

5-1-2013

The Implications of the Arab Spring on the Future of the Responsibility to Protect Doctrine

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I. Introduction

The Responsibility to Protect doctrine (commonly referred to as "R2P") was developed over the last decade in response to the various successes and failures of humanitarian interventions during the 1990s. The United Nations Security Council recently used this emerging norm as a justification for Resolution 1973, which authorized "all necessary measures" for member countries to protect civilians in Libya.¹ After the death of former Libyan leader Muammar Gaddafi on October 20, 2011, NATO's leaders announced the conclusion of its humanitarian intervention in Libya, which had been initiated in accordance with Resolution 1973.² Many western leaders have called the operation a model for future interventions under the R2P doctrine.³ However, since the beginning of the 'Arab Spring,' the wave of uprisings beginning in Tunisia and spreading throughout the Arab World over the course of 2011, several other Middle Eastern governments have cracked down on peaceful protesters, most notably in the dictatorial regimes of Bahrain, Yemen and Syria. Of these countries, the crackdown in Syria is particularly notable for its regime's blatant commission of crimes against humanity.

By early December 2011, the death toll in Syria had reached an estimated 3,500 and by mid-December, clashes between protestors and government military forces had resulted in the deaths of over 5,000 men, women and children.⁴ Most world leaders and organizations have acknowledged that clear evidence exists of crimes against humanity committed by the regime of Syrian President Bashar al-Assad. Nevertheless, the international community has taken few concrete actions regarding the situation in Syria. International actors have reacted dissimilarly to

¹ S.C. Res. 1973, ¶ 4, U.N. Doc. S/RES/1973 (Mar. 17, 2011).

² Laura Smith-Spark, *NATO Names Oct. 31 as Early End Date for Libyan Mission*, CNN (Oct. 21, 2011, 9:12 PM), <http://www.cnn.com/2011/10/21/world/africa/libya-war-nato/index.html>.

³ Press Release, President Barack Obama, Remarks by the President on the Death of Muammar Qaddafi (Oct. 20, 2011), <http://www.whitehouse.gov/the-press-office/2011/10/20/remarks-president-death-muammar-qaddafi>.

⁴ *Syria Death Toll Tops 3,500, UN Says*, BBC NEWS (Nov. 8, 2011, 12:17 PM), <http://www.bbc.co.uk/news/world-middle-east-15635867>; Khaled Yacoub Oweis, *Syria Death Toll Hits 5,000 as Insurgency Spreads*, REUTERS, Dec. 13, 2011, available at <http://www.reuters.com/article/2011/12/13/us-syria-idUSTRE7B90F520111213>.

the violence in Libya and Syria due to various political factors, but if the U.N. and major world powers continue their failure to respond effectively to the deaths of civilians in Syria, the emerging international legal norm of R2P, so recently bolstered by the Libyan intervention's success, will suffer a significant blow to its legitimacy.

II. International Law Governing Humanitarian Intervention

A. The Use of Force under the United Nations Charter

The United Nations Charter provides a framework for international laws governing the use of force between states. Article 1 of the Charter describes the purposes of the U.N. and includes taking "effective collective measures for the prevention and removal of threats to the peace" in order to maintain international peace and security.⁵ Article 2(4) of the Charter prohibits states from using the "threat or use of unlawful force" against another state's territorial integrity.⁶ Furthermore, Article 2(7) says that "nothing contained in the present Charter shall authorize the U.N. to intervene in matters which are essentially within the domestic jurisdiction of any state."⁷ The only exception to this protection of state sovereignty is the "application of enforcement measures" by the Security Council under Chapter VII.⁸

If the Security Council determines that there is a threat to peace or security, it may take actions under Article 41 and Article 42, in Chapter VII of the U.N. Charter. Article 41 of the U.N. Charter gives the Security Council the ability to authorize certain measures not involving the use of force⁹. Article 42 allows the Security Council to authorize measures involving the use of force, by land, air or sea, as is necessary to maintain or restore international peace.¹⁰ The Gulf

⁵ U.N. Charter art. 1, para. 1.

⁶ U.N. Charter art. 2, para. 4.

⁷ U.N. Charter art. 2, para. 7.

⁸ *Id.*

⁹ U.N. Charter art. 41, para. 1.

¹⁰ U.N. Charter art. 42, para. 1.

War in 1990 demonstrates the historical understanding of Article 42 authorization. Iraq violated Kuwait's territorial sovereignty in contravention of Art. 2(4), and the Security Council entered many resolutions designed to cause Iraq to withdraw from Kuwait. However, Article 41 economic sanctions proved inadequate, so the Security Council authorized military force if Iraq did not withdraw. This gave the so-called "Coalition of the Willing" the authority to lawfully intervene with air strikes.¹¹ Article 42 authorization has since been used to approve military humanitarian intervention operations.

