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THE R2P IS DEAD. LONG LIVE THE R2P.

*LIBYA, SYRIA, AND THE RESPONSIBILITY TO PROTECT*

by Nadir Dalal

## INTRODUCTION

The various historic events surrounding the Arab Spring have captured the world's attention. The reactions and responses by the international community have also done so, especially the use of the doctrine of the Responsibility to Protect (R2P) in Libya, in early 2012.<sup>1</sup> That event marked the first time the United Nations Security Council (UNSC) had ever authorized the unwelcome use of military force against the will of a sovereign state. However, given the similarities between the events in Libya and those currently taking place in Syria, it is unclear why the UNSC has not used R2P for a second time. This paper posits that after only a single instance of justifying the use of force against the will of a sovereign state, R2P has already been crippled.<sup>2</sup> This belief is strengthened by the subsequent lack of the use of R2P in Syria, where the humanitarian crisis and need for international action is much more dire. The perceived failure of R2P also speaks to the failure of the United Nations (UN), and in particular the UNSC, in fulfilling its duty as the primary international body tasked with maintaining international peace and security. The paper argues that future usage of R2P, or the lack thereof, during the Arab Spring will have long lasting effects on the reputation, legitimacy, and future viability of the United Nations

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<sup>1</sup> R2P creates a responsibility to states to act to prevent or remedy specific humanitarian crises. Groundbreaking, R2P even allows for military actions against unwilling sovereign states, given specific conditions are satisfied. *See generally* The Secretary-General, *Report of the Secretary-General on Implementing the responsibility to protect, delivered to the Security Council and the General Assembly*, U.N. Doc. A/63/677 (Jan. 12, 2009) [hereinafter SG Report] (outlining the core principles, uses, and rationale behind R2P).

<sup>2</sup> Arguments exist that R2P had been used before Libya. However, Libya remains the first and only time when the UNSC authorized a military intervention against an unwilling sovereign government, under the third pillar of R2P.

system. Finally, this paper will also address the means by which R2P may be rehabilitated. Given the important purpose for which R2P was created, the international community should act purposefully in resuscitating one of its newest, and most important, doctrines.

In addressing the statements above, this paper will first detail the history of the creation of R2P, including the events that triggered its creation, and the reasoning behind its development as a recognized doctrine of international law and diplomacy and its rules and functions. Next, careful analyses of data sources will highlight and compare the differences and similarities between the use of R2P in Libya and its subsequent lack of use in Syria. The paper will then address the impact of the Arab Spring and the use, or nonuse, of R2P on the UN. Finally, I will analyze the future outlook for R2P and the means by which it may be changed in order to guarantee its future viability.

#### HISTORY OF INACTION DURING TIMES OF HUMANITARIAN CRISES

The goal of the UN Charter (the Charter) is to prevent the outbreak of another World War and to institute a system to control the use of force in instances other than self-defense.<sup>3</sup> Within the Charter are several articles that enshrine the internationally recognized concept of state sovereignty, a core tenet of the international legal system.<sup>4</sup> State sovereignty is the internationally recognized concept that justifies and protects the actions of a state within its own territory.<sup>5</sup> Any such actions fall within a state's due rights

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<sup>3</sup> See Thomas M. Franck & Faiza Patel, *UN Police Action in Lieu of War: "The Old Order Changeth,"* 85 AM. J. INT'L L. 63, 63 (1991). See also John C. Yoo & Eric Posner, *International Law and the Rise of China,* 7 CHI. J. INT'L L. 71, 6 (2006), available at <http://works.bepress.com/johnyoo/36>.

<sup>4</sup> See Treaty of Westphalia, Oct. 24, 1648, 1 Consol. T.S. 271, available at <http://fletcher.archive.tusm-oit.org/multilaterals/texts/historical/westphalia.txt> (regarded as *the* beginning of the current system of equal, sovereign, independent states); U.N. Charter art. 2, para. 1, available at <http://www.un.org/en/documents/charter/chapter1.shtml> ("The Organization is based on the principle of sovereign equality of all its Members.").

<sup>5</sup> *Black's Law Dictionary* 674 (3<sup>rd</sup> pocket ed. 2001) (supreme authority exercised and the right to self-governance)

and cannot and should not be interfered with by foreign entities.<sup>6</sup> A byproduct of protecting state sovereignty has been the domestic or internal perpetration of nearly 50 mass murders and genocides since 1955, with between 12 and 22 million non-combatant casualties.<sup>7</sup> These acts continue to happen in direct contravention of the core purposes of the UN.<sup>8</sup> In part due to the reoccurring nature of these events, the international community has worked hard at finding an appropriate and effective solution. To better understand the impetus for change, it is important to first briefly review examples of major humanitarian crises, and the subsequent international responses, in Bosnia, Rwanda, and East Timor, in the years leading up to the creation of R2P.

### *Bosnia-Herzegovina*

Like many humanitarian crises, the events that occurred in Bosnia-Herzegovina (Bosnia) from 1992 to 1995 were deeply rooted in ethnic and cultural tensions. Located in a historically multi-ethnic and multi-cultural region of the world, the Bosnian population at the time was mainly composed of three main groups: Bosniaks, Serbs and Croatsians.<sup>9</sup>

Tensions were already high when Bosnia declared independence from Yugoslavia in 1991,

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<sup>6</sup> *Id.* (supreme authority implies having the final word and being unquestioned)

<sup>7</sup> Barbara Harff, *No Lessons Learned from the Holocaust? Assessing Risks of Genocide and Political Mass Murder since 1955*, 97 AM. POL. SCI. REV. 57, 57 (2003).

<sup>8</sup> U.N. Charter art. 1, para. 1, available at <http://www.un.org/en/documents/charter/chapter1.shtml> ([T]o take collective measures for the prevention and removal of threats to the peace, suppression of acts of aggression and other breaches of the peace..."); *Id.*, para. 3 (To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.").

<sup>9</sup> Fran Markowitz, *Census and Sensibilities in Sarajevo*, 49 COMP. STUD. SOC'Y & HIST. 40, 42 (2007) (Ethnic distribution in Bosnia: 43.5% Bosniak (Muslim), 31.2% Serbian (Eastern Orthodox), 17.4% Croatian (Catholic) (citing National Census, (1991) (Bos'n & Herz.)).).

a move that greatly upset the Serb population. By 1995, the death toll from the ensuing violence is estimated to be over 250,000 people.<sup>10</sup>

While casualties are the inevitable result of conflict, it is speculated that the response to Serb actions by the UN actually fueled higher levels of violence.<sup>11</sup> UN involvement in Bosnia was strictly limited to humanitarian relief efforts, including the establishment of several 'safe zones', which included the village of Srebrenica. Knowing that the UN forces would not interfere, in July of 1995 Bosnian-Serb forces attacked Srebrenica, a UNSC declared "safe area."<sup>12</sup> Over 30,000 Bosniak Muslims had taken shelter in the city, which was under the protection of UN Protection Force (UNPROFOR) troops.<sup>13</sup> Serbian forces sent an ultimatum to UNPROFOR troops to either cease interference or become targets themselves.<sup>14</sup> Following UNPROFOR directive 2/95, UNPROFOR forces withdrew from Srebrenica, leaving the city defenseless.<sup>15</sup> As Serb forces took control of the area, over 7,000 Bosniak males were purposely separated from their families and executed.<sup>16</sup> Peace came to the region only after US led NATO military air forces took

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<sup>10</sup> U.N. Dev. Program [UNDP], UNDP Office in Bos'n & Herz., *2002 Human Development Report: Bosnia and Herzegovina*, at 111-112, available at [hdr.undp.org/en/.../Bosnia\\_and\\_Herzegovina\\_2002\\_en.pdf](http://hdr.undp.org/en/.../Bosnia_and_Herzegovina_2002_en.pdf) (of the estimated 269,810 killed, 157,313 (58.3%) were Bosniak/Muslims). See also Carl Dahlman & Gerard Toal, *Broken Bosnia: The Localized Geopolitics of Displacement and Return in Two Bosnian Places*, 95 *Annals Ass'n Am. Geographers* 644, 644 (2005).

<sup>11</sup> Ivo H. Daalder, *Decision to Intervene: How the War in Bosnia Ended*, Brookings, Dec. 1998, <http://www.brookings.edu/research/articles/1998/12/balkans-daalder>.

<sup>12</sup> S.C. Res. 819, ¶ 1, U.N. Doc. S/RES/819 (Apr. 16, 1993), available at <http://www.un.org/docs/scres/1993/scres93.htm> ("Demands that all parties and others concerned treat Srebrenica and its surroundings as a safe area which should be free from any armed attack or any other hostile act.").

<sup>13</sup> See Arne Johan Vetlesen, *Genocide: A Case for the Responsibility of the Bystander*, 37 *J. PEACE RES.* 519, 530 (2000) ("The execution of the mandate is secondary to the security of UN personnel....").

