interventions and broad multilateral interventions, rather than lone American ones.").

²¹⁵ E.g., *Great Decisions in Foreign Policy: Intervention Calculation* (Foreign Policy Association 2013) (streamed using Netflix) (quoting Colum Lynch), *transcript available at* <http://www.greatdecisionsonpbs.com/watch/the-intervention-calculation/colum-lynch/> ("The Russians, the Chinese, the South Africans, . . . the Brazilians, and the Indians have been much less supportive of the whole outcome; they have seen it as sort of a violation of the principle of Responsibility to Protect [I]t seems evident to me, and the U.S. government I don't think accepts this, that this went far beyond Responsibility to Protect. I think it's also a bit naïve to think that if you use military force in the name of Responsibility to Protect, that you can somehow limit what a military does to the letter of the law. In the sense that you send the military force in, and militaries are trained to achieve decisive military objectives . . . [a]nd that meant going after military targets, going after hitting family members, chasing down Qaddafi and

Despite the fact that the intervention was purportedly aimed at protecting civilians, protection was given on a political basis: only those civilians supporting the opposition were protected.²¹⁶ This is a violation of the responsibility to protect on several planes. First, the primary purpose of responsibility-to-protect intervention is to save lives.²¹⁷ Crucially, the ICISS has refused to draw lines between cases in which the human rights violations are deliberately carried out by the state and cases in which the violations result from the failure or collapse of a state.²¹⁸ The refusal to distinguish, for responsibility-to-protect intervention purposes, between two situations that appear politically distinct, demonstrates the ICISS's commitment to restrict responsibility-to-protect interventions to humanitarian efforts, to the exclusion of political agendas.²¹⁹ Further, the ICISS explicitly refuses to sanction intervention in the absence of large-scale loss of life, even where "a population, having clearly expressed its desire for a democratic regime, is denied its democratic rights by a military take-over."²²⁰ Again, this demonstrates the ICISS's commitment to carrying out interventions *only* to end human suffering, rather than effectuating regime change. Finally, responsibility-to-protect intervention should strive to protect "all members of a population, regardless of ethnic origin or relation to the previous source of power in the territory."²²¹ Arguably, under these principles and the principle that intervention should be driven by prevention over action, utilizing the least intrusive means possible,

trying to kill him himself. And so these are things that go beyond what most people would've thought Responsibility to Protect entailed.").

²¹⁶ *Id.*; Herron, *supra* note 6, at 368.

²¹⁷ ICISS Report, *supra* note 1, § 4.1.

²¹⁸ *Id.* § 4.22.

²¹⁹ The ICISS report notes that "[w]hile the initial mandate may reflect a preoccupation with human protection, political and security concerns sooner or later predominate." ICISS Report, *supra* note 1, § 7.17. See Alex J. Bellamy, *The Responsibility to Protect and the Problem of Regime Change*, E-INTERNATIONAL RELATIONS (Sept. 27, 2011), http://www.e-ir.info/2011/09/27/the-responsibility-to-protect-and-the-problem-of-regime-change/#_ftn4 ("The principal objections to the 2001 report of the International Commission on Intervention and State Sovereignty which coined the phrase *responsibility to protect* came from states and commentators worried about the widened potential for abuse that may accompany any relaxing of the general prohibition on force contained in Article 2(4) of the Charter.")

²²⁰ ICISS Report, *supra* note 1, § 4.26.

²²¹ *Id.* § 5.8.

Operation Unified Protector should have ended as soon as Qaddafi's sons offered to replace Qaddafi with a constitutional democracy for Libya.²²² NATO's incomplete and politically driven protection for civilians in Libya not only contradicted the explicit goals of responsibility-to-protect intervention, but it looked shockingly similar to an atrocity that responsibility-to-protect rebuilding efforts should work to prevent – “reverse ethnic cleansing.”²²³

Not only was the political favoritism evident in the Libyan intervention a violation of responsibility-to-protect principles, it made waves in the international community.²²⁴ Russia and China have perceived the Libyan intervention as a “trick” – the discussion leading up to the intervention focused on humanitarian issues, as demanded by the responsibility to protect, but the intervention itself seemed to focus on regime change.²²⁵ Besides Russia and China, numerous states, including India, Brazil, and South Africa, which supported intervention, have come to view the Libyan intervention as a violation of the responsibility to protect and an effort to overthrow a regime unfavorable to western interests under the guise of humanitarian intervention.²²⁶ Both American and European companies stood to benefit from a “more pro-western” Libyan administration.²²⁷ Libya's oil reserves are the largest known in Africa,²²⁸ and about 40% of the United States' imported oil in 2011 came from the Organization of the Petroleum Exporting Countries,²²⁹ of which Libya is a member.²³⁰ David

²²² David D. Kirkpatrick, *2 Qaddafi Sons Are Said to Offer Plan to Push Father Out*, N.Y. TIMES (Apr. 3, 2011), available at <http://www.nytimes.com/2011/04/04/world/africa/04libya.html?&pagewanted=all>.

²²³ See ICISS Report, *supra* note 1, § 5.8.

²²⁴ Colum Lynch, *supra* note 215; *Great Decisions in Foreign Policy: Intervention Calculation* (Foreign Policy Association 2013) (streamed using Netflix) (perspective of Chuck Hagel), transcript available at <http://www.greatdecisionsonpbs.com/watch/sacred-cow-defending-america-on-a-budget/chuck-hagel/>.

²²⁵ Chuck Hagel, *supra* note 224 (“[B]oth Russia and China have used [Operation Unified Protector] not to go along with tougher U.N. sanction on Syria. ‘You clever fellows tricked us on the Libya thing; you didn’t talk about regime change, you talked about humanitarian issues.’”).

²²⁶ Colum Lynch, *supra* note 215.

²²⁷ *Great Decisions*, *supra* note 170.

²²⁸ *Libya*, U.S. ENERGY INFORMATION ADMINISTRATION (Oct. 10, 2013), available at <http://www.eia.gov/countries/cab.cfm?fips=ly>.