B. History of International Peacekeeping and Humanitarian Intervention

Prior to 2000, peacekeeping missions and humanitarian interventions were characterized by inconsistency, incompetence, and underfunding. Though President Franklin D. Roosevelt's envisioned the United Nations primarily as a mechanism for coordinating "the use of force to deter or defeat acts of aggression" in the wake of World War II, the organization's weak secretariat and ideologically divided Security Council initially prevented the UN from effectively addressing international security issues.¹² In 1956, U.N. Secretary-General Dag Hammarskjöld initiated U.N. peacekeeping to respond to the Suez Canal Crisis. These peacekeeping troops could use their weapons only in self-defense, in order to maintain their separation from conflict.¹³ The Cold War limited the effectiveness of U.N. peacekeeping missions because the forces could be used only when U.S. and Soviet perspectives on an issue aligned.¹⁴ In 1961, the U.N. Security Council authorized U.N. peacekeepers to use force to keep the new Congolese state intact, which led to a messy and violent conflict. As a result, the U.N. stopped issuing

¹¹ JAMES TRAUB, *THE BEST INTENTIONS: KOFI ANNAN AND THE UN IN THE ERA OF AMERICAN WORLD POWER* 26-28 (1st ed. 2006).

¹² *Id.* at 4-8.

¹³ TRAUB, *supra* note 11, at 11.

¹⁴ *Id.* at 14.

mandates authorizing its peacekeeping troops to use force.¹⁵ However, the end of the Cold War enabled the U.N. to extend its diplomatic and mediation efforts to countries and regions where it had previously been unable to take action. In 1988 and 1989, five peacekeeping missions were established in Afghanistan, Angola, Central America, Namibia and the border regions between Iran and Iraq.¹⁶ In August 1990, when Iraq blatantly violated the territory of a sovereign state by invading Kuwait, it provided a perfect opportunity for the U.N. Security Council to utilize its Article 42 power to authorize "all necessary means" to enforce an Iraqi withdrawal from Kuwait, in Resolution 678.¹⁷ This move, and the ensuing successful military operation undertaken by the "Coalition of the Willing," signaled that with the end of the Cold War, the U.N. could finally fulfill its mission for enforcing global peace and security.¹⁸

Until the 1990s, there was an understanding in international law that involvement in another sovereign state's international affairs was illegitimate. However, crises in the 1990s led to the development of the idea that state sovereignty should not supersede the importance of humanitarian concerns.¹⁹ In April 1991, the U.N. passed Resolution 680 to respond to Iraqi repression of Kurdish civilians, and thus the United States and its Gulf War allies launched "Operation Provide Comfort" to protect the Kurdish population with ground and air support.²⁰ In December 1992, the U.N. authorized a humanitarian intervention to provide famine assistance and humanitarian relief to the people of war-torn Somalia. While the U.S.-led mission, "Operation Restore Hope," successfully saved lives, it also notoriously led to Somali and

¹⁵ TRAUB, *supra* note 11, at 15-16.

¹⁶ *Id.* at 25.

¹⁷ TRAUB, *supra* note 11, at 26-28; S.C. Res 678, ¶ 2, U.N. Doc. S/RES/678 (Nov. 29, 1990).

¹⁸ TRAUB, *supra* note 11, at 28.

¹⁹ *Id.* at 109-115.

²⁰ SAMANTHA POWER, A PROBLEM FROM HELL: AMERICA AND THE AGE OF GENOCIDE 237-241 (1st ed. 2002).

American casualties and a civil war that continues today.²¹ In the wake of the Somalia fiasco, the U.N. authorized a small and underfunded peacekeeping mission to enforce a peace treaty that had ended Rwanda's civil war.²² In early 1994, General Romeo Dallaire, head of the peacekeeping force, warned the U.N. that the Hutus were planning to exterminate the Tutsis. He appealed to the Security Council for the authority to prevent the genocide, yet the U.N. refused to expand the peacekeeping mandate.²³ On April 6, 1994, the Rwandan genocide began. The Tutsis pled with the U.N. to intervene, but the UN instead ended the peacekeeping mission and both the U.N. and the U.S. failed to act in an effective or timely manner.²⁴ By the time a Tutsi-led rebellion ended the killing on July 18, 1994, nearly 800,000 Rwandans had died in the genocide.²⁵

The Bosnian War also displayed the U.N.'s ineptitude at handling post-Cold War civil conflicts through traditional peacekeeping strategies. On March 27, 1992, Bosnian Serbs declared a Serbian Republic of Bosnia-Herzegovina. On April 6, 1992, the Bosnian War began and on April 7, the U.N. recognized Bosnia Herzegovina as an independent state.²⁶ Despite clear evidence of ethnic cleansing during the Bosnian War, foreign governments cited the complexity of the conflict as justification for inaction.²⁷ Measures taken by foreign governments mainly consisted of symbolic gestures, sanctions, and peace talks, all aimed at soothing public outrage at media coverage of atrocities.²⁸ This apparent unwillingness to commit a credible military force to

²¹ Jon Western & Joshua Goldstein, *Humanitarian Intervention Comes of Age*, FOREIGN AFF., Nov. 1, 2011, <http://www.foreignaffairs.com/articles/136502/jon-western-and-joshua-s-goldstein/Humanitarian-intervention-comes-of-age>; TRAUB, *supra* note 11, at 42-43.