<sup>14</sup> *Id.* at 531.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

decisive action, bombing over 300 Serb targets from August to September of 1995.<sup>17</sup> The added pressure from these strikes combined with diplomatic efforts, helped force Bosnian-Serb leaders to agree to the Dayton Accords in late 1995.<sup>18</sup> Opposite its own purposes, UN inaction in Bosnia cost civilian lives and likely prolonged the conflict. During the same time period as the Bosnian War, the UN's failure to act in Rwanda was once more costing thousands of lives.

### *Rwanda*

Similar to the situation in Bosnia-Herzegovina, the population of Rwanda has historically been composed of two ethnic groups: the Hutu majority and the Tutsi minority.<sup>19</sup> A former colony of Belgium, the minority Tutsi had been favored over the Hutu by their Belgian rulers.<sup>20</sup> This classic colonial era tactic of dividing a population along ethnic lines and promoting minority rule helped sow the seeds for future conflict.<sup>21</sup>

By the time Rwanda gained independence in 1962, there had already been several instances of conflict between Hutu and Tutsi ethnic groups, with Hutus firmly in control by the mid-1980s.<sup>22</sup> In 1990, a force comprised mainly of Tutsi exiles invaded Rwanda. After several years of conflict, a system of power sharing between the two groups was negotiated in the summer of 1993. However, when Hutu leader Juvenal Habyarimana's plane was shot

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<sup>17</sup> Ryan C. Hendrickson, *Crossing the Rubicon*, NATO REVIEW, Sept. 1, 2005, <http://www.nato.int/docu/review/2005/Combating-Terrorism/Crossing-Rubicon/EN/index.htm>. See also Kent J. Kille & Ryan C. Hendrickson, *NATO and the United Nations: Debates and Trends in Institutional Coordination*, 2 J. INT'L ORG. STUD. 28, 40 (2011).

<sup>18</sup> Hendrickson, *supra* note 17.

<sup>19</sup> See William B. Wood, *Geographic Aspects of Genocide: A Comparison of Bosnia and Rwanda*, 26 Transactions Inst. Brit. Geographers 57, 60 (2001) (Tutsis comprise less than 20% of general population).

<sup>20</sup> MAHMOOD MAMDANI, *WHEN VICTIMS BECOME KILLERS: COLONIALISM, NATIVISM AND THE GENOCIDE IN RWANDA* 100-101 (Princeton Univ. Press 2001) (2001); See also Kenneth R. White, *Scourge of Racism: Genocide in Rwanda*, 39 J. Black Stud. 471, 473-474 (2009).

<sup>21</sup> MAMDANI, *supra* note 20, at 100-101.

<sup>22</sup> Wood, *supra* note 19, at 60; White, *supra* note 20, at 476.

down in April 1994 Hutu's throughout Rwanda reacted with immediate violence against the Tutsi population, blaming them for their leader's death.<sup>23</sup>

Within three months, the death toll reached an estimated 800,000 people with an additional two million refugees.<sup>24</sup> Despite the presence of a UN peacekeeping mission in Rwanda up to and including the time of the start of violence, the international community did little during the three months of violence.<sup>25</sup> Even a vote by the UNSC to increase troops by 5,500 in May did nothing, as it took six months for Member States to provide the necessary troops.<sup>26</sup> In the end, it was Rwanda Patriotic Front (RPF) troops composed of mainly Tutsi refugees that succeeded in ousting the standing Hutu government.<sup>27</sup> Once again the UNSC failed to uphold its duty as the primary body tasked with maintaining international peace and security. Nonetheless, the lessons learned in Bosnia and Rwanda guided the UN's subsequent response in East Timor.

### *East Timor*

Ever since Portugal officially left this former colony in 1975, East Timor has had a long and violent history with neighboring Indonesia. Conflicts between the two included forced annexation and decades of guerilla-type warfare by East Timor separatists. Following a change of Indonesian leadership in 1998, the UN Mission in East Timor (UNAMET) was established to conduct a referendum to determine if the East Timorese

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<sup>23</sup> Wood, *supra* note 19, at 60; White, *supra* note 20, at 476-477.

<sup>24</sup> U.N. International Children's Emergency Fund [UNICEF], Rwanda: Ten years after the genocide, [http://www.unicef.org/infobycountry/rwanda\\_genocide.html](http://www.unicef.org/infobycountry/rwanda_genocide.html) (last visited Apr. 20, 2013).

<sup>25</sup> S.C. Res. 893, ¶ 1, U.N. Doc. S/RES/872 (Oct. 5, 1993), available at <http://www.un.org/docs/scres/1993/scres93.htm>.

<sup>26</sup> S.C. Res. 918, ¶ 5, U.N. Doc. S/RES/918 (May 17, 1994), available at <http://www.un.org/docs/scres/1994/scres94.htm>; See also U.N. Assistance Mission for Rwanda [UNAMIR], Rwanda: UNAMIR Background, <http://www.un.org/en/peacekeeping/missions/past/unamirS.htm> (last visited Apr. 20, 2013).

<sup>27</sup> Wood, *supra* note 19, at 60.

people desired independence from Indonesia.<sup>28</sup> Held on August 30, 1999, the referendum results clearly indicated the desire for an independent state of East Timor.<sup>29</sup> Within days, pro-integration militias, with suspected support from Indonesian security forces, launched well-orchestrated attacks that killed between two and three thousand people, and devastated the East Timor economy and infrastructure.<sup>30</sup>

Unlike in Bosnia and Rwanda, the UN response was swift, with the UNSC soon approving the creation and deployment of the International Force for East Timor (INTERFET).<sup>31</sup> UN control and administration of East Timor continued under the UN Transitional Administration in East Timor (UNTAET), until East Timor officially gained independence in 2002.<sup>32</sup> UN involvement in East Timor would continue under various missions for an additional decade.<sup>33</sup> This level of foreign involvement in actions of a sovereign government perhaps foreshadowed the next steps that the international community took to combat future humanitarian crises.

### *Lessons Learned*

While the UN and the international community have almost always attempted to remedy major humanitarian crises, their efforts are often too little, too late. With over one

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<sup>28</sup> S.C. Res. 1246, ¶ 1, U.N. Doc. S/RES/1246 (June 11, 1999), available at <http://www.un.org/docs/scres/1999/sc99.htm>.

<sup>29</sup> U.N. Mission in East Timor [UNAMET], East Timor: UNAMET Background, <http://www.un.org/en/peacekeeping/missions/past/etimor/UntaetB.htm> (last visited Apr. 20, 2013) (95% of registered voters cast ballots (total 446,953 votes), with 78.5% voting for independence. 21.5% were in favor of the Indonesian proposal for East Timor to become a 'special autonomous region' of Indonesia).

<sup>30</sup> Commission for Reception, Truth, and Reconciliation Timore-Leste [CAVR], *Chega! The Report of the Commission for Reception, Truth and Reconciliation in Timor-Leste Executive Summary*, pt. 6, at 3 (2005), available at <http://www.cavr-timorleste.org/chegaFiles/finalReportEng/06-Profile-of-Violations.pdf>.

<sup>31</sup> S.C. Res. 1264, ¶ 3, U.N. Doc. S/RES/1264 (Sept. 15, 1999), available at <http://www.un.org/docs/scres/1999/sc99.htm>.

<sup>32</sup> S.C. Res. 1272, ¶ 1, U.N. Doc. S/RES/1272 (Oct. 25, 1999), available at <http://www.un.org/docs/scres/1999/sc99.htm>.

<sup>33</sup> S.C. Res. 1410, ¶ 1, U.N. Doc. S/RES/1410 (May. 17, 2002), available at <http://www.un.org/docs/scres/2002/sc2002.htm>; S.C. Res. 1599, ¶ 1, U.N. Doc. S/RES/1599 (Apr. 28, 2005), available at <http://www.un.org/en/sc/documents/resolutions/2005.shtml>.

million deaths combined in these examples alone, many thousands could have likely been saved with timely and effective UN action. However, the timeline shows an increasing comfort of the UN to involve itself in issues that would have historically constituted breaches of sovereignty: From apparent paralysis in Bosnia and Rwanda, to swift and decisive action in East Timor. Above and beyond merely stopping the violence, the UN also established extensive government and administrative support, as was seen in East Timor. The next several years following these crises brought about a bold and hopeful solution to the problem of massive domestically driven humanitarian crises.

#### CREATION, FUNCTION AND RULES OF R2P

##### *Creation*

The degree of international support and rapid processes of conceptualization, refinement, affirmation and implementation of the doctrine of R2P has been unprecedented.<sup>34</sup> The international community needed a response to the long and bloody history of inaction during humanitarian crises. To address this issue, the Canadian government created the International Commission on Intervention and State Sovereignty (ICISS) in 2000. The ICISS began work on the creation of what would become R2P. It published its report, "The Responsibility to Protect," in 2001.<sup>35</sup> The report addressed the politically charged issue of state sovereignty, by framing the discussion as a *responsibility*.<sup>36</sup>

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<sup>34</sup> Martha Hall Findlay, Can R2P Survive Libya and Syria? 4-6 (2011), available at <http://www.opencanada.org/wp-content/uploads/2011/11/SSWG-Paper-Martha-Hall-Findlay-November-2011.pdf> (entire process completed less than a decade).