²²⁹ Neelesh Nerurkar, *U.S. Oil Imports and Exports*, CONGRESSIONAL RESEARCH

Ignatius, editor and columnist at the Washington Post, pointed out that while the NATO intervention in Libya was a “limited success,” the real interest in Libya, for the United States, is to keep the oil flowing at low prices.²³¹ The international community is not blind to the economic and strategic interests of the United States and other Western states, and responds accordingly. For some states, mistrust of Western motivations behind intervention has sparked reluctance to intervene in Syria.²³² However, other states have their own improper motivations for inaction.

*C. Inconsistent Application of The Responsibility to Protect:
Making Sense of the Inaction in Syria*

What distinguishes Syria from Libya in terms of the responsibility to protect and intervention is not human rights. To be sure, Syrian citizens faced human rights violations.²³³ Protests in Syria began in March 2011, around the time that the U.N. authorized military action in Libya.²³⁴ Tactics employed by the Syrian government against the protestors included the use of chemical weapons, torture, and executions.²³⁵ Opposition forces led attacks on civilians and also participated in kidnappings, torture, and executions.²³⁶ In September and October 2013, two-and-a-half years into the civil war, the death toll in Syria was reported to be just above 100,000, with more than 40,000 civilian lives lost.²³⁷ The U.N. reported roughly the same number in July

SERVICE, 4-5 (Apr. 4, 2012), available at <http://www.fas.org/sgp/crs/misc/R42465.pdf>.

²³⁰ *Libya*, *supra* note 228.

²³¹ *Great Decisions in Foreign Policy: Intervention Calculation* (Foreign Policy Association 2013) (streamed using Netflix) (quoting David Ignatius), transcript available at <http://www.greatdecisionsonpbs.com/watch/sacred-cow-defending-america-on-a-budget/david-ignatius/>.

²³² Colum Lynch, *supra* note 215; Chuck Hagel, *supra* note 224.

²³³ See generally *Human Rights in Syria*, HUMAN RIGHTS WATCH, <https://www.hrw.org/middle-eastn-africa/syria> (last visited Jan. 22, 2014) (recounting numerous atrocities violating human rights in Syria).

²³⁴ *Syria Profile*, BBC NEWS (Dec. 12, 2013), available at <http://www.bbc.co.uk/news/world-middle-east-14703995>; Bilefsky, Landler, Kirkpatrick, Fahim, Cooper, Bumiller, & Lee, *supra* note 199.

²³⁵ *Human Rights in Syria*, *supra* note 233.

²³⁶ *Id.*

²³⁷ *Syrian Death Toll: More than 110,000 Dead in Conflict, NGO Says*, HUFFINGTON POST (Sept. 1, 2013), http://www.huffingtonpost.com/2013/09/01/syria-death-toll_n_3851982.html; Laura Stampler, *Group Says Syria Death Toll at 115,000*,

2013 before deciding in January 2014 to stop updating the Syrian death toll, explaining that it could no longer verify the figure due to its limited access to Syria.²³⁸ While the ICISS declined to quantify “large scale loss of life,”²³⁹ given that the U.N. authorized military intervention in Libya when the death toll was estimated to be 1,000 by rebels, and 150 by Qaddafi,²⁴⁰ any argument that the civilian deaths in Syria would not satisfy the just threshold requirement for military intervention under the responsibility to protect would be baseless.²⁴¹

The differences in Syria and Libya are strategic, economic, and political. In October 2011, when the death toll in Syria was estimated at 3,000, the U.N. Security Council voted on a resolution that condemned “continued grave and systematic human rights violations by the Syrian authorities.”²⁴² The Resolution was vetoed by both Russia and China.²⁴³ The Security Council voted again in February 2012, and the Resolution was again vetoed by Russia and China.²⁴⁴ Both Russia and China walked out of the August 2013 U.N. Security Council meeting at which Great Britain would have introduced a resolution authorizing military intervention in Syria.²⁴⁵ In part, the unwillingness of Russia and China to consider responsibility-to-protect intervention in Syria can be attributed to a shared mistrust of American intentions.²⁴⁶ Both states have publicly stated their shared belief that the U.S. is

TIME, (Oct. 1, 2013), <http://world.time.com/2013/10/01/group-says-syria-death-toll-at-115000/>.

²³⁸ Laura Stampler, *U.N. To Stop Updating Syria Death Toll*, TIME (Jan. 7, 2014), <http://world.time.com/2014/01/07/un-to-stop-updating-syria-death-toll/>.

²³⁹ ICISS Report, *supra* note 1, § 4.20.

²⁴⁰ U.N. Authorizes ‘All Necessary Measures’ in Libya, USA TODAY (Mar. 18, 2011), http://usatoday30.usatoday.com/news/world/2011-03-17-clinton-no-fly-zone_N.htm.

²⁴¹ ICISS Report, *supra* note 1, at XII.

²⁴² Colum Lynch, *Russia, China Block Syria Resolution at the United Nations*, WASH. POST (Oct. 4, 2011), available at http://www.washingtonpost.com/world/national-security/russia-china-block-syria-resolution-at-un/2011/10/04/gIQArcFBML_story.html.

²⁴³ *Id.*

²⁴⁴ Holly Yan, *Why China, Russia Won’t Condemn Syrian Regime*, CNN (Feb. 5, 2012), <http://www.cnn.com/2012/02/05/world/meast/syria-china-russia-relations/>.

²⁴⁵ *Id.*

²⁴⁶ Hannah Beech, *China’s View on Syria Crisis: America’s “Hidden Motivations” Are Leading It Astray*, TIME (Sept. 13, 2013), <http://world.time.com/2013/09/13/chinas-view-on-syria-crisis-americas-hidden-motivations-are-leading-it-astray/>.

manufacturing reasons to invade Syria.²⁴⁷ In August 2013, Russia implored the United States to “act sensibly” and to stop striving to “create artificial groundless excuses for military intervention in the region”²⁴⁸ In September 2013, *People’s Daily*, a Chinese news outlet widely regarded as a “mouthpiece” of the Chinese government, echoed the sentiment when it published an opinion asserting that the United States’ “hidden motivation” for intervention was Syria’s alliance with Iran, “America’s regional rival,” calling the allegation of Syria’s use of chemical weapons a rumor and an “excuse for America to launch an attack on Syria.”²⁴⁹ The mistrust of the United States’ intentions, shared by Russia and China, is not without foundation. Colum Lynch, responsible for U.N. coverage at the Washington Post, has explained that from the standpoint of Russia and China, the United States has begU.N.to establish a pattern, through its overthrow of Hussein in Iraq and Qaddafi in Libya, in which the U.S. is willing to use force to overthrow a regime unfavorable to American interests.²⁵⁰ Not only does this allow the United States to expand its global reach, but it also allows the U.S. to intrude upon Russian and Chinese interests.²⁵¹