²² Western & Goldstein, *supra* note 21; POWER, *supra* note 20, at 329-389.

²³ POWER, *supra* note 20, at 329-389.

²⁴ *Id.*

²⁵ POWER, *supra* note 20, at 329-389.

²⁶ CAROLE ROGEL, *THE BREAKUP OF YUGOSLAVIA AND ITS AFTERMATH* 29 (1st ed. 2004).

²⁷ POWER, *supra* note 20, at 260-261.

²⁸ *Id.*

ending ethnic cleansing in the Bosnian War only emboldened the Serb forces.²⁹ On July 11, 1995, Bosnian Serb forces overran weak U.N. peacekeeping defenses to seize the "safe area" of Srebrenica. U.N. Force Commander General Bernard Janvier refused to request NATO support despite clear signs of mass executions. By July 24, the U.N. special rapporteur for human rights for the former Yugoslavia reported that more than 7,000 of Srebrenica's 40,000 civilians had been executed. More than two years earlier, in March 1993, the U.N. Security Council had passed Resolution 816 authorizing states to use "all necessary measures in the airspace of Bosnia and Herzegovina" to enforce a no-fly zone.³⁰ In June 1993, Resolution 836 authorized the use of force for protection of certain designated U.N. safe areas, such as Srebrenica.³¹ After the Bosnian Serbs overran Srebrenica, a NATO-led operation finally acted under the authority of these resolutions and enforced Western rhetoric with credible military action, by bombing Serbian military targets.³² On September 8, 1995, the parties agreed to participate in peace negotiations and on December 14 the Dayton Peace Accords were officially signed.³³

By the end of 1995, U.S. President Bill Clinton had finally realized that noninvolvement could be more costly than the risks of involvement.³⁴ This mentality resulted in a swift intervention in Kosovo to protect ethnic Albanians from violence committed by Serbian forces in 1999. The NATO bombing campaign commenced without authority from the U.N. Security Council and was tainted by the strategic motivations of intervening powers. Nevertheless, the intervention saved lives and ended the fighting in Kosovo. The international community largely viewed the intervention as illegal under the U.N. Charter yet legitimate because of widespread

²⁹ Western & Goldstein, *supra* note 21.

³⁰ S.C. Res 816, ¶ 4, U.N. DOC. S/RES/816 (Mar. 31, 1993).

³¹ S.C. Res 836, ¶ 9, U.N. DOC. S/RES/836 (June 4, 1993).

³² ROGEL, *supra* note 26, at 36-37.

³³ *Id.* at 38-40.

³⁴ POWER, *supra* note 20, at 441.

international approval and its basis in human rights-oriented goals.³⁵ Likewise, U.N. Secretary-General Kofi Annan stated in a speech that the doctrine of humanitarian intervention was entirely consistent with the language and spirit of the U.N. Charter and that the Security Council must not fail to act as it had done in Rwanda and Kosovo, thereby setting the stage for the R2P doctrine to develop.³⁶ Meanwhile, the former colonies in the developing world balked at the apparent threat to the principle of state sovereignty.³⁷ Therefore, at the turn of the 21st century, many uncertainties persisted as to how the doctrine of humanitarian intervention would develop in the future.³⁸

C. The Emergence of the "Responsibility to Protect" Doctrine

"Humanitarian Intervention" has been defined as the use of force against a territorial state by another state or a collective group of states, with or without authorization from the United Nations Security Council, for the promotion or protection of basic human rights of individuals, other than intervening states' own citizens, without the permission from the territorial state within whose borders the use of force takes place.³⁹ The idea of humanitarian intervention thus presented a conflict between territorial sovereignty and the idea of human security. In September 2000, the Canadian government announced to the U.N. General Assembly that it would establish the International Commission on Intervention and State Sovereignty ("ICISS") to respond to the questions surfacing in the wake of Kosovo.⁴⁰ The December 2012 ICISS report, entitled "The Responsibility to Protect," proposed a new perspective on the question of when, if ever, it is appropriate for states to take military action against another state for the purpose of protecting

³⁵ TRAUB, *supra* note 11, at 109-115; POWER, *supra* note 20, at 460-473.

³⁶ TRAUB, *supra* note 11, at 109-115.

³⁷ *Id.*

³⁸ TRAUB, *supra* note 11, at 109-115.

³⁹ J. L. Holzgrefe, *The Humanitarian Intervention Debate*, in HUMANITARIAN INTERVENTION: ETHICAL, LEGAL AND POLITICAL DILEMMAS 15, 18 (J. L. Holzgrefe & Robert O. Keohane eds., 2003).