<sup>35</sup> See generally INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY [ICISS], THE RESPONSIBILITY TO PROTECT (2001), available at <http://responsibilitytoprotect.org/ICISS%20Report.pdf> (Setting forth the preliminary concepts of R2P).

<sup>36</sup> R2P advocates argued that sovereignty comes from the creation of a social contract with the population that agrees to be ruled by the sovereign. In return, the primary duty of the sovereign is the protection of the people. If the sovereign will not protect the people, it therefore fails to uphold the main duty that grants it

Although not fully accepted by the international community in its original form, the ICISS report sparked discussions and began a process of refinement that culminated in decisive and unified action within the next several years.[footnote]

At the 2005 World Summit, heads of state and leaders from around the world came to an agreement on a refined form of the R2P doctrine set forth in the 2001 ICISS report.<sup>37</sup> The refined outcome document narrowed the scope and implementation procedures of R2P and established the central premise of R2P.<sup>38</sup> A month later, the UNSC also reaffirmed the World Summit Outcome Declaration.<sup>39</sup>

### *Function*

The final R2P was considerably narrower in scope and function than what was originally suggested in the 2001 ICISS report.<sup>40</sup> The ICISS report was highly aspirational and included controversial elements and suggestions as to how the new doctrine could be executed. The original concept of R2P was not restricted to specific crimes and was actionable whenever there was a massive humanitarian crisis.<sup>41</sup> For forceful interventions, a scenario would have had to fulfill six key requirements.<sup>42</sup> R2P as conceptualized in the ICISS report was far too broad for immediate acceptance.

In an effort to push R2P forward and make it more palatable for states, the triggers and specific purposes for which the doctrine could be used were greatly narrowed. Instead

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sovereignty. See Ruxandra Ivan, *The Responsibility to Protect Whom? The Notion of "Responsibility to Protect" in International Politics*, 12 ROM. POL. SCI. REV. 309, 310-311 (2012).

<sup>37</sup> 2005 World Summit Outcome, G.A. Res. 60/1, ¶ 138-139, U.N. Doc. A/RES/60/1 (Oct. 24, 2005), available at <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan021752.pdf>.

<sup>38</sup> G.A. Res. 60/1, *supra* note 37, ¶ 138-139.

<sup>39</sup> S.C. Res. 1674, ¶ 4, U.N. Doc. S/RES 1674 (Apr. 26, 2006) available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/RES/1674\(2006\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1674(2006)) (reaffirming ¶ 138-139 of World Summit Outcome Document).

<sup>40</sup> See Findlay, *supra* note 34, at 5.

<sup>41</sup> See ICISS, *supra* note 35, at 32-33.

<sup>42</sup> *Id.* at 32.

of a system that could be used flexibly, the use of R2P was reduced to the specific crimes of genocide, war crimes, ethnic cleansing, and crimes against humanity.<sup>43</sup> The use of R2P was also restricted to only cover acts by a state within its own territory. This was done to reinforce the idea that R2P enhances state sovereignty by helping states achieve their primary responsibilities to their citizens.<sup>44</sup>

### *Rules*

The formal process by which R2P can be activated was also further clarified. This process was laid out as “three pillars” as described by UN Secretary General Ban-Ki Moon in 2009.<sup>45</sup> For international intervention in the sovereign acts of a state within its own territory, including possible use of force, a given situation must in some way fulfill one of the three pillars. The first pillar firmly establishes that states have a responsibility to protect their own population from the specific triggering crimes of genocide, war crimes, ethnic cleansing and crimes against humanity.<sup>46</sup> The second pillar of R2P extends the responsibility of states to include a duty to assist other states in fulfilling the obligations of the first pillar.<sup>47</sup> If the requirements of the first and second pillar are insufficient for the needs of a given situation, the third pillar of R2P allows for quick responses and the use of

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<sup>43</sup> SG Report, *supra* note 1, ¶ 10. *But see* ICISS, *supra* note 35, at 32 (“[F]or [intervention] to be warranted, there must be serious and irreparable harm occurring to human beings, or imminently likely to occur.”).

<sup>44</sup> SG Report, *supra* note 1, ¶ 10(a).

<sup>45</sup> *See generally* SG Report, *supra* note 1.

<sup>46</sup> SG Report, *supra* note 1, at pt. I.

<sup>47</sup> SG Report, *supra* note 1, at pt. II.

more coercive options – up to and including the use of force.<sup>48</sup>

Responsibility to Protect (R2P)		
<b>Pillar 1</b> States have a duty to protect their own citizens.	<b>Pillar 2</b> The international community has a duty to assist states.	<b>Pillar 3</b> Possible use of force if authorized by the UNSC.

Although the third pillar allows for a variety of actions to be taken, most actions, and especially any use of force, must first gain approval from the UNSC.<sup>49</sup> Alternatives to the use of force can include international sanctions regimes as well as referral to the International Criminal Court (ICC).<sup>50</sup> Any use of international force, however, falls under the specific powers granted to the UNSC, as the primary international body tasked with the maintenance of international peace and security, and thus requires explicit permission.<sup>51</sup>

Although in line with the rules of the Charter, this approval requirement coupled with the increasing inability for the UNSC to come to agreement on major issues, may hold severe implications for the future viability of R2P, as well as the reputation of the UN as the main institution in the maintenance of international peace and stability. These concerns are justified by the UN's failure to protect civilian lives during times of crisis, even in the immediate period after the creation of R2P. The Darfur region of Sudan has seen conflict between rebel groups and Sudanese government forces for over a decade.<sup>52</sup> Despite

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<sup>48</sup> SG Report, *supra* note 1, at pt. III.

<sup>49</sup> SG Report, *supra* note 1, ¶ 11(c).

<sup>50</sup> SG Report, *supra* note 1, ¶ 53-54.

<sup>51</sup> U.N. Charter, *supra* note 8, art. 24; *Id.* at Ch. 7.

<sup>52</sup> Glenys Kinnock & Michael E. Capuano, *A decade on, Sudan threatens to repeat the tragedy of Darfur*, GUARDIAN.CO.UK, Mar. 10, 2013, <http://www.guardian.co.uk/commentisfree/2013/mar/10/decade-on-sudan-tragedy-darfur>.

powerful groups calling the events in Darfur, genocide, the UNSC declined to act against the wishes of the Sudanese government and to authorize forceful international intervention.<sup>53</sup>

### *Darfur*

Since gaining independence from Britain in 1956, Sudan has mainly been ruled by military regimes.<sup>54</sup> The Sudanese government had been in a state of civil war with rebel groups in the southern region of Sudan since 1983.<sup>55</sup> In 2003, rebel forces in Darfur, located in western Sudan, combined forces and attacked government installations.<sup>56</sup> With most government troops already fighting rebels in the south, the Sudanese government lost effective control of rural areas of northern Sudan.<sup>57</sup> Exploiting tribal tensions, the Sudanese government recruited nomadic tribal groups to aid in fighting the rebels in Darfur.<sup>58</sup> Called the *janjaweed* by civilians, these nomadic ad hoc government forces utilized brutal tactics that included indiscriminate slaughter, looting, and rape.<sup>59</sup>

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<sup>53</sup> See Glenn Kessler & Colum Lynch, *U.S. Calls Killings in Sudan Genocide*, THE WASHINGTON POST, Sept. 10, 2004, at A01, available at <http://www.washingtonpost.com/wp-dyn/articles/A8364-2004Sep9.html> (U.S. Secretary of State Colin Powell address to Senate Foreign Relations Committee.); Peter Walker & James Sturcke, *Darfur genocide charges for Sudanese president Omar al-Bashir*, GUARDIAN.CO.UK, July 14, 2008, <http://www.guardian.co.uk/world/2008/jul/14/sudan.warcrimes1>; *Text of President Bush's Speech on Sudan*, N.Y. TIMES, May 29, 2007, [http://www.nytimes.com/2007/05/29/world/africa/29iht-29sudan-text.5919156.html?\\_r=0](http://www.nytimes.com/2007/05/29/world/africa/29iht-29sudan-text.5919156.html?_r=0) ("My administration has called these actions by their rightful name: genocide. The world has a responsibility to help put an end to it.).

<sup>54</sup> International Commission on Inquiry on Darfur, *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General*, ¶ 43, submitted to the Secretary-General, (Jan. 25, 2005), available at [http://www.un.org/news/dh/sudan/com\\_inq\\_darfur.pdf](http://www.un.org/news/dh/sudan/com_inq_darfur.pdf) [hereinafter Commission on Darfur] (from 1956-2005, only 10 years of democracy).

<sup>55</sup> Civil War existed between North and South Sudan from 1983 to 2005 with serious human rights abuses throughout. Over 2 million died and 4.5 million were displaced from their homes. The conflict in Darfur began during this period of peace negotiations. It has been argued that this is because rebel groups in Darfur were specifically barred from participating in the Comprehensive Peace Agreement (CPA) talks. See Commission on Darfur, *supra* note 54, ¶ 50.

<sup>56</sup> Commission on Darfur, *supra* note 54, ¶¶ 63-66.