An interest in disrupting an American-led intervention is not the only reason Russia and China oppose intervention in Syria. In addition, both states have strong economic and strategic incentives to maintain friendly relations with Syria.²⁵² Russia’s relationship with Syria is worth billions of dollars.²⁵³ Russia made an estimated \$162 million in both 2009 and 2010 through its arms dealing in Syria, \$19.4 billion through investments in tourism and energy, \$550 million in a 2012 sale of combat jets to Syria, and expects another estimated \$4 billion to \$5 billion from its arms

²⁴⁷ *Id.*

²⁴⁸ *Military Intervention in Syria Bypassing UNSC Would be Catastrophic – Russian Diplomat*, RUSSIA BEYOND THE HEADLINES (Aug. 27, 2013), available at http://rbth.ru/news/2013/08/27/military_intervention_in_syria_bypassing_unsc_would_be_catastrophic_-_ru_29242.html.

²⁴⁹ Beech, *supra* note 246.

²⁵⁰ Colum Lynch, *supra* note 215.

²⁵¹ *Id.*

²⁵² Yan, *supra* note 244.

²⁵³ *Id.*; Daniel Treisman, *Why Russia Supports Syria's Assad*, CNN (Feb. 3, 2012), <http://www.cnn.com/2012/02/02/opinion/treisman-russia-syria>.

dealing with Syria.²⁵⁴ Russia is also motivated to protect its only naval base on the Mediterranean in Tartus, Syria.²⁵⁵ As the third largest importer to Syria in 2010,²⁵⁶ and the largest importer to Russia in 2013,²⁵⁷ China has economic interests in both Syria and Russia. Not only does China have economic incentives to maintain friendly ties with Syria, but Syria supported China through allegations of human rights violations and criticisms of China's response to uprisings in Tibet.²⁵⁸ Further, China stated that it "always oppose[s] the use of force in international relations."²⁵⁹ When the U.N. authorized action in Libya, both Russia and China abstained from the vote.²⁶⁰ The explanation commonly advanced for China's hands-off approach to international affairs is its own desire to be left alone by the international community.²⁶¹

*D. The Influence of Power on the Decision to Take Action
Under The Responsibility to Protect.*

The Russian and Chinese vetoes are not the only thing preventing an intervention in Syria.²⁶² The inaction of the international community in the face of ongoing human rights violations in Syria gives credence to Max Boot's position that the community will be more likely to intervene when faced with an easy win.²⁶³ Not only does Syria have a military that surpasses that of Libya, but its ties to Russia and China would prove

²⁵⁴ Yan, *supra* note 244; Treisman, *supra* note 253.

²⁵⁵ Treisman, *supra* note 253; Colum Lynch, *supra* note 215.

²⁵⁶ Yan, *supra* note 244.

²⁵⁷ Daniel Pena, *China's Syria Strategy*, HUFFINGTON POST (Sept. 16, 2013), http://www.huffingtonpost.com/daniel-pena/china-syria_b_3923162.html.

²⁵⁸ See Yan, *supra* note 244; Simon Elegant, *China and Tibet: The Spin Campaign*, TIME (Mar. 26, 2008), <http://content.time.com/time/world/article/0,8599,1725650,00.html>.

²⁵⁹ Beech, *supra* note 246.

²⁶⁰ Bilefsky, Landler, Kirkpatrick, Fahim, Cooper, Bumiller, & Lee, *supra* note 199.

²⁶¹ Beech, *supra* note 246 ("When it comes to international affairs, China has tended to either retire from the limelight or snipe from the sidelines."); See, e.g., Yan, *supra* note 244 (China "vetoed a draft resolution that would have demanded Syrian President Bashar al-Assad stop killing and answer calls . . . [for] reasons to maintain good relations with Syria.").

²⁶² David Ignatius, *supra* note 231.

²⁶³ Max Boot, *supra* note 162.

problematic even if those states abstained from the vote.²⁶⁴ Beyond the opposition of Russia and China, a Syrian intervention would not be met with the kind of regional support garnered by NATO for the Libyan intervention, either by way of neighboring states or regional organizations.²⁶⁵ Further, an intervention would likely spur Assad to move the fighting into nearby Lebanon and Iraq.²⁶⁶ While the inaction with regard to Syria is at the very least impliedly (and arguably expressly) condoned by the principle that military action should only be taken when success is likely, and will not cause more harm than good,²⁶⁷ this approach provides powerful states and their allies a high degree of influence to determine, based on their own interests, when human rights violations will be ignored and when they will not be tolerated.

First, China, Russia, and the United States, widely accepted as the three most powerful states in the world,²⁶⁸ are each permanent members of the U.N. Security Council, meaning they have veto power over any Security Council Resolution proposing action under the responsibility to protect.²⁶⁹ While the ICISS implores the Permanent Five members of the Security Council not to apply their veto to block responsibility-to-protect action “where their

²⁶⁴ *Great Decisions in Foreign Policy: Intervention Calculation* (Foreign Policy Association 2013) (streamed using Netflix) (perspective of Ivo Daalder, U.S. Permanent Representative on the Council of the North Atlantic Treaty Organization (NATO)), transcript available at <http://www.greatdecisionsonpbs.com/watch/nato-and-the-u-s-in-the-21st-century/ivo-daalder/>.

²⁶⁵ Delviscio, Jacquette, & Moore, *supra* note 183 (demonstrating that the United Arab Emirates, Qatar, Jordan, Morocco, The Arab League, and Libyan National Transitional Council all either supported or participated in the intervention); Daalder & Stavridis, *supra* note 181; Daalder & Stavridis, *supra* note 180.

²⁶⁶ *Id.*

²⁶⁷ ICISS Report, *supra* note 1, at XII.