⁴⁰ THE INT. COMMISSION ON INTERVENTION AND ST. SOVEREIGNTY, RESPONSIBILITY TO PROTECT 1-2 (2001).

people at risk in that state.⁴¹ According to the new concept of Responsibility to Protect promulgated by ICISS, sovereignty implies an inherent obligation to protect the people within the state.⁴² If a state is unwilling or unable to prevent its people from suffering serious harm, then the international community has a responsibility to step in.⁴³

The ICISS Report declared that the foundations of this concept could be found in international law, meaning it was already an emerging principle. First, sovereignty has always carried certain obligations, such as respecting other states' sovereignty.⁴⁴ Second, the U.N. Charter directs the Security Council to maintain international peace and security, demonstrating an existing responsibility on the part of the international community.⁴⁵ Third, legal obligations under covenants and treaties of international humanitarian and international human rights law provide benchmarks of conduct expected under international law.⁴⁶ Additionally, universal jurisdiction provisions under various treaties and under customary international law permit states to try those accused of serious international crimes.⁴⁷ In fact, the 1998-1999 Augusto Pinochet case in the British House of Lords demonstrated that government leaders have no sovereign immunity regarding serious violations of international criminal law while in office.⁴⁸ Lastly, intervention when states fail to protect their civilians had been put into practice by states,

⁴¹ *Id.* at 3-7.

⁴² THE INT. COMMISSION ON INTERVENTION AND ST. SOVEREIGNTY, *supra* note 40, at 13.

⁴³ *Id.* at 16-18.

⁴⁴ THE INT. COMMISSION ON INTERVENTION AND ST. SOVEREIGNTY, *supra* note 40, at 7-8.

⁴⁵ *Id.* at 13.

⁴⁶ THE INT. COMMISSION ON INTERVENTION AND ST. SOVEREIGNTY, *supra* note 40, at 6, 8, 16, 50; Convention on the Prevention and Punishment of the Crime of Genocide art. 1-13, Dec. 9, 1948, 78 U.N.T.S. 277; Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field art. 1-18, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; Geneva Convention Relative to the Treatment of Prisoners of War art. 1-16, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 126, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287; Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. DOC. A/RES/60/1/ (Sept. 16, 2005); Rome Statute of the Int'l Crim. Court art. 22-33, July 17, 1998, 2187 U.N.T.S. 3.

⁴⁷ THE INT. COMMISSION ON INTERVENTION AND ST. SOVEREIGNTY, *supra* note 40, at 6, 14, 24-25.

⁴⁸ *Regina v. Bartle and Commission of Police, Ex Parte Pinochet*, United Kingdom, House of Lords, 1999, 38 I.L.M. 581 (1999).

regional bodies and the U.N. in the 1990s.⁴⁹ The ICISS proposed that three specific responsibilities fall under this doctrine, which are the responsibilities to prevent, react and rebuild.⁵⁰ The report also set forth criteria necessary for legitimate intervention. The violation of human rights must be extremely grave and humanitarian motivations must dominate other intentions;⁵¹ there must be no other means of rectifying the violations, and the primary purpose must be to avert human suffering.⁵² The least destructive means possible should be taken and there must be a reasonable likelihood of success.⁵³ Finally, the use of force must be supported by those whose will be benefitted by the force and authorized by the U.N. Security Council.⁵⁴

In 2004, the Secretary-General's High-Level Panel on Threats, Challenges, and Change addressed R2P again.⁵⁵ The Panel asserted that under the 1948 Genocide Convention, states agree that genocide is a crime under international law and they must prevent or punish it.⁵⁶ Therefore, since the global community has recognized genocide as a threat to international peace and security, the principle of sovereignty cannot be used to protect acts of genocide or other large-scale violations of international human rights law.⁵⁷ The panel explicitly endorsed R2P as an emerging norm and set out potential criteria for determining whether to authorize use of military force: seriousness of threat, proper purpose, last resort, proportional means and balance

⁴⁹ THE INT. COMMISSION ON INTERVENTION AND ST. SOVEREIGNTY, *supra* note 40, at 15-16.

⁵⁰ *Id.* at 74.

⁵¹ THE INT. COMMISSION ON INTERVENTION AND ST. SOVEREIGNTY, *supra* note 40, at 32-36.

⁵² *Id.* at 36-37.

⁵³ THE INT. COMMISSION ON INTERVENTION AND ST. SOVEREIGNTY, *supra* note 40, at 37.

⁵⁴ *Id.* at 35-36.

⁵⁵ High-Level Panel on Threats, Challenges, and Change, *A More Secure World: Our Shared Responsibility*, ¶ 203, U.N. DOC. A/59/565 (Dec. 2, 2004).

⁵⁶ *Id.* at ¶¶ 66, 200, 233.

⁵⁷ High-Level Panel on Threats, Challenges, and Change, *supra* note 55, at ¶ 200.

of consequences.⁵⁸ The March 2005 Report of the Secretary-General also urged states to embrace and use R2P as a basis for collective action to prevent or end mass atrocities.⁵⁹

Finally, at the 2005 U.N. World Summit, Member States unanimously endorsed the Responsibility to Protect doctrine in Sections 138-140 of the Outcome Document.⁶⁰ Section 138 provides that every state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity.⁶¹ This is a much narrower application of the protection than originally proposed in the 2001 report. The Outcome Document precludes the R2P doctrine's use in cases of natural disasters, epidemics and other serious suffering that does not fall under the four situations enumerated in Section 138. Under Section 139, the international community has the responsibility to protect civilian populations from the listed atrocities with peaceful means and, when absolutely necessary, forceful collective action, through the mechanism of the U.N.⁶² Unlike the 2001 ICISS Report and the 2004 High Panel Report, the Outcome Document did not provide guidance for Security Council decisions implementing the doctrine. Following the 2005 World Summit, the Security Council acknowledged R2P in Resolution 1674 in April 2006 and later reaffirmed its commitment to the doctrine in November 2009 with Resolution 1894.⁶³ In August 2007, U.N. Secretary-General Ban Ki-moon proposed the establishment of a Special Advisor on the Responsibility to Protect, which the Security

⁵⁸ *Id.* at ¶ 203

⁵⁹ U.N. Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights for All*, ¶ 132, U.N. DOC A/59/2005 (Mar. 21, 2005).