<sup>57</sup> Commission on Darfur, *supra* note 54, ¶ 66.

<sup>58</sup> Commission on Darfur, *supra* note 54, ¶¶ 67-68.

<sup>59</sup> Janjaweed is an Arabic colloquialism that means approximately "devil on horseback." These forces, are reported to liberally use a 'scorched earth' approach to warfare, utilizing tactics such as rape, murder, looting, and pillaging. See Commission on Darfur, *supra* note 54, ¶¶ 98-116.

The actions of the government forces in Darfur fall under the specific crimes necessary to trigger R2P consideration. In 1998, the International Criminal Tribunal for Rwanda, in the decision *Prosecutor v. Akayesu*, established that the use of rape as a wartime tactic may qualify as an act of genocide.<sup>60</sup> Sources confirm that the instances of rape in Darfur met the same criteria as was used by the ICTR.<sup>61</sup> Next, given that the conflict in Darfur was purely an internal affair, the conflict should have also fulfilled the R2P requirement that the issue be related to the actions of a state within its own territory.<sup>62</sup>

The fact that the Sudanese government was in control of *janjaweed* forces responsible for killings and rapes denotes a failure to uphold the first pillar of R2P – the responsibility to protect one’s own population. Despite the fact that failure to uphold the first pillar places the responsibility upon the international community, the international response to the conflict was weak.<sup>63</sup> An attempt by the UNSC to authorize a peacekeeping force via Resolution 1706 in 2006 failed due to lack of consent by the Sudanese government; the first ever complete failure of a UNSC authorized peacekeeping mission.<sup>64</sup> A later peacekeeping mission in 2008 was understaffed, severely behind schedule, and failed

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<sup>60</sup> *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgment, ¶ 731 (Sept. 2, 1998), available at <http://www.unictt.org/Portals/0/Case%5CEnglish%5CAkayesu%5Cjudgement%5Cakay001.pdf> (“[T]he Chamber wishes to underscore the fact that in its opinion, [rape and sexual violence] constitute genocide in the same way as any other act as long as they were committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such.”).

<sup>61</sup> See Nora Boustany, *Janjaweed Using Rape as ‘Integral’ Weapon in Darfur, Air Group Says*, THE WASHINGTON POST, July 3, 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/07/02/AR2007070201627.html>; *Testimonies of Rape in Sudan*, BBC.CO.UK, July 19, 2004, <http://news.bbc.co.uk/2/hi/africa/3900777.stm>.

<sup>62</sup> See Commission on Darfur, *supra* note 54, ¶¶ 50, 63-68.

<sup>63</sup> There were 19 UNSC resolutions on Darfur between 2003 and 2008, with no strong response or UN established peacekeeping force despite two resolutions authorizing such forces. See S.C. Res. 1706, ¶¶ 1, 3, 8-9, 12, U.N. Doc. S/RES/1706 (Aug. 31, 2006) available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/RES/1706\(2006\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1706(2006)); S.C. Res. 1769, ¶¶ 1, 5, 15, U.N. Doc. S/RES/1769 (July 31, 2007) available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/RES/1769\(2007\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1769(2007)).

<sup>64</sup> See Africa Action, *Six Months Since 1769* (Jan. 31, 2008), <http://www.africaaction.org/six-months-since-1769.html> (overview of Sudanese conflict from 2003 to 2008).

to maintain peace and security in the region.<sup>65</sup> Given the numerous peacekeeping failures, the duration and severity of the conflict, it remains a mystery why the use of force via R2P was never fully put into action in Darfur. It would take several more years and a series of revolutions in the Middle East for the UN to finally see the full use of international force under R2P in Libya.<sup>66</sup>

#### THE “ARAB SPRING” AND R2P

From 2010 to the present, the series of protests, movements, and political revolutions termed the “Arab Spring” have rapidly spread across the Middle East and North Africa. Starting with Tunisian protests in December 2010, over a dozen states have felt the direct impact of the Arab Spring. Although this paper will mainly concentrate on the impacts of Arab Spring events in Libya and Syria, it is important to establish a brief timeline to illustrate the speed and power with which the Arab Spring came to be.

#### *Timeline*

The beginnings of the Arab Spring have been traced to the self-immolation of Mohammad Bouazizi, a young fruit and vegetable vendor in the relatively stable North African state of Tunisia on December 19<sup>th</sup>, 2011.<sup>67</sup> Over the next several days as word of Mr. Bouazizi’s actions spread, as well as speculations as to his reasons, groups of youth around the country began to gather in protest. In a country, and region, where dissent is often times repressed, the ensuing weeks of protest were alarming to all states in the region. Within weeks after the first protests in Tunisia, youth in Algeria also began to

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<sup>65</sup> *Id.* (U.N. peacekeepers attacked and killed, humanitarian aid workers attacked, conflict continues as before).

<sup>66</sup> S.C. Res. 1973, ¶ 4, U.N. Doc. S/RES/1973(Mar. 17, 2011) available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/RES/1973\(2011\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1973(2011)).

<sup>67</sup> See Garry Blight et al., *Arab Spring: An Interactive Timeline of Middle East Protests*, GUARDIAN.CO.UK, Jan. 5, 2012, [www.guardian.co.uk/world/interactive/2011/mar/22/middle-east-protest-interactive-timeline](http://www.guardian.co.uk/world/interactive/2011/mar/22/middle-east-protest-interactive-timeline) (timeline links to news stories collected from Dec. 2010 – Dec. 2011, organized by state and type of action).

protest, with a man also setting himself on fire.<sup>68</sup> On January 14<sup>th</sup>, less than a month after the initial protests, Tunisian President Ben Ali fled Tunisia after nearly a quarter century of rule.<sup>69</sup>

The rapid regime change in Tunisia fueled protests throughout the region, and within days sparked protests in Egypt.<sup>70</sup> These protests in turn sparked even more protests throughout the Middle East. A mere eighteen days after protests began in Egypt, President Hosni Mubarak stepped down on February 11<sup>th</sup>.<sup>71</sup> With two leaders stepping down within a month, the Arab Spring had truly become a regional force for change. On February 16<sup>th</sup>, protests spread to neighboring Libya, where long time leader Colonel Muammar el-Qaddafi began his eight-month struggle to maintain control.<sup>72</sup> This marked the first time in history that the UN had implemented the use of force against a sovereign and unwilling member of the international community.<sup>73</sup>

#### LIBYA, THE FIRST AND LAST USE OF R2P?

The revolutionary rebellion in Libya stood as a key turning point for the legitimacy of the UN and international community in matters where a humanitarian crisis was either ongoing or inevitable. Unable to afford another instance of unilateral action, such as when NATO acted without approval in Kosovo, the UNSC passed Resolution 1973, on March 18<sup>th</sup>,

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<sup>68</sup> See *id.* at Algeria Jan. 9-13, 2011.

<sup>69</sup> See Angeliqe Chrisafis & Ian Black, *Zine al-Abidine Ben Ali Forced to Flee Tunisia as Protestors Claim Victory*, The GUARDIAN, Jan. 14, 2011, at 1, available at <http://www.guardian.co.uk/world/2011/jan/14/tunisian-president-flees-country-protests>.

<sup>70</sup> See Mohammad Al-Momani, *The Arab "Youth Quake": Implications on Democratization and Stability*, 3 MIDDLE E. L. & GOVERNANCE 159, 160 (2011); Egypt: *Thousands Protest Against President Hosni Mubarak*, GUARDIAN.CO.UK, Jan. 25, 2011, <http://www.guardian.co.uk/world/video/2011/jan/25/egypt-protest-president-murabak-video> (protesters comment on inspiration from Tunisian protests).

<sup>71</sup> Chris McGreal & Jack Shenker, *Hosni Mubarak Resigns – and Egypt Celebrates a New Dawn*, GUARDIAN.CO.UK, Feb. 11, 2011, <http://www.guardian.co.uk/world/2011/feb/11/hosni-mubarak-resigns-egypt-cairo>.

<sup>72</sup> Blight et al., *supra* note 67, at Libya Feb. 16-Oct. 23, 2011.

<sup>73</sup> S.C. Res. 1973, *supra* note 66; See also Ivan, *supra* note 36, at 315.

2011.<sup>74</sup> Under Resolution 1973, the UNSC authorized the use of force against a sovereign state for the purposes of humanitarian intervention for the very first time.<sup>75</sup>

### *UNSC Resolution 1973*

In February 2011, the UNSC demanded the immediate end to violent government actions against protesters in Libya.<sup>76</sup> Qaddafi raised the legitimate fear of massive civilian casualties through his speeches to his supporters.<sup>77</sup> Given the combination of overt threats, history of violence, and mounting evidence of purposeful targeting of civilians, the UNSC had little choice but to act immediately to prevent what was seen as an inevitable humanitarian crisis.<sup>78</sup> UNSC Resolution 1973 was remarkable for several reasons beyond being the first authorization for the use of force. First, it marked a clear departure away from prior UNSC inaction in the face of looming humanitarian suffering.<sup>79</sup> Second, it contained very little detail as to exactly how any intervention efforts were to be carried

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<sup>74</sup> In the spring of 1999, NATO Member States authorized air strikes against Serb forces during the conflict in Kosovo. These strikes were carried out despite a recent repeated vetoes by Russia and China on measures within the UNSC proposing a similar UNSC sanctioned course of action. This was a major blow to UN legitimacy, as the act was not only carried out against explicit votes against such action, but because the strikes were ultimately *successful* in hastening an end to the conflict. See Adam Roberts, *NATO's 'Humanitarian War' over Kosovo*, 41 INT'L INST. FOR STRATEGIC STUD. 102, 102, 104 (providing background on the NATO action and history of vetoes in UNSC); Saira Mohamed, *Taking Stock of the Responsibility to Protect*, 48 STAN. J. INT'L L. 319, 323 (2012) (discussing how unilateral action damaged UNSC legitimacy); See also Findlay, *supra* note 34, at 4.