²⁶⁸ See *What are the Most Powerful Countries in The World*, MARKET BUS. NEWS (Nov. 21, 2013), <http://marketbusinessnews.com/most-powerful-countries-world/3447> (listing the United States, Russia, and China as the most powerful states in the world, respectively); *The 10 Most Powerful Militaries in The World*, BUS. INSIDER (June 12, 2013, 12:28 PM), <http://www.businessinsider.com/10-most-powerful-militaries-in-the-world-2013-6?op=1> (listing the United States, Russia, and China, as the states with the most powerful militaries, respectively); *The World's Most Powerful People*, FORBES, <http://www.forbes.com/powerful-people/list/> (listing the Presidents of Russia, the United States, and China as the three most powerful people in the world, respectively).

²⁶⁹ *United Nations Security Council: Current Members*, UNITED NATIONS, <http://www.un.org/en/sc/members/> (last visited Sept. 14, 2014); ICISS Report, *supra* note 1, at XIII.

vital state interests are not involved,”²⁷⁰ this is not binding, and in any case, it can be difficult to define what interests are “vital.”²⁷¹ Even if other global leaders that oppose intervention in Syria, such as India and Brazil,²⁷² – both opposed to action in Syria due to mistrust of Western motives – called for immediate action in Syria, the standing vetoes from Russia and China could prevent U.N. authorization.²⁷³

Second, if the mere fact that a powerful state opposes intervention is enough to weigh the scales against intervention based on the unlikelihood of success, powerful states have more than a legal veto power; they have an absolute veto power on a pragmatic level. Not only could a decision to intervene in spite of the opposition cause tension that may lead to further international conflict, but intervention may not be feasible without the resources of the powerful state.

For example, in Operation Unified Protector, the United States provided:

75 percent of the intelligence, surveillance, and reconnaissance data employed 75 percent of the refueling planes used throughout the mission -- without which strike aircraft could not have lingered near potential targets in order to respond quickly to hostile forces threatening to attack civilians. And U.S. commanders in Europe had to quickly dispatch over 100 military personnel to the NATO targeting center at the outset of the intervention when it became clear that other member states lacked the knowledge and expertise to provide their aircraft with the correct targeting information.²⁷⁴

The success in Libya may not have been possible without the

²⁷⁰ ICISS Report, *supra* note 1, at XIII.

²⁷¹ Max Boot, *supra* note 162.

²⁷² *Most Powerful Countries*, *supra* note 268 (stating that India is the eighth most powerful state in the world according to Market Business News, and has the fourth most powerful military according to business insider); *10 Most Powerful*, *supra* note 268 (stating that Brazil has the tenth most powerful military according to business insider); *The World's Most Powerful People*, *supra* note 268 (stating that the Presidents of India and Brazil are considered the 21st and 20th most powerful people in the world, respectively, according to Forbes).

²⁷³ See ICISS Report, *supra* note 1, at XIII.

²⁷⁴ Ivo H. Daalder & James G. Stavridis, *NATO's Victory in Libya*, 91 FOREIGN AFF. 2, (Mar./Apr. 2012), available at <http://www.foreignaffairs.com/articles/137073/ivo-h-daalder-and-james-g-stavridis/natos-victory-in-libya>.

United States' support and resources.²⁷⁵

Third, if the international community were confronted by a situation in which human rights violations were occurring in a particularly powerful state, the international community may be unable or unwilling to intervene. Danielle Pletka, Vice President for Foreign and Defense Policy Studies at the American Enterprise Institute, captured this dilemma when discussing the relationship between China and the United States.²⁷⁶ Pletka notes that while China poses a serious threat to the United States, the United States relies heavily on China, and the trouble the United States may encounter with China is a "total mystery," even to the United States Department of State and Central Intelligence Agency.²⁷⁷ The extent to which China and the United States are intertwined bolsters Max Boot's prediction that it would take an Armageddon for the United States to get involved in a conflict with China.²⁷⁸ Indeed, not only are power players Russia, China, and the United States willing to overlook human rights violations in less powerful states when it suits them,²⁷⁹ but they are willing to overlook human rights violations within their own borders and feel reasonably shielded from international action because of their role in the global community.

On the other end of the spectrum, powerful states seem more than willing to take action in less powerful states when they may benefit from such action. When discussing states that the United States should be concerned about and where preventative steps could be taken, General James Jones mentions Nigeria.²⁸⁰ Jones's concerns are not without merit: Nigeria is religiously divided, has serious problems with piracy and organized crime, and would affect a large region of Africa if it encountered a

²⁷⁵ See *id.*

²⁷⁶ See *Great Decisions in Foreign Policy: NATO and the U.S. in the 21st Century* (Foreign Policy Association 2013) (streamed using Netflix) (perspective of Danielle Pletka, vice-president for foreign and defense policy studies at the American Enterprise Institute (AEI)), transcript available at <http://www.greatdecisionsonpbs.com/watch/sacred-cow-defending-america-on-a-budget/danielle-pletka/>.

²⁷⁷ *Id.* ("We buy so much from China, we trade so much with China, we manufacture so much in China. China owns so many of our treasuries. The notion of a world in which China didn't play this role would be hard to envision at this point.").

²⁷⁸ Max Boot, *supra* note 162.

²⁷⁹ See *supra* Part IV, section c.

²⁸⁰ James Jones, *supra* note 168.

crisis.²⁸¹ What makes Jones's concern interesting is not the likelihood that intervention will become necessary, but what America stands to gain if it were to become involved in an intervention in Nigeria.²⁸² Jones specifically mentions Nigeria's wealth and oil reserves.²⁸³ It has been observed, not infrequently, that the United States often acts to preserve its access to the oil market.²⁸⁴ Further, Jones mentions that there are "a lot of things that could be put together, between now and that fateful day," cheaply, that would allow the United States to "gradually intervene" in Nigeria.²⁸⁵ These comments are troubling for several reasons. First, this approach seems clearly contrary to the principles underlying the responsibility to protect.²⁸⁶ While Jones does cite several factors that could lead to a conflict, he provides no information that distinguishes Nigeria from any number of states worldwide that share these features, or would lead one to believe that a large-scale loss of life was looming in Nigeria.²⁸⁷ Further, the apparent readiness to intervene, gradually or otherwise, is contrary to the principle of non-intervention.²⁸⁸ Even more disturbing, he explicitly references several non-responsibility-to-protect interests the United States might have in an intervention in Nigeria that are strikingly similar to the interests the United States had in the interventions in both Iraq and Libya.²⁸⁹

The inconsistency with which action is taken when the responsibility to protect is invoked shows that responsibility-to-protect intervention does not truly turn on human rights, but on the relative power of the states involved, and the economic and strategic interests of those states.²⁹⁰ When humanitarian

²⁸¹ *Id.*

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ *Great Decisions in Foreign Policy*, *supra* note 170 ("Maintaining access to certain markets, especially oil, is a common consideration [of the United States].").