⁶⁰ Western & Goldstein, *supra* note 21.

⁶¹ 2005 World Summit Outcome, G.A. Res. 60/1, U.N. DOC. A/RES/60/1 (Sept. 16, 2005).

⁶² *Id.*

⁶³ Key Developments on the Responsibility to Protect at the United Nations 2005-2011, INT'L COALITION FOR THE R2P (2011), <http://www.responsibilitytoprotect.org/ICRtoP%20Latest%20Developments%20at%20the%20UN%202011>.

Council approved in December 2007.⁶⁴ The General Assembly also adopted a resolution on the doctrine in September 2009.⁶⁵

Since 2005, Reports of the Secretary-General urged Member States to agree on further specifics for the Security Council to use in applying the R2P doctrine. The 2009 Report emphasized that the doctrine includes three pillars of equal importance: the protection responsibilities of the State, capacity building, and timely and decisive response from the international community.⁶⁶ The 2010 Report focused on building the U.N.'s ability to share information and improve its early warning system in order to enable states to take timely and well-informed action.⁶⁷ The 2011 Report addressed the role of regional organizations in implementing R2P.⁶⁸ It notes that while Article 52 of the U.N. encourages regional settlement of disputes, Article 53 provides that no enforcement action may occur without Security Council authorization.⁶⁹ However, in 2000, the African Union agreed upon a right to intervention to when authorized by the organization due to grave circumstances; this provision created as a result of the perception that the U.N. had ignored human rights crises in Africa during the 1990s.⁷⁰ Despite the existence of this principle in the African Union's 2000 Constitutive Act, authorization by the Security Council as a prerequisite for legal use of force under R2P has been a common theme of all reports and agreements on the doctrine since 2001.⁷¹ Since the 2005 World Summit, the Security Council had invoked the R2P doctrine without authorizing military

⁶⁴ *Id.*

⁶⁵ G.A. Res. 63/308, ¶ 2, U.N. Doc. A/RES/63/308 (Sept. 14, 2009).

⁶⁶ U.N. Secretary General, *Implementing the Responsibility to Protect*, ¶ 11, U.N. Doc. A/63/677 (Jan. 12, 2009).

⁶⁷ U.N. Secretary-General, *Early Warning, Assessment and the Responsibility to Protect*, ¶ 19, A/64/864 (July 14, 2010).

⁶⁸ U.N. Secretary-General, *The Role of Regional and Sub-Regional Arrangements in Implementing the R2P*, ¶ 3, A/65/877-S/2011/393 (June 27, 2011).

⁶⁹ *Id.* at ¶ 5.

⁷⁰ Press Release, U.N. Secretary-General, Secretary-General Defends, Clarifies 'Responsibility to Protect at Berlin Event on 'Responsible Sovereignty: International Cooperation for a Changed World,' U.N. Press Release SG/SM/11701 (July 15, 2008); U.N. Secretary-General, *supra* note 66, at ¶ 8.

⁷¹ U.N. Secretary-General, *supra* note 66, at ¶ 56; Constitutive Act of the African Union art. 4(h), Nov. 07, 2011, 2158 U.N.T.S. 3.

force to prevent election violence in Kenya in 2007, Guinea in 2010 and Sudan in 2011.⁷² By early 2011, the remaining ambiguity surrounding R2P largely pertained to its practical implementation in authorizing use of force and the operational aspects of a military intervention. Libya provided the first example of Security Council authorization for military humanitarian intervention under the R2P doctrine.

III. Responsibility to Protect in the Context of the Arab Spring

On December 18, 2010, the self-immolation of a fruit vendor, Mohamed Bouazizi, in protest of Tunisia's corruption sparked demonstrations that eventually led to the January 14, 2011 ouster of Tunisian President Zine El Abidine Ben Ali.⁷³ Tunisia's protests created a wave of uprisings that spread throughout the Middle East. By December 2011, former Egyptian President Hosni Mubarak, former Libyan leader Colonel Muammar Gaddafi and former Yemeni President Ali Abdullah Saleh had all been forced from power.⁷⁴ Other governments, including those of Kuwait, Lebanon, Oman, Morocco, and Jordan, implemented government changes and constitutional reforms in response to civil protests.⁷⁵ In Bahrain and Syria, unrest continues to grow and threaten the legitimacy of those countries' regimes.⁷⁶

Throughout the uprisings of 2011, Western states struggled with questions concerning how to appropriately respond. Countries like the United States stumbled as they tried to weigh their own national interests against the need to support the push for democracy. For example,

⁷² Simon Adams, *R2P and the Libya Mission*, L.A. TIMES, Sept. 28, 2011, <http://www.latimes.com/news/opinion/commentary/la-oe-adams-r2p-20110928,0,1407335.story>; INT'L COALITION FOR THE R2P, *supra* note 63.