<sup>75</sup> Contrary to some beliefs, Libya was the first instance of UNSC authorization of military intervention against an *unwilling* sovereign government. Other instances of UN foreign involvement have all included some type of permission or request by the host state. See S.C. Res. 1973, *supra* note 66; Paul D. Williams & Alex J. Bellamy, *Principles, Politics, and Prudence: Libya, the Responsibility to Protect, and the Use of Military Force*, 38 GLOBAL GOVERNANCE 273, 275 (2012).

<sup>76</sup> S.C. Res. 1970, ¶¶ 1, 4, 9, U.N. Doc. S/RES/1970 (Feb. 26, 2011), available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/RES/1970\(2011\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1970(2011)) (also imposed targeted travel bans, an arms embargo, and referral of the issue of human rights violations to the International Criminal Court)

<sup>77</sup> See Sari Bernstein, *The Responsibility to Protect after Libya: Humanitarian Intervention as Customary International Law*, 38 BROOK. J. INT'L L. 305, 337 (2012); Ved P. Nanda, *From Paralysis in Rwanda to Bold Moves in Libya*, 34 HOUS. J. INT'L L. 1, 39 (2012).

<sup>78</sup> Williams, *supra* note 75, at 288.

<sup>79</sup> Mohamed, *supra* note 74, at 331.

out.<sup>80</sup> For example, the text of Resolution 1973 called for the enforcement of a no-fly zone, and authorized UN Member States to take “all necessary measures” to protect civilians, while expressly forbidding foreign troops to set foot on Libyan territory.<sup>81</sup> Notably, support for the initiative by the Arab League is largely credited with swaying the opinion of Russia and China, who abstained from voting rather than oppose the resolution.<sup>82</sup> While this is widely regarded as authorizing the use of force, the resolution does not in any way further clarify how Member States were specifically to act. Third, it formally acknowledged the need for forceful intervention on humanitarian grounds by the international community.<sup>83</sup>

The lack of clarity in the resolution left the door open for potential abuse of the R2P justifications for intervention and overreach of the express mandate provided in Resolution 1973.<sup>84</sup> For example, some argue that efforts to institute regime change were a necessary part of efforts to protect the civilian population. American, British, and French leaders used these arguments in justifying their support for subsequent NATO bombings and sorties that were not directly related to civilian protection efforts.<sup>85</sup> While the resolution did not authorize such actions, it also did not expressly forbid regime change efforts.<sup>86</sup> Some have even claimed that UNSC members violated what meager specificity was set forth in the

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<sup>80</sup> S.C. Res. 1973, *supra* note 66.

<sup>81</sup> “All necessary measures” did not include the ability to violate the arms embargo established in Res. 1970. Regardless, weapons and supplies were routinely supplied to rebel forces. *See* S.C. Res. 1973, *supra* note 66 (“[A]ll necessary measures, notwithstanding paragraph 9 of resolution 1970.”).

<sup>82</sup> *See* Maysa Bydoon, *The Responsibility to Protect (RtoP) and Libya*, 30 EUR. J. SOC. SCI. 377, 379 (2012); *See also* Bernstein, *supra* note 77, at 338.

<sup>83</sup> *See* Mohamed, *supra* note 74, at 331.

<sup>84</sup> Nanda, *supra* note 77, at 49-50.

<sup>85</sup> Startling opinion piece that outright calls for the elimination of Qaddafi less than a month after the passage of Resolution 1973 that justifies such action as a means of guaranteeing civilian protections. Barack Obama et al., *Libya’s Pathway to Peace*, THE INTERNATIONAL HERALD TRIBUNE, Apr. 15, 2011, op-ed, available at <http://www.nytimes.com/2011/04/15/opinion/15iht-edlibya15.html>.

<sup>86</sup> S.C. Res. 1973, *supra* note 66 (no reference to regime change in entire Resolution).

resolutions during their own intervention efforts.<sup>87</sup> By providing arms and supplies to rebels, France and other Member States were seen by some as violating the arms embargo laid out in Resolution 1970.<sup>88</sup> Additionally, the presence of Special Forces troops in Libya violated one of the few explicit commands in Resolution 1973 to avoid any foreign troops on Libyan territory.<sup>89</sup> NATO air strikes also continued *after* rebel forces had established control in the capital, Tripoli, a fact that strikes against the argument that protecting civilians was the primary goal.<sup>90</sup>

Overreach of UNSC resolutions held the possibility of setting a dangerous precedent, especially in matters related to the violent breach of state sovereignty. China and Russia in particular have historically been protective of state sovereignty, and arguably would not have supported such action in Libya if not for the extreme circumstances and support of regional organizations like the African Union and League of Arab States.<sup>91</sup> Some high level experts at the UN have even theorized that China and Russia allowed R2P to be used to call for the use of force in Libya with the express purpose and knowledge that overreach would cripple the doctrine in the future.<sup>92</sup> However, analysis of the dialogue surrounding the adoption of Resolution 1973 seems to paint the opposite view, with China and Russia asking insightful yet unanswered questions, specifically aimed at clarifying the extent and

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<sup>87</sup> See Williams, *supra* note 75, at 291.

<sup>88</sup> See *id.*

<sup>89</sup> See *id.*

<sup>90</sup> See Haider Ala Hamoudi, *Arab Spring, Libyan Liberation and the Externally Imposed Democratic Revolution*, 89 DENV. U. L. REV. 699, 731 (2012).

<sup>91</sup> See Bernstein, *supra* note 77, at 338; Bydoon, *supra* note 82, at 381; Williams, *supra* note 75, at 279-280.

<sup>92</sup> Personal knowledge gained from direct conversations on Syria with Deputy Permanent Representatives while working full time at the UN and EU headquarters in NYC during the UN Arms Trade Treaty (ATT), Aug. 2012. Conversation arose in part from conversations on the politicking and threats exchanged between China, Russia, UK and the US on conditional support and threats of non-acceptance of the ATT.

methods of intervention.<sup>93</sup> Conspiracy theories aside, given the long history of inaction by the international community in so many cases of horrific humanitarian crises, the question must be asked: why the use of R2P in Libya?

#### *Factors for use of R2P in Libya*

It is unlikely that any singular reason or concern brought about the use of R2P in Libya. On the contrary, an assortment of factors played a role. Some of these include the Arab Spring inspired revolutions, the degree of human suffering, the prolific use and availability of online news sources and information sharing, and the widespread and constant news coverage and media attention on Libya. Factors specifically related to the Libyan regime include the size of the army and the virtual lack of allied states. And finally, a large public will for action developed from UN inaction in the past, the possibility of damage to UN legitimacy, and the particular state interests of the intervening countries.<sup>94</sup>

The sheer scale and speed with which revolutions blossomed across the Middle East galvanized the attention of the world. For the first time in modern history, large-scale multi-state revolutions were not only taking place, but were actually creating change in one of the most traditionally authoritarian regions of the world. Prior to the intervention, the price paid by civilian protesters against the established leadership in Libya was high. Violent government acts included mass killings, summary executions, the use of tanks,

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<sup>93</sup> See U.N. SCOR, 66<sup>th</sup> Sess., 6498<sup>th</sup> mtg. at 8, 10, S/Pv.6498 (Mar. 17, 2011)(China and the Russian Federation asked questions on the specifics of the proposed no-fly zone, rules of engagement, and limits on the use of force, all of which were left unanswered by the other UNSC members. China also stressed the importance of the Arab League and African Union requests for intervention. The Russian Federation explicitly states concerns that the consequences of excessive use of force in Libya will harm the future ability to maintain peace and security throughout the Middle East.)

<sup>94</sup> Evidence of the public will can be seen by the creation of R2P itself.

attack helicopters, and the deaths of thousands of civilians.<sup>95</sup> Large-scale involvement by Middle Eastern youth was another factor that heavily contributed towards the intensity of protests, and degree of attention and publicity gained by each protest or act of defiance.<sup>96</sup>

Arab Spring protesters in every involved state turned to the Internet as a means of communication, whether used internally as a tool of organization and coordination, or externally as a means of spreading their story and garnering ever-greater domestic and international support.<sup>97</sup> In fact, sites like Facebook and YouTube were oftentimes credited with having played key roles in the efforts of protesters.<sup>98</sup> This massive stream of information aided the widespread news coverage of events, statements, and conditions surrounding events. Media coverage in turn added pressure on the UN and world leaders to act. The UN could not afford to allow the situation in Libya to remain unaddressed and risk the possibility of non-UNSC authorized, yet potentially successful, unilateral action.<sup>99</sup> However, once action was authorized, it was NATO forces, not the UN, that controlled the overall mission.