²⁸⁵ James Jones, *supra* note 168.

²⁸⁶ *See supra* Part III.

²⁸⁷ *See* James Jones, *supra* note 168.

²⁸⁸ *See Id.*; ICISS Report, *supra* note 1, § 4.11.

²⁸⁹ *See supra* Part IV, section b; *infra* Part V, section b.

²⁹⁰ *See* Mark P. Lagon, *Promoting Human Rights: Is U.S. Consistency Desirable or Possible?*, COUNSEL ON FOREIGN RELATIONS, (OCT. 2011) <http://www.cfr.org/human-rights/promoting-human-rights-us-consistency-desirable-possible/p26228> (arguing that a more consistent human rights policy is actually in the best economic and political interest

intervention strays from the guiding principles of responsibility to protect, there are sociological and legal implications.

V. The Effects and Implications of Misuses of the Responsibility to Protect

A. *Ethnocentrism and The Responsibility to Protect*

The sociological principle of ethnocentrism²⁹¹ explains the tendency of humans to judge behaviors and cultures by the standards of one's own culture and norms, instead of by the norms of the judged culture.²⁹² An ethnocentric viewpoint can result in a worldview that places higher value on one's own culture and people than other cultures and their people.²⁹³ While ethnocentrism necessarily permeates all areas of law,²⁹⁴ it has the potential to be especially hazardous in areas of international law that allow or suggest that one state act on the basis of another state's actions and the perceived value of those actions. Ethnocentric concerns arise in the context of responsibility to protect when a state places higher value on the lives of its own citizens than the citizens of another state, or on the people on one side of a conflict to the degradation of the opposing side. When ethnocentric motivations lie behind responsibility-to-protect intervention, international action that should have been aimed at saving lives can become a modern form of imperialism.²⁹⁵

of the U.S.).

²⁹¹ Coined by William G. Sumner. *William Graham Sumner*, AM. SOC. ASSOCIATION, http://www.asanet.org/about/presidents/William_Sumner.cfm (last visited Sept. 14, 2014).

²⁹² Elizabeth Elliot Cooper, *Ethnocentrism*, OXFORD BIBLIOGRAPHIES, <http://www.oxfordbibliographies.com/view/document/obo-9780199766567/obo-9780199766567-0045.xml> (last visited Sept. 14, 2014).

²⁹³ *Id.*

²⁹⁴ See Nora V. Demleitner, *Combating Legal Ethnocentrism: Comparative Law Sets Boundaries*, 31 ARIZ. ST. L. J. 737, 739–40 (1999), available at <http://scholarlycommons.law.wlu.edu/wlufac/151/>.

²⁹⁵ See generally Darius Nazemroaya, *From the Cold War to NATO's "Humanitarian Wars" – The Complicity of The United Nations*, CENTRE FOR RESEARCH ON GLOBALIZATION (APR. 4, 2012), available at <http://www.globalresearch.ca/from-the-cold-war-to-nato-s-humanitarian-wars-the-complicity-of-the-united-nations/30114> ("Humanitarian wars, especially under the guise of the 'Responsibility to Protect (R2P),' are a modern form of imperialism. The standard pattern that the United States and its allies use to execute them is one where genocide and ethnic cleansing are vociferously alleged by a coalition of governments, media organizations, and non-governmental

Ethnocentrism often looks like patriotism.²⁹⁶ In the abstract, ethnocentrism can be seen in the way that states discuss their relationship to other states.²⁹⁷ An example of American ethnocentrism is seen in the statements of Danielle Pletka, when discussing American intervention under the responsibility to protect.²⁹⁸ After acknowledging that it is impossible to know how a state or administration will behave because those entities are made up of humans, Pletka makes several categorical statements about democracies, in what seems to be an attempt to shed light on how to predict the behavior that she just labeled unpredictable.²⁹⁹

The real solution in the world is to understand that democracies behave much better than dictatorships. Democratic countries don't invade other countries. Democratic countries are more or less accountable to their own people. Democratic countries like to maximize prosperity, because that's how democrats get re-elected. And that's the real solution to moving forward with a more peaceful world – not simply figuring out a better way to know what everybody's thinking.³⁰⁰

The ethnocentrism is seen clearly in her first statement, which places higher value on democracies than on dictatorships.³⁰¹ Pletka paints democracies in the kindest of lights, implying that democratic states, such as the United States, pave the path to world peace, if only other forms of government would fall in line.³⁰² This may be a widely held belief throughout democracies and western culture, but the veracity of some of Pletka's statements is in question. What Pletka may have meant when she stated that democracies do not invade other countries, is that democracies do

organizations. The allegations – often lurid and unfounded – then provide moral and diplomatic cover for a variety of sanctions that undermine and isolate the target country in question, and thereby pave the way for military intervention. This is the post-Cold War *modus operandi* of the US and NATO.”).

²⁹⁶ See John Hucheson et al., *U.S. National Identity, Political Elites, and a Patriotic Press Following September 11*, 21 POL COMM. 27, 27-19 (2004).

²⁹⁷ See Danielle Pletka, *supra* note 276.