⁷³ Rania Abouzeid, *Bouazizi: The Man Who Set Himself and Tunisia on Fire*, TIME, Jan. 21, 2011, <http://www.time.com/time/magazine/article/0,9171,2044723,00.html>.

⁷⁴ Abigail Hauslohner & Yasmine El Rashidi, *The 18-Day Miracle: Egyptian People Power Ousts Hosni Mubarak*, TIME, Feb. 11, 2011, <http://www.time.com/time/world/article/0,8599,2048575,00.html>; Raina Abouzeid, *In Libya's Wake, Pressure Builds on Assad*, TIME, Aug. 22, 2011, <http://www.time.com/time/world/article/0,8599,2089934,00.html>; Abdullah al-Shihri & Ben Hubbard, *Yemen President Saleh Quits Amid Uprisings*, TIME, Nov. 23, 2011, <http://www.time.com/time/world/article/0,8599,2100163,00.html>.

⁷⁵ Garry Blight, Sheila Pulham & Paul Torpey, *Arab Spring: An Interactive Timeline of Middle East Protests*, GUARDIAN.CO.UK, <http://www.guardian.co.uk/world/interactive/2011/mar/22/middle-east-protest-interactive-timeline> (last updated Nov. 29, 2011).

⁷⁶ *Id.*

Egyptians criticized the United States President Barack Obama for his delayed response to their call for Mubarak's ouster.⁷⁷ The United Nations Security Council's decision to take action in Libya demonstrated Western powers' desire to seem supportive of the Arab Spring, thereby bolstering their self-perceived role of protecting civilians and supporting democratic values. The Arab League's support of Resolution 1973 showed an interest in playing an active role in the region's uprisings and cooperating with NATO and its allies. Doing so increased the organization's legitimacy in the eyes of the international community and of protesters throughout the Middle East and North Africa. However, successful military humanitarian intervention in Libya has been followed by the international community's inability to respond effectively and coherently to Syria's consistently brutal crackdown on protestors.

A. Military Intervention in Libya

Following the successful removal of Tunisian dictator Ben Ali on January 14 and Egyptian dictator Mubarak on February 11, protests erupted in Benghazi, Libya on February 15, 2011.⁷⁸ The violence escalated quickly and on February 20, 200 protesters were reportedly massacred.⁷⁹ The Libyan leader, Muammar Gaddafi, quickly provoked criticism from the international community for ordering attacks on peaceful protesters.⁸⁰ In response to the rising death toll, the United Nations Security Council passed Resolution 1970 on February 26, which referenced the Libyan authorities' responsibility to protect its civilians, invoked the Security Council's duty to maintain international peace and security and imposed harsh, specific economic sanctions on Libya and Gaddafi and his family under Article 41 of the Charter.⁸¹

⁷⁷ Edmund Sanders, *Anti-American Sentiment Gradually Surfaces in Egypt*, L.A. TIMES, Feb. 1, 2011, <http://articles.latimes.com/2011/feb/01/world/la-fg-egypt-anti-american-2011020>.

⁷⁸ Blight, Pulham & Torpey, *supra* note 75.

⁷⁹ *Id.*

⁸⁰ Blight, Pulham & Torpey, *supra* note 75.

⁸¹ S.C. Res 1970, ¶¶ 9-21, U.N. Doc. S/Res/1970 (Feb. 26, 2011).

However, Gaddafi ignored the Resolution's call to respect international humanitarian law and continued to violently assault the Libyan rebels who were demanding that he step down.⁸²

Acknowledging that the Article 41 sanctions had failed to produce positive results, the Security Council passed Resolution 1973 on March 17⁸³. This created a no-fly zone with the broadest scope ever authorized, as well as endorsed direct military action, without a nexus to the no-fly zone, in order to protect civilians.⁸⁴ Resolution 1973 specifically invoked the Responsibility to Protect Doctrine by echoing the language of Resolution 1970 and again emphasizing the "responsibility of the Libyan authorities to protect the Libyan population" and that "parties to armed conflicts bear the primary responsibility to take all feasible steps to ensure the protection of civilians."⁸⁵ It specifically refers to widespread and systematic attacks that may amount to crimes against humanity, as well as human rights violations such as arbitrary detentions, enforced disappearances, torture and summary executions. The resolution also points to condemnation by the Arab League, African Union and Organization of the Islamic Conference of these human rights violations to justify its authorization of states taking "all necessary measures... to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya." Notably, the resolution expressly prohibits the option of a foreign occupation force in Libya.⁸⁶ As this was the broadest authorization of force in a humanitarian intervention situation, it was very important for the parties involved in the collective action to show restraint and stay within the mandate of Resolution 1973.⁸⁷

⁸² Blight, Pulham & Torpey, *supra* note 75.