Several factors also made Libya an easy target for international intervention. The Libyan army was only estimated to contain between 50,000 and 130,000 troops, with most

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<sup>95</sup> U.N. High Commissioner for Human Rights Navenethem Pillay, *Report to United Nations Human Rights Council*, 9 mins. (Feb. 25, 2011), available at <http://www.c-spanvideo.org/program/298207-1>.

<sup>96</sup> Al-Momani, *supra* note 70, at 160-161 (Noting the combination of lack of employment plus high education and oppressive regimes led to a build up of tension and political anger); *See also* Filipe R. Campante & Davin Chor, *Why was the Arab World Poised for Revolution? Schooling, Economic Opportunities, and the Arab Spring*, 26 J. ECON. PERSP. 167, 169, 175 (2012) (Data shows that education levels in Middle East has rapidly increased, while job opportunities have either remained the same or stagnated. Increased education that is not rewarded in employment leads to decreased personal costs to political protest. The combination of high education and low job prospects increases political activism, and this was exactly reflected in the Arab Spring states.).

<sup>97</sup> Al-Momani, *supra* note 70, at 163 (Citing explosive growth in Internet usage in the Middle East, 29.8% by 2010, a growth rate of 1,825% from 2000. Also 27 million Facebook users, a medium that the government had a difficult time regulating, yet allowed protesters to share information widely and rapidly.).

<sup>98</sup> *Id.*

<sup>99</sup> *See supra* note 74, and accompanying text.

elite forces composed of either mercenary or loyal tribal relations.<sup>100</sup> It is reported that Gaddafi purposely kept his military small to reduce the threat of a military coup.<sup>101</sup> Also, the rebel Libyan National Army was able to seriously contend with Libyan forces in terms of numbers and basic weaponry. This was especially true after the imposition no-fly zones and arms embargos by UNSC Resolutions 1973 and 1970, which removed most technological leads that Libyan forces had once held.<sup>102</sup> Also, at the time of the Arab Spring, Gaddafi had few international allies and little support, with whatever relations he once had with major powers like Russia evaporating when Russia voted in favor of Resolution 1970 and did not act against the passage of Resolution 1973.<sup>103</sup>

Individual governments and coalitions also felt pressure to act. Domestic pressure, especially in democratic states, can exert tremendous pressure upon elected leadership and sway their decision making process. This effect is due to so called *two-level games*.<sup>104</sup> In international affairs, leaders (level 1) must always be concerned with international pressures.<sup>105</sup> However, domestic constituencies (level 2) also exert pressure upon their leaders.<sup>106</sup> This in turn influences the possible actions that leaders may pursue.<sup>107</sup> Leaders

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<sup>100</sup> ARAM NERGUIZIAN & ANTHONY H. CORDESMAN, INSTABILITY IN SYRIA: ASSESSING THE RISKS OF MILITARY INTERVENTION 17 (Center for Strategic & International Studies 2011), available at [http://csis.org/files/publication/111213\\_SyriaMilitaryIntervention.pdf](http://csis.org/files/publication/111213_SyriaMilitaryIntervention.pdf); Sylvia Poggioli, *Gadhafi's Military Muscle Concentrated in Elite Units*, NPR, Mar. 10, 2011, <http://www.npr.org/2011/03/10/134404618/gadhafis-military-muscle-concentrated-in-elite-units>.

<sup>101</sup> Poggioli, *supra* note 100.

<sup>102</sup> *How Syria and Libya Compare*, GUARDIAN.CO.UK, Apr. 28, 2011,

<http://www.guardian.co.uk/world/2011/apr/28/syria-libya-how-they-compare>.

<sup>103</sup> NERGUIZIAN, *supra* note 100, at 21 (Russia is estimated to have lost a minimum of \$4 billion in lost arms trade deals with Libya after creation of a UN arms embargo via Resolution 1970). See also *UN Sanctions on Libya to cost Russia US\$4 Billion*, RT, Feb. 27, 2011, <http://rt.com/news/russia-arms-export-libya/>.

<sup>104</sup> See Robert D. Putnam, *Diplomacy and Domestic Politics: The Logic of Two-Level Games*, 42 Int'l Org. 427, 433-435 (1988) (well regarded theory of international diplomacy).

<sup>105</sup> *Id.* at 431-432.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* (two level games analysis: pressure from L2 → L1 constrains possibilities. This effect is not always a negative or restrictive effect. For example, during negotiations L1 members may place excuses for lack of action on the needs and desires of the L2 group, thereby gaining flexibility in how they negotiate with other

often submit to pressure from their constituents due to political considerations such as gains or consequences in subsequent elections.<sup>108</sup> For example, domestic US opinion in 2011 was arguably less inclined to risk American lives and treasure upon yet another foreign war. This likely impacted President Obama's decision to not push for the US to take the primary lead in military actions in Libya. As a result, the US took a supportive role and largely backed up more direct action by French and other NATO forces.<sup>109</sup> Given the state of war weariness in America, President Obama may have done so in part to gain an anti-war image for the upcoming 2012 Presidential Elections, which he won.<sup>110</sup>

Analysis of relevant political commentary lends weight to the argument that state interests were the major reason for intervention in Libya, although humanitarian concerns did play a minor role.<sup>111</sup> In the commentary surrounding the adoption of Resolution 1973, out of all UNSC members, only France briefly referred to the concept of an international responsibility to act, while most other members only stressed the responsibility of the Libyan government to protect its own people.<sup>112</sup> Additionally, US President Obama made no mention of R2P in his address to the nation to establish the rationale behind the intervention in Libya.<sup>113</sup> Instead, he stated that the US has a responsibility to act to protect

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L1 groups. This option is oftentimes unavailable to L1 members who maintain strict control of the general population, such as dictators or military leaders.)

<sup>108</sup> *Id.* at 432.

<sup>109</sup> See Steven Erlanger, *Libya's Dark Lesson for NATO*, N.Y. TIMES, Sept. 4, 2011, at SR4, available at <http://www.nytimes.com/2011/09/04/sunday-review/what-libyas-lessons-mean-for-nato.html?pagewanted=all&r=0>.

<sup>110</sup> Dave Boyer, *Obama Carries Anti-War Message to Rallies*, THE WASHINGTON TIMES, Sept. 2, 2012, <http://www.washingtontimes.com/news/2012/sep/2/obama-biden-cast-romney-war-monger/?page=all>.

<sup>111</sup> See generally Mohamed, *supra* note 74 (general theme of US involvement more to do with state interests than humanitarian concerns or duties under R2P).

<sup>112</sup> See U.N. SCOR, *supra* note 93, at 3 ("Every hour that goes by increases the burden of responsibility on our shoulders.").

<sup>113</sup> President's Address to the Nation on the Situation in Libya, 2011 Daily Comp. Pres. Docs., 2011 DCPD No. 00206 (Mar. 28, 2011), available at <http://www.gpo.gov/fdsys/pkg/DCPD-201100206/pdf/DCPD-201100206.pdf>.

its interests and values.<sup>114</sup> Further comments about the need to measure interests against the needs to act add weight to the argument that although R2P was created to rise above national interests, the reality remains that individual members of the international community still require the addition of personal beneficial interests in order to act.<sup>115</sup> Producing 1.5 million barrels of oil per day, Libya's rich oil production capabilities are one of many possible interests that major Western powers considered worth protecting or securing.<sup>116</sup> Although disappointing, given the potential political and economic costs associated with war for purely humanitarian purposes, it is unlikely that in the near future, states will fully eliminate the calculus of interests and benefits from their decisions to intervene.<sup>117</sup>

#### *Factors for use of R2P in Syria*

Given the plethora of factors that existed in pushing the international community to implement R2P intervention methods in Libya, it is important to check and compare these factors to those that exist in Syria. If a substantial number of the factors remain the same, or are present to a stronger degree, then the reasoning as to why R2P has not been

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<sup>114</sup> *Id.* at 5.

<sup>115</sup> See Mohamed, *supra* note 74, at 331, 336; Williams, *supra* note 75, at 282 (citing studies that show that external military intervention is usually inspired by self-interest, and intervention *only* for humanitarian purposes is extremely rare).

<sup>116</sup> See GUARDIAN.CO.UK, *supra* note 102; CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK 2009 (2009), <https://www.cia.gov/library/publications/the-world-factbook/geos/ly.html> (Libya ranks 10th in the world for proven crude oil reserves with 4.88 billion barrels).

<sup>117</sup> See Williams, *supra* note 75, at 285 (war is rarely politically efficient, and especially humanitarian warfare, where a state money and troops are being expended for little tangible benefit and rather just to protect 'others' 'over there.').

implemented a second time must be questioned.