²⁹⁸ See *id.*

²⁹⁹ See *id.*

³⁰⁰ *Id.*

³⁰¹ It seems clear that when Pletka references democracies, she is referencing the United States, and possibly other Western states. See *id.*

³⁰² See Danielle Pletka, *supra* note 276.

not invade other countries without justification.³⁰³ As this comment has shown, the purported justification for such invasions is not always sound.³⁰⁴ In the same series of interviews, Donald Rumsfeld, former United States Secretary of Defense, makes a similar statement when discussing lessons learned through American action in Afghanistan and Iraq.³⁰⁵

[T]hroughout my adult life, and I've lived a long time, the United States of America has contributed to a more stable and peaceful world. We've provided leadership. We've helped strengthen the rib cage in the globe, and we've done so by having strengths and recognizing the truth And if there's a vacuum, somebody will fill that vacuum. It will either be the United States or some country other than the United States; and the odds will be a country that does not think like we do, does not have our interests first in their mind as we do, and that the world will be a less safe and less stable place if we do not provide that kind of leadership.³⁰⁶

Rumsfeld's statements are blatantly colored with ethnocentrism. His praise for the United States is not unexpected, given his status as former Secretary of Defense, but it is a romantic view of the United States, Rumsfeld's own culture, not shared by leaders worldwide. In 2003, Nelson Mandela, former President of South Africa and Nobel Peace Prize Winner, called the United States' actions in Iraq a "tragedy" and criticized the United States for "committ[ing] unspeakable atrocities" and "undermining the United Nations."³⁰⁷ When Rumsfeld predicts that a state not aligned ideologically with the United States would create instability, he places the agenda of the United States above that of other States and fails to acknowledge that the United States' actions *have* created instability in the very context he is addressing: Iraq.³⁰⁸

It is ironic that Rumsfeld glorifies the actions of United States

³⁰³ See *id.*

³⁰⁴ See *supra* Part IV.

³⁰⁵ *Great Decisions in Foreign Policy*, *supra* note 170.

³⁰⁶ *Id.* (quoting Donald Rumsfeld), *transcript available at* <http://www.greatdecisionsonpbs.com/watch/sacred-cow-defending-america-on-a-budget/donald-rumsfeld/>.

³⁰⁷ Jarrett Murphy, *Mandela Slams Bush on Iraq*, CBS NEWS (Jan. 30, 2003), <http://www.cbsnews.com/news/mandela-slams-bush-on-iraq/>.

³⁰⁸ *Id.*

in the context of Iraq, because not only did the invasion of Iraq violate the U.N. Charter,³⁰⁹ the United States has demonstrated spectacular ethnocentrism through its raids in Iraq. First, it should be noted that the 2003 invasion of Iraq is not justified by the responsibility to protect, though the United States justified the invasion on humanitarian grounds.³¹⁰ While the mission in Iraq is unclear,³¹¹ it can be assumed that the mission is directed, at least in part, at protecting American lives. But in pursuing that “mission,” countless unarmed civilians in Iraq have been killed in raids and by drones.³¹² Each time an Iraqi civilian is killed while American forces fight for justice for American citizens, the United States places higher value on the lives of its own citizens than on the lives of civilians abroad.³¹³

But ethnocentric practices in the intervention context are not limited to action taken by the United States.³¹⁴ Ethnocentrism played a central role in the way the intervention in Libya played out.³¹⁵ When NATO intervened in Libya in 2011, civilians were not given blanket protection; the intervening forces protected only those civilians who sided with the rebel opposition.³¹⁶ It has been noted that regime change in Libya was to the benefit of the United States and the other Western states involved in the NATO intervention.³¹⁷ When those states prioritized the lives of civilians

³⁰⁹ See *supra* Part V, section b; Hans Blix, *Iraq Was a Terrible Mistake and Violation of U.N. Charter*, CNN (Mar. 19, 2013), <http://www.cnn.com/2013/03/18/opinion/iraq-war-hans-blix/>.

³¹⁰ Eric A. Heinze, *Humanitarian Intervention and the War in Iraq: Norms, Discourse, and State Practice*, 36.1 PARAMETERS 20, 22 (Spring 2006), available at <http://strategicstudiesinstitute.army.mil/pubs/parameters/Articles/06spring/heinze.pdf>.

³¹¹ See *supra* Part V, section b.

³¹² DIRTY WARS (Bertha Foundation, BritDoc Films 2014) (streamed using Netflix) (documentary website: dirtywars.org); see also Mark Karlin, *In Scahill Documentary, Blowback May Be Biggest, Most Dangerous Legacy of US Dirty Wars*, TRUTHOUT (Jun. 25, 2013), [hereinafter Mark Karlin] <http://www.truth-out.org/opinion/item/17190-in-scahill-documentary-blowback-may-be-biggest-most-dangerous-legacy-of-us-dirty-wars>.

³¹³ See Mark Karlin, *supra* note 312 (“This is at the heart of Dirty Wars, that the life of non-Americans (unless they are Americans targeted by the White House, then they too can be given a death sentence) in dusty nations are considered less valuable, as Scahill notes, than ours.”).

³¹⁴ See Colum Lynch, *supra* note 215.

³¹⁵ *Id.*

³¹⁶ *Id.*

³¹⁷ *Id.*

that supported the states' own strategic and economic interests above the lives of civilians that opposed regime change in Libya, they acted with ethnocentrism, and as a result, lives were lost.³¹⁸

Not only is ethnocentrism a problem from a sociological stand point, it may actually be a violation of the principles underlying the responsibility to protect. The non-intervention principle "protects peoples and cultures, enabling societies to maintain the religious, ethnic, and civilizational differences that they cherish."³¹⁹ The value placed on cultural diversity does not cease to exist simply because the non-intervention principle has been overcome. To the contrary, the ICISS has made a specific effort to protect against ethnocentric practices in the context of responsibility-to-protect intervention.³²⁰ In addition to pointing out the cultural interests protected by non-intervention, the ICISS lays out specific intervention principles designed to protect against politicizing intervention and acting based on cultural biases. For example, intervention action should be blind to the political nature of the human rights violations and should focus solely on the humanitarian effort of intervention; whether the atrocities stemmed from government action or government failure should not affect the action taken.³²¹ Similarly, intervention action should only be taken in the face of large-scale loss of life and not in response to a military take over or regime change.³²² Finally, the ICISS explicitly demands that intervention protect "all members of a population, regardless of ethnic origin or relation to the previous source of power in the territory."³²³

In addition to violating the responsibility-to-protect principles, ethnocentrism causes tension internationally and leads to a reluctance to resort to responsibility-to-protect intervention in the future. Acting on ethnocentric motivations can make what began as a responsibility to protect-justified intervention, look like a politically motivated attack on an unfavorable regime.³²⁴ The ethnocentric actions taken by the Western states in Libya have led

³¹⁸ *See id.*

³¹⁹ ICISS Report, *supra* note 1, §§ 4.1–2.

³²⁰ *Id.*

³²¹ *Id.* at § 4.22.