⁸³ S.C. Res. 1973, *supra* note 1, at ¶ 4.

⁸⁴ Michael N. Schmitt, *Wings over Libya: The No Fly Zone in Legal Perspective*, 36 YALE J. INT'L L. 45, 46 (2011) (discussing the scope of Resolution 1973); S.C. Res. 1973, *supra* note 1, at ¶ 6.

⁸⁵ S.C. Res. 1973, *supra* note 1, at ¶ 1.

⁸⁶ *Id.* at ¶ 4.

⁸⁷ Thomas H. Lee, *Following Int'l Law Helps the US in Libya*, HUFFINGTON POST, Mar. 29, 2011, http://www.huffingtonpost.com/thomas-h-lee/following-Int'l-l_b_841890.html.

The mandate of Resolution 1973 allowed international states and organizations to take "all necessary measures" to protect civilians. Under customary laws of war, rebel forces engaged in combat are not considered civilians for purposes of humanitarian law.⁸⁸ NATO forces had the authority to enforce the no-fly zone and to use force to protect civilians, but not to assist the rebel troops win a civil war.⁸⁹ Many observers accused the parties involved in the Libyan Intervention of going beyond their U.N. mandate and actively participating in regime change.⁹⁰ Countries that have traditionally been very sensitive to threats to state sovereignty, such as Russia and China, abstained in voting on Resolution 1973.⁹¹ Russia and China did not utilize their veto power in consideration of support for the Resolution from the Arab League and African Union, but expressed unease about the absence of limits on the intervention.⁹² The other abstaining delegations acted out of concern for the potential negative implications of armed intervention. Since then, concerns that have always accompanied the emerging norm of humanitarian intervention have resurfaced. For example, there has traditionally been a suspicion that intervening states have an agenda beyond simple protection of citizens, such as promoting regime change.⁹³ Thus, NATO's role in Gaddafi's demise has renewed concerns that R2P will be used merely as a pretext for advancing external countries' own national interests and participating in regime change.⁹⁴

⁸⁸ Geneva Convention Relative to the Protection of Civilian Persons in Time of War, *supra* note 46, at 5.

⁸⁹ Lee, *supra* note 87.

⁹⁰ Imad Mansour, *The Middle Powers Amid the Arab Revolts*, MIDDLE EAST RESEARCH AND INFORMATION (Sept. 29, 2011), <http://www.merip.org/mero/mero092911>.

⁹¹ Press Release, Security Council, Security Council Approves 'No-Fly Zone' over Libya, Authorizing 'All Necessary Measures' to Protect Civilians, by Vote of 10 in Favor with 5 Abstentions, U.N. Press Release SC/10200, (Mar. 17, 2011).

⁹² *Id.*

⁹³ Press Release, Security Council, *supra* note 91.

⁹⁴ Adams, *supra* note 71; *EU Powers Drop UN Syria Sanctions Call*, BBC NEWS (Sept. 28, 2011, 8:27 AM), <http://www.bbc.co.uk/news/world-middle-east-15085816>; Mansour, *supra* note 90.

Nevertheless, Libya has the potential to be a positive example of a multilateral approach to intervention, as opposed to unilateral military action. However, many of the conditions that made this situation an ideal case for this approach could be considered unique to Libya and unlikely to be replicated in the future. First, there was no ambiguity as to whether atrocities would occur without intervention. Gaddafi promised to "have no mercy and pity" on the civilians of Benghazi in response to their protests.⁹⁵ China and Russia had no alliance or positive diplomatic ties with Gaddafi's regime or national interests in Libya, and therefore had no reason to veto authorization of the use of force.⁹⁶ Indeed, Gaddafi had few allies in the world by the time the Arab Spring had begun. Gaddafi was so unpopular even among Arabs that the U.N. could rely, in its call for use of force in Resolution 1973, on support from the Arab League and African Union, which increased the intervention's legitimacy.⁹⁷ Furthermore, the Arab Spring had exposed the vulnerability of dictatorial regimes and made Arab leaders eager to demonstrate support for the Libyan protesters.⁹⁸ Libya was of limited strategic value to the United States, so there was less risk in allowing European powers to take control of the operation.⁹⁹ Meanwhile, Libya's proximity to Europe made European powers more willing to become involved.¹⁰⁰ In addition, Libya's geography was conducive to waging an airpower campaign, thus allowing for a successful intervention despite lack of ground forces.¹⁰¹ The existence of a somewhat organized opposition movement also gave NATO a group to work with, and reduced the need for a ground

⁹⁵ Stewart Patrick, *Libya and the Future of Humanitarian Intervention*, FOREIGN AFF., Aug. 26, 2011, <http://www.foreignaffairs.com/articles/68233/stewart-patrick/libya-and-the-future-of-humanitarian-intervention>.

⁹⁶ *Id.*

⁹⁷ Michael O'Hanlan, *Libya and the Obama Doctrine*, FOREIGN AFF., Aug. 31, 2011, <http://www.foreignaffairs.com/articles/68237/michael-ohanlon/libya-and-the-obama-doctrine>; African Union, *Communique of the 265th meeting of the African Union Peace and Security Council* (Mar. 10, 2011).

⁹⁸ Patrick, *supra* note 96.

⁹⁹ O'Hanlan, *supra* note 98.

¹⁰⁰ Patrick, *supra* note 96.

¹⁰¹ O'Hanlan, *supra* note 98.

invasion.¹⁰² Therefore, the unique situation in Libya lent itself to a successful and relatively swift military intervention, and it has yet to be determined whether Libya can be used as a model for future humanitarian interventions.

B. Bloodshed in Syria

On January 26, 2011, demonstrators began protesting against the Syrian government. The movement spread slowly at first, but uprisings finally escalated in March with the city of Dara'a becoming a focal point of the unrest. On March 25, a reported 100,000 protesters marched in Dara'a, but toward the end of the month, Syrian security forces began attacking Syrian protesters on the orders of President Bashar al-Assad.¹⁰³ By April, the brutality of the regime's crackdown on protestors became unmistakably apparent.¹⁰⁴ While the violence did not escalate as quickly as in Libya, attacks on Syrian activists have continued consistently for more than eight months, resulting in more than 5,000 deaths, according to the United Nations.¹⁰⁵ The Syrian opposition announced the creation of the Syrian National Council in August, and has since called for U.N. Security Council action to support their cause.¹⁰⁶ Defectors from the Syrian police and military have been able to lend more organization and military experience to those fighting on the side of the opposition.¹⁰⁷ However, pro-Assad rallies in Aleppo, the mainstay of Assad's support, and continued loyalty from many Syrian soldiers demonstrate that the government can still command some support, mainly from the Alawites, the Shiite minority that makes up 12% of the Syrian population.¹⁰⁸

¹⁰² Patrick, *supra* note 96.

¹⁰³ Blight, Pulham & Torpey, *supra* note 75.

¹⁰⁴ *Id.*

¹⁰⁵ Oweis, *supra* note 4.

¹⁰⁶ *Syrian Unrest: Arab League Sets Observer Ultimatum*, BBC NEWS (Nov. 24, 2011, 9:31 PM), <http://www.bbc.co.uk/news/world-middle-east-15869914>.

¹⁰⁷ *Id.*

¹⁰⁸ Nada Bakri, *Pro-Assad Rally Shows Syrian Government Can Still Command Support*, N.Y. TIMES, Oct. 19, 2011, <http://www.nytimes.com/2011/10/20/world/middleeast/assad-supporters-hold-rally-in-aleppo-syria.html>.

In June 2011, Human Rights Watch published a report documenting human rights abuses in Syria from March through May. According to the report, even in the first three months of the attacks on protesters, the abuses committed by Assad's regime amounted to crimes against humanity under international law, according to the Rome Statute of the International Criminal Court.¹⁰⁹ Article 7 of the Rome Statute defines crimes against humanity as acts committed as part of a widespread or systematic attack against a civilian population, "pursuant to or in furtherance of a State or organizational policy to commit such attack," and committed with knowledge of the attack.¹¹⁰ The acts that constitute crimes against humanity in Syria's case include systematic killings of protesters and bystanders (including in mosques and funeral processions), denial of medical assistance, arbitrary arrests, disappearances, torture, executions and mass graves.¹¹¹ In August 2011, the Office of the High Commissioner of Human Rights issued a report that also found a pattern of human rights violations constituting widespread or systematic attacks against the civilian population.¹¹² In November 2011, Human Rights Watch released another report on the violence in Syria from mid-April to August, reaffirming that the Assad regime had been continuously committing human rights abuses.¹¹³ On December 12, 2011, the U.N. High Commissioner for Human Rights, Navi Pillay, reported that more than 5,000 had likely died in the unrest in Syria, called for urgent action to end violence and repeated her previous calls for the Security Council to refer the situation to the International Criminal Court.¹¹⁴

Unlike in the Libyan case, the U.N. Security Council has been unable to agree on any collective sanctions or action in Syria despite consensus from human rights organizations that

¹⁰⁹ Hum. Rts. Watch, *We've Never Seen Such Horror: Crimes Against Humanity by Syrian Security Forces* (June 1, 2011).

¹¹⁰ Rome Statute of the Int'l Crim. Court, *supra* note 46, at 5-9.

¹¹¹ Hum. Rts. Watch, *supra* note 109.

¹¹² U.N. Office of the High Commissioner for Hum. Rts., *Report of the Fact-Finding Mission on Syria pursuant to HRC resolution S-16/1*, ¶ 72 (Aug. 17, 2011).

¹¹³ Hum. Rts. Watch, *We Live as in War: Crackdown on Protesters in the Governorate of Homs* (Nov. 11, 2011).

¹¹⁴ Oweis, *supra* note 4.

Assad regime has failed to uphold its responsibilities to Syrian people. Western governments slowly applied pressure through targeted sanctions but remained less vocal about pushing for hard sanctions. In September, European countries considered calling for immediate sanctions