Libya v. Syria		
Libya	Factors	Syria
Yes	UNSC Resolution	No
Very High	Regional Support for Intervention	Med.
Low/Med.	Civilain Deaths by Government	Very High
None	Presence of Allied States	Yes
50,000 - 130,000	Size of Military	400,000+
Very High	Organized Rebels	Low/Med.
Very High	Presence of Oil	Low
Low	Sectarian/Ethnic Divides	Very High
Low	Potential for Regional Destabilization	Very High
Approximately 1 Month	Time until Intervention	2+ Years, No Intervention

Given the speed and breadth of the reaction in Libya, it is hard to grasp how the same community remained divided and indecisive on Syria. It is important to first compare and contrast the origin and timeline of protests in both countries. Government violence against Arab Spring inspired protesters in Syria occurred approximately one month after the first instances of violence in Libya.<sup>118</sup> Instances of violence increased rapidly as protests spread throughout Syria, extending as far as the capital in Damascus.<sup>119</sup> Protests in Syria clearly followed the same Arab Spring inspired path and those in Libya.

Civilian deaths in Syria are currently many times higher than reports from Libya in the days prior to international action.<sup>120</sup> Multiple reports place the current death toll in

<sup>118</sup> Blight et al., *supra* note 67, at Syria Feb. & Mar. 2011 (Syrian government forces began killing protesters in mid-March 2011, compared to protests in Libya which began in mid-February 2011.).

<sup>119</sup> *Id.* at Syria Mar. 2011 (nine major protests within two weeks of the beginnings of violence in Syria).

<sup>120</sup> See Seumas Milne, *If the Libyan War was About Saving Lives, it was a Catastrophic Failure*, the Guardian, Oct. 26, 2011, at p. 33, available at <http://www.guardian.co.uk/commentisfree/2011/oct/26/libya-war->

Syria at approximately 60,000 or greater.<sup>121</sup> Not all of these deaths constitute pure unarmed civilians. However, peaceful unarmed protests in Syria lasted longer than those in Libya, with early reports showing deaths totaling 1,000 or more within the earliest months.<sup>122</sup> As in Libya, Syrian youth played a key role in the beginning stages of protest and initiated strident calls for significant reform.<sup>123</sup> Protesters also made liberal use of the Internet and social networking websites to help coordinate and spread their goals and messages.<sup>124</sup> Unlike the situation in Libya however, Syrian officials reacted quickly; periodically shutting down Internet and phone line services to cities and towns across the state.<sup>125</sup> Growing differences between Libya and Syria become more apparent when comparing the risks that any international intervention forces might face in Syria.

Unlike Libya, the balance of forces between the Syrian government and opposition forces is much less favorable for intervention forces. At the start of the conflict in Syria, the Syrian army was estimated to include over 400,000 troops, including armored units, Special Forces, enormous stockpiles of chemical and biological weapons, and a modern air

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[saving-lives-catastrophic-failure](#) (stating UN data shows pre-intervention death toll was between 1,000-2,000).

<sup>121</sup> See MEGAN PRICE ET AL., PRELIMINARY STATISTICAL ANALYSIS OF DOCUMENTATION OF KILLINGS IN THE SYRIAN ARAB REPUBLIC 1 (The Benetech Human Rights Program 2013), available at <http://www.ohchr.org/Documents/Countries/SY/PreliminaryStatAnalysisKillingsInSyria.pdf> (“[T]he seven databases collected here identified 59,648 unique killings.”); See also Ashley Fantz, *Syria Death Toll Probably at 70,000*, U.N. Human Rights Official Says, CNN, Feb. 12, 2013, <http://www.cnn.com/2013/02/12/world/meast/syria-death-toll>.

<sup>122</sup> *Syria Death Toll ‘Surpasses 1,000’*, AL JAZEERA, May 24, 2011, <http://www.aljazeera.com/news/middleeast/2011/05/2011524182251952727.html>.

<sup>123</sup> See Kelly McEvers, *Revisiting the Spark that Kindled the Syrian Uprising*, NPR, Mar. 16, 2012, <http://www.npr.org/2012/03/16/148719850/revisiting-the-spark-that-kindled-the-syrian-uprising> (the interrogation and beatings of several youth is credited as the origin of Arab Spring protests in Syria).

<sup>124</sup> See Annasofie Flamand & Hugh Macleod, *Syria’s Protesters Turn to Facebook to Expose ‘Citizen Spies’*, THE OBSERVER, Oct. 8, 2011, at 26, available at <http://www.guardian.co.uk/world/2011/oct/09/syria-informers-protests-internet-facebook>.

<sup>125</sup> Martin Chulov, *Syria Shuts Off Internet Access Across the Country*, GUARDIAN.CO.UK, Nov. 29, 2012, <http://www.guardian.co.uk/world/2012/nov/29/syria-blocks-internet>.

force.<sup>126</sup> Bolstering these units is a large state security system, comprised of four largely autonomous secret police or intelligence agencies.<sup>127</sup> Conversely, Syrian opposition forces are far less well armed and organized. Syrian military forces regularly repel almost all advances that opposition forces have made.<sup>128</sup>

Sectarian violence, the possible threat to Israel, Iranian involvement, and lack of cohesion within the UNSC are all factors that must be weighed by those who would intervene in Syria. Religious, ethnic, and tribal divides are stronger and more pronounced in Syria than in Libya.<sup>129</sup> Combined with a population over three times as large as Libya, Syria faces a high possibility of severe post-intervention violence.<sup>130</sup> In addition, existing social divisions have been purposely inflamed by the Assad regime since the beginning of serious fighting in Syria.<sup>131</sup> A destabilized Syria could also pose a threat to Israeli peace and security, something that the US is loath to allow.<sup>132</sup> Furthermore, Iran's strong support of the Assad regime, and the potential threat of Iranian action are of serious concern.<sup>133</sup> Finally, any foreign intervention efforts must first be approved by the UNSC.<sup>134</sup> While regional organizations call for international action in Syria, they are not as explicit as they

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<sup>126</sup> See NERGUIZIAN, *supra* note 100, at 16 (Additional factors include a much higher population and population density, which could make air strikes more dangerous. Also, Syria reportedly has a large amount of anti-aircraft, anti-ship and anti-missile capabilities, which would also increase the dangers of intervening forces); GUARDIAN.CO.UK, *supra* note 102.

<sup>127</sup> See "BY ALL MEANS NECESSARY!" 5 (Human Rights Watch 2011), <http://www.hrw.org/reports/2011/12/15/all-means-necessary> (outlining the four main state intelligence and security agencies).

<sup>128</sup> See NERGUIZIAN, *supra* note 100, at 16, 25; Jonathan Dupree, *Syria Update: Regime Breaks Siege of Wadi al-Deif*, INSTITUTE FOR THE STUDY OF WAR, Apr. 18, 2013, <http://www.understandingwar.org/backgrounder/syria-update-regime-breaks-siege-wadi-al-deif> (Regime forces break a six month siege of military bases, putting rebels on defensive).

<sup>129</sup> See NERGUIZIAN, *supra* note 100, at 16.

<sup>130</sup> *Id.*

<sup>131</sup> See *id.* at 26.

<sup>132</sup> See *id.* at 21, 23-24 (Syria helps maintain the stability of Israeli's northern border, as well as buffers against Palestinian anti-Israel 'agitation').

<sup>133</sup> See *id.* at 1 (Syria is Iran's most important strategic partner in the Middle East).

<sup>134</sup> See *supra* note 49.

were in Libya.<sup>135</sup> However, even if an explicit request was made to the UNSC, as was done prior to Resolution 1973, it is unlikely such a request would sway China and Russia *again*. If the UNSC could come to an agreement, any plan of action would need to satisfy Russian and Chinese interests.<sup>136</sup> These factors show that any intervention efforts in Syria will face a much more dangerous situation, with wider repercussions, than those faced in Libya.

Some states may also have an interest in preventing action in Syria including the Russian Federation, China, and the US. As discussed earlier, Russia's interests may best be served with being able to continue its large military sales contracts with Syria.<sup>137</sup> China, too, has little reason to support the use of R2P in Syria, especially if doing so would support a policy of overthrowing authoritarian governments.<sup>138</sup> Lastly, US interests may be served by not intervening in Syria for various reasons. First, it is unknown if a replacement of the Assad regime would be more or less favorable to US interests.<sup>139</sup> Second, the conflict is currently a large economic and military drain on Assad's allies Iran and Hezbollah,

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<sup>135</sup> Hala Droubi & Rick Gladstone, *Syrian Opposition Joins Meeting of Arab League*, N.Y. TIMES, Mar. 27, 2013, at A3, available at [http://www.nytimes.com/2013/03/27/world/middleeast/syrian-opposition-group-takes-seat-at-arab-league.html?\\_r=0](http://www.nytimes.com/2013/03/27/world/middleeast/syrian-opposition-group-takes-seat-at-arab-league.html?_r=0) (The Arab League suspended Syria's membership in 2011, and recently invited Syrian opposition leaders to take over the vacant position. At the last Arab League Summit Meeting, members also agreed to allow each other to provide defensive or military weapons support to Syrian opposition groups at will. There is still no record of the Arab League requesting foreign intervention in Syria to the extent requested in 2011 in Libya.).