³²² *Id.* at §§ 4.21–25.

³²³ *Id.* at § 5.8.

³²⁴ *See infra* notes 341–348 and accompanying text.

to an unwillingness to intervene in Syria, separate and apart from the politically-motivated unwillingness to intervene on the part of Russia and China.³²⁵ Such abuses blur the line between intervention justified under the responsibility to protect, and uses of force in violation of Article 2 of the U.N. Charter.³²⁶

B. Abuses of The Responsibility to Protect and Legal Line Drawing

Humanitarian concerns are at times invoked to justify inexcusable actions not warranted by the responsibility to protect.³²⁷ While some instances of alleged responsibility to protect abuse are not clear-cut, such as the suggested improper application of the responsibility to protect in the intervention in Libya, some abuses are unambiguous. When Russia invaded Georgia in 2008, Russia's Foreign Minister, Sergei Lavrov, justified the action under the responsibility to protect, responding to what Russia saw as "genocide" in the republic of South Ossetia.³²⁸ In August 2008, Georgia led a surprise night attack on South Ossetia, employing roughly 11,000 Georgian troops, using tanks, explosives, and banned weapons.³²⁹ Russia swiftly responded, and claimed its invasion of Georgia was directed

³²⁵ E.g., Colum Lynch, *supra* note 215 ("The Russians, the Chinese, the South Africans . . . the Brazilians, and the Indians have been much less supportive of the whole outcome; they have seen it as sort of a violation of the principle of Responsibility to Protect . . . [I]t seems evident to me, and the U.S. government I don't think accepts this, that this went far beyond Responsibility to Protect. I think it's also a bit naïve to think that if you use military force in the name of Responsibility to Protect, that you can somehow limit what a military does to the letter of the law. In the sense that you send the military force in, and militaries are trained to achieve decisive military objectives . . . [a]nd that meant going after military targets, going after hitting family members, chasing down Qaddafi and trying to kill him himself. And so these are things that go beyond what most people would've thought Responsibility to Protect entailed.").

³²⁶ U.N. Charter art. 2, para. 4.

³²⁷ See *infra* notes 341–348 and accompanying text.

³²⁸ Gareth Evans, *Russia and the 'Responsibility to Protect'*, L.A. TIMES, (Aug. 31, 2008), <http://www.latimes.com/la-oe-evans31-2008aug31,0,1295318.story#axzz2q1jxUOIR>.

³²⁹ Robert Bridge, *Did Georgia Get a US Green Light to Attack South Ossetia?*, RT (Aug. 5, 2011, 6:17 PM), <http://rt.com/politics/georgia-medvedev-ossetia-war-interview/>; Lira Tshkhovrebova, *Georgia's Shameful Attack on South Ossetia*, LA TIMES (Nov. 17, 2008), <http://www.latimes.com/news/opinion/la-oe-w-tshkhovrebova17-2008nov17,0,2251465.story#axzz2uCP2mtMw>.

primarily at protecting Russian citizens.³³⁰ This use of the responsibility to protect to justify invasion has been challenged on several grounds.³³¹ First, critics doubt that the threat to the people of South Ossetia was serious enough to meet the just cause threshold to warrant military intervention.³³² Even if the threat in South Ossetia had reached the level of large scale loss of life or ethnic cleansing required to meet the just cause threshold of responsibility-to-protect military intervention, Russia's aim to protect its own citizens living within the region is not an acceptable motive under the responsibility to protect.³³³ Further, critics question whether protection of Russia's citizens or otherwise was Russia's primary motivation for the invasion.³³⁴ Other suspected motivations include a desire to take control of Ossetia and Abkazia,³³⁵ undermine Georgia's military, and derail Georgia's NATO ambitions.³³⁶ The likelihood that these ulterior motives spurred the invasion is supported by the fact that Russia did not exhaust peaceful means of protection prior to invading Georgia, and responded to the alleged genocide in a way that has been called "excessive," both strategically and geographically.³³⁷

³³⁰ Gareth Evans, *supra* note 328.

³³¹ E.g., *Russia vs. Georgia: The Fallout*, INT'L COALITION FOR THE RESP. TO PROTECT (Aug. 22, 2008), <http://www.responsibilitytoprotect.org/index.php/component/content/article/133-europe/1829-international-crisis-group-russia-vs-georgia-the-fallout>; Gareth Evans, *supra* note 328.

³³² *Global Centre for R2P's Background Note on Georgia and Russia*, INT'L COALITION FOR THE RESP. TO PROTECT, available at <http://www.responsibilitytoprotect.org/index.php/component/content/article/133-europe/1815-global-centre-for-Responsibility-to-Protects-background-note-on-georgia-and-russia> (last visited Jan. 22, 2014); Gareth Evans, *supra* note 328.

³³³ ICISS Report, *supra* note 1, § 4.27 ("[The ICISS] regard[s] that as being again a matter appropriately covered under existing international law, and in particular Article 51 of the U.N. Charter."); *Global Centre for R2P's Background Note on Georgia and Russia*, INT'L COALITION FOR THE RESP. TO PROTECT, <http://www.responsibilitytoprotect.org/index.php/component/content/article/133-europe/1815-global-centre-for-Responsibility-to-Protects-background-note-on-georgia-and-russia> (last visited Jan. 22, 2014).

³³⁴ Gareth Evans, *supra* note 328.

³³⁵ Both Ossetia and Abkazia lie on the Georgian border of Russia. *Georgia Profile*, BBC NEWS EUR., <http://www.bbc.co.uk/news/world-europe-17301647> (see map within) (last visited Feb. 24, 2014).

³³⁶ Gareth Evans, *supra* note 328.

³³⁷ *Id.* (noting that Russia sent "about 20,000 Russian troops and 100 tanks into South Ossetia and . . . Georgia"); see also *Global Centre for R2P's Background Note on*

Not only do these facts make more likely the suspected inappropriate motives, but both are violations of the precautionary principles guiding military intervention under the responsibility to protect.³³⁸ Perhaps most importantly, Russia acted without approval from the U.N. Security Council, so it had no legal authority for its actions.³³⁹

Another invasion not justified by the responsibility to protect, in which the invading government advanced a humanitarian agenda, was the 2003 invasion of Iraq by the United States.³⁴⁰ While the 1991 intervention in Iraq, Operation Desert Storm, took place ten years before the ICISS was established and published its report on the responsibility to protect, the intervention was authorized by the U.N. Security Council, and is generally viewed as a mission aimed at protecting Kuwait from Iraqi invasion.³⁴¹ But even at that time, protecting Kuwait, an ally, was not the United States' only interest; the United States also had an interest in protecting "the flourishing oil trade."³⁴² The 2003 invasion, however, is clearly outside the bounds of the responsibility to protect. First, the invasion was not motivated by humanitarian concerns, but by the pursuit for weapons of mass destruction; it was only after no such weapons were located that the United States turned to humanitarian justifications for the invasion.³⁴³ Eleven years later, the United States still has troops in Iraq, and the purpose of the occupation is unclear. Chuck Hagel, former United States Senator, shed light on the confusion when discussing United States' intervention:

One of the reasons we're in trouble in Afghanistan is because we went well beyond our mission. We accomplished the mission then we took our eye off the ball and intervened, invaded Iraq, and occupied Iraq. And now, twelve years later, we're not sure

Georgia and Russia, *supra* note 332.

³³⁸ ICISS Report, *supra* note 1, at XII.

³³⁹ *Global Centre for R2P's Background Note on Georgia and Russia*, *supra* note 332.

³⁴⁰ Heinze, *supra* note at 310.

³⁴¹ See *Persian Gulf War*, HISTORY, <http://www.history.com/topics/persian-gulf-war> (last visited August 24, 2014); Joseph William Davids, *Would Intervention in Syria Violate International Law*, THE NEW INT'L LAW (Sept. 8, 2012), <https://thenewinternationallaw.wordpress.com/tag/gulf-war/>.

³⁴² *Great Decisions in Foreign Policy*, *supra* note 170.

³⁴³ Heinze, *supra* note at 310.

what our mission is. Is our mission to eliminate the Taliban? That never was our mission. Is it nation building? Is it sending children to school? Is it building sewer systems? Is it going after al-Qaeda?³⁴⁴

Notably, none of the suggested purposes would meet the “right intention” principle in order to justify intervention under the responsibility to protect.³⁴⁵ Second, the just cause threshold was not met, as the atrocities in Iraq *at the time* did not reach a large-scale loss of life.³⁴⁶ While Saddam Hussein’s rule of Iraq was violent and at times reached the large-scale loss of life necessary to justify responsibility-to-protect intervention, responsibility-to-protect action must be preventative, and cannot be justified by looking to atrocities in the past.³⁴⁷ Finally, like the Russian invasion of Georgia in 2008, the United States’ invasion of Iraq in 2003 was not authorized by the U.N. Security Council.³⁴⁸

In instances such as these, in which the action taken by one state against another is not justified by the responsibility to protect, the action is an unlawful use of force in violation of Article 2 of the U.N. Charter.³⁴⁹ Nevertheless, in Russia’s case, no sanctions were issued, and at the time there was speculation that Germany would not support sanctions against Russia for fear of endangering its relationship with Russia, and specifically its access to gas and oil.³⁵⁰ Further, in 2010, two years after the Georgia-Russia debacle, NATO adopted a new strategic concept, in which it committed to “reinforc[ing] cooperation with Russia.”³⁵¹ Likewise, the United States has not faced sanctions for its unlawful use of force in Iraq, and in fact American combat troops remained in Iraq for eight years.³⁵²

³⁴⁴ Chuck Hagel, *supra* note 224.

³⁴⁵ ICISS Report, *supra* note 1, § 4.32.

³⁴⁶ *Id.* §§ 4.10–20.

³⁴⁷ *Id.*

³⁴⁸ See Heinze, *supra* note at 310.

³⁴⁹ Mark Tran, Julian Borger, & Ian Traynor, *EU Threatens Sanctions Against Russia*, THE GUARDIAN (Aug. 28, 2008), <http://www.theguardian.com/world/2008/aug/28/eu.russia>; see U.N. Charter art. 2.

³⁵⁰ Tran, Borger, & Traynor, *supra* note 349.

³⁵¹ NATO Adopts New Strategic Concept, *supra* note 148.

³⁵² See Anjulo Sastry & Alisa Wiersema, *10-year Iraq War Timeline*, ABC NEWS (March 19, 2013), <http://abcnews.go.com/Politics/TheNote/10-year-iraq-war-timeline/story?id=18758663#1>.

The failure to address unlawful breaches of state sovereignty sends a message to both the violating states and international observers: for powerful states, like Russia and the United States, anything goes.

VI. Conclusion

The inconsistent application of responsibility-to-protect principles in the thirteen years since its inception shows that responsibility-to-protect intervention does not, in fact, turn on humanitarian principles, but on some combination of power dynamics, political strategy, and economic gain.³⁵³

In the past, the doctrine has been abused and misapplied.³⁵⁴ Unjustified attacks have been launched in violation of the U.N. Charter; interventions justified by the responsibility to protect at the outset have been executed in violation of the principles underlying the doctrine; and situations warranting international action have been ignored due to the economic and strategic interests of states with the power to prevent intervention.³⁵⁵

If the abuses seen in the past decade continue, the responsibility to protect doctrine is unlikely to survive. Not only do these abuses of the responsibility to protect violate the principles underlying the doctrine, they contribute to an international atmosphere of mistrust and reluctance that in turn obstructs responsibility-to-protect intervention in situations in which action is warranted and sorely needed. The international community has already seen and felt some of the lasting effects of the 2011 intervention in Libya.³⁵⁶ Operation Unified Protector has been a “divisive” issue, and the belief that the intervention violated the principles of the responsibility to protect has caused tension in the U.N. Security Council.³⁵⁷ One of the consequences of NATO’s overreaching in Libya is the hesitancy of the international community to intervene in Syria.³⁵⁸ Even if the U.N. does not officially disavow responsibility to protect, the international community will turn its back on the doctrine and oppose

³⁵³ See *supra* Part V.

³⁵⁴ *Id.*

³⁵⁵ *Id.*

³⁵⁶ See Colum Lynch, *supra* note 215.

³⁵⁷ *Id.*

³⁵⁸ *Id.*

intervention as it becomes clear that those who abuse a doctrine designed to encourage responsibility ultimately will not be held responsible.