<sup>136</sup> See *supra* note 93, and accompanying text.

<sup>137</sup> For information why Russia may not want intervention in Syria see *supra* note 103, and accompanying text.

<sup>138</sup> China is one of only a few remaining communist states in the world, and has every reason to not support such a policy. For additional reasons why China would be skeptical of supporting another R2P action. ROYAL UNITED SERVICES INSTITUTE, SHORT WAR, LONG SHADOW 4 (Adrian Johnson & Saqeb Mueen eds., Royal United Services Institute for Defense and Security Studies 2012) (2012), available at [http://www.rusi.org/downloads/assets/WHR\\_1-12.pdf](http://www.rusi.org/downloads/assets/WHR_1-12.pdf) ("[T]he manner in which the initial Security Council Resolution was contorted out of all recognition from the protection of civilians to, in effect, outright regime change has left a sour taste in the mouths of powers like China [and] Russia ... China and Russia will presume that the model in future [R2P] operations is rather regime change under the cloak of R2P, and will be more forthcoming with vetoes. We have already seen this over Syria."); See also *supra* notes 74, 93, and accompanying text.

<sup>139</sup> Thanassis Cambanis, *Should America Let Syria Fight On?*, The Boston Globe, Apr. 7, 2013, <http://www.bostonglobe.com/ideas/2013/04/06/should-america-let-syria-fight/UUtDpctZYyeymgSjGRSBWK/story.html>.

traditional US enemies.<sup>140</sup> Third, Russia and China stand to lose standing in the region the longer they continue to block efforts to intervene.<sup>141</sup> The fact that the US could likely do more than it currently does to help civilians in Syria, points to the possible veracity of such claims. Ultimate US reactions to current claims of the use of chemical weapons by the Assad regime against Syrian civilians will uncover the truth of whether or not the US supports R2P, or whether state interests reign supreme.<sup>142</sup>

Pillar two of R2P states that the international community has a responsibility to provide assistance in cases such as Syria. Pillar three further states that with UNSC approval, coercive or even forceful means of intervention may be allowed. For over two years, indications of massive violence and civilian deaths in Syria have been laid out before the international community. The fact that it has still not intervened indicates that one of the main goals of R2P, non-interest based intervention, has failed to manifest.<sup>143</sup> While the exact rationale for non-intervention remains unclear, what *is* clear is that the international community has once again failed to uphold its duties to protect lives. This failure could have negative consequences for the future of UN legitimacy, as well as the outlook for future international doctrines and solutions to persistent world problems.

#### THE FUTURE OF THE UN AND R2P

##### *IMPACT ON THE UN*

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<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> See Noah Shachtman & Spencer Ackerman, *Syrian Blood Tests Positive for Sarin Gas, US Spies Say*, WIRED, Apr. 25, 2013, <http://www.wired.com/dangerroom/2013/04/sarin-tainted-blood/>; *Us has 'Some Confidence' Syria Used Chemical Weapons*, BBC, Apr. 25, 2013, <http://www.bbc.co.uk/news/business-22297569>.

<sup>143</sup> See *supra* notes 111-117, and accompanying text

For international institutions such as the UN, the appearance and maintenance of legitimacy is crucial to its future standing and existence.<sup>144</sup> By utilizing R2P in Libya, the UN fended off the possibility of unilateral action that could undermine its legitimacy. Instead, it is now in an equally undesirable position. For forceful intervention under pillar three of R2P, the UNSC must give expressed approval for member state action.<sup>145</sup> However, in allowing NATO to lead and coordinate the action in Libya, the UNSC abrogated its responsibility to maintain control of the world's first R2P authorized intervention. Once NATO had taken over operations, any intervention mission was arguably outside of UN control. This can be seen in the swift shift in purpose from humanitarian intervention to regime change.<sup>146</sup> Regime change, no matter the reason, is incompatible with core tenets of the Charter. These UN tenets stress the importance of political independence, non-interference, and sovereign equality.<sup>147</sup> By appearing to pick and choose where and when to intervene, the UN has undermined its own legitimacy.

#### *R2P MOVING FORWARD*

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<sup>144</sup> In the international system where there is no over-arching government or control structure, the actions of an organization are only deemed to be proper and lawful if that organization possesses *legitimacy* in the eyes of its members. This legitimacy requirement is only larger for a globally recognized organization such as the UN. Members following the rules of the organization and the works that are done or provided in the name of the organization can earn legitimacy. This is a slow process. While legitimacy is hard earned, it can be quickly lost, especially if an organization fails to uphold tenants that are close to its core function – in the case of the UN, the maintenance of peace and security and protection of individuals around the world. Unilateral action against the will, or not even considering the will, of the UN strips legitimacy. This is especially true if any intervention is successful, as success without the UN points towards its non-critical status. See Ian Hurd, *The Strategic Use of Liberal Internationalism: Libya and the UN Sanctions, 1992-2003*, 59 INT'L ORG. 495, 496, 500-501 (2005) (Strong state actors have a stake in maintaining the legitimacy of international organizations, this would be especially true for permanent UNSC members. Legitimacy is a source of great power, but can also be very fragile and prone to damage. Hypocrisy is lethal to legitimacy.).

<sup>145</sup> See *supra* note 49.

<sup>146</sup> See Bydoon, *supra* note 82, at 383.

<sup>147</sup> See Findlay, *supra* note 34, at 4; See U.N. Charter, art. 2 (UN Charter speaks to principles of sovereign equality, peaceful settlement of disputes, refrain from threats or use of force against political independence of states.)

Two main options exist which could allow R2P to continue serving the vital purpose for which it was created – a decisive tool to protect civilian lives. One possibility would be to lower the controls on the doctrine to bypass the currently requirement of UNSC approval for pillar three.<sup>148</sup> The current rules of R2P show that in situations where the UNSC fails to act in a timely manner, the GA has an option to address the matter under the “Uniting for Peace” procedure.<sup>149</sup> Although the primary body responsible for maintaining international peace and security, the UNSC is the only means of addressing such important issues.<sup>150</sup> However, the “Uniting for Peace” procedure has at least one major weakness: decisions reached under this procedure are non-binding, and considered recommendations only.<sup>151</sup> For R2P to be strengthened in a meaningful manner, with the ability to pass binding resolutions without the approval of the UNSC, the Charter would need to be modified. However, changes to the Charter require approval by the UNSC, and it is highly unlikely that the permanent members of the UNSC would allow such action to pass. If R2P cannot be expanded, perhaps it should be limited.

The lack of clear instruction as to the guidelines, limits, and execution of intervention leaves R2P open to overreach. As a young doctrine, ambiguous characteristics, expansive scopes, or exploitative use can severely damage R2P’s reputation and future viability.<sup>152</sup> By setting explicit guidelines and limits to what can and cannot be done under

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<sup>148</sup> See *supra* note 49.

<sup>149</sup> SG Report, *supra* note 1, ¶ 63.

<sup>150</sup> *Id.*

<sup>151</sup> Uniting for Peace, G.A. Res. 377 (V), ¶ 1 (Nov. 3, 1950), available at <http://www.un.org/Depts/dhl/landmark/pdf/ares377e.pdf>.

<sup>152</sup> Legal scholars including one of the original ICISS team that first proposed R2P spoke on whether or not R2P should be expanded to cover topics such as environmental disasters. The statements were overwhelmingly against expansion. See Edward C. Luck, *Environmental Emergencies and the Responsibility to Protect: A Bridge Too Far*, 103 AM. SOC’Y INT’L L. 32, 38 (2009); Gareth Evans, *The Responsibility to Protect in Environmental Emergencies*, 103 AM. SOC’Y INT’L L. 27, 32 (2009).

R2P, the UN can provide clarity to the doctrine and uniformity to its application.

Unfortunately, this would curtail some of the more aspirational aspects of R2P, which was created to be a broad and powerful option in the fight against massive humanitarian crises. However, the question must be asked whether a weaker R2P, is still better than no R2P at all. Those familiar with the historical events that necessitated the creation of R2P would answer that question with a resounding, "yes!"

#### CONCLUSION

By placing a *duty* on the international community to act, R2P was created to remove interest-based calculations from the decisions making process of states. The purpose of which was to increase international intervention in instances of extreme humanitarian crisis. However, a lack of clarity and instruction as to its actual execution kept the use of R2P uncertain. When finally used to justify intervention in Libya, the subsequent overreach of its mandate perverted its real-world application from the noble ideals of its creation. No longer seen as imposing a duty on states to act, it has potentially become a tool to be used when convenient. This is seen in the lack of action in Syria, despite far worse conditions than those used to justify action in Libya. Questions remain as to whether the international community ever truly adopted the full and intended meaning of R2P, or if state interests continue to dominate over humanitarian concerns. . The failure of R2P also reflects upon the UN, and has dealt a blow to its legitimacy and future viability. The future of R2P and the legitimacy of the UN are currently uncertain. However, solutions and possibilities exist that may salvage the future of both, but only if the international community can once more come together for purpose of the greater good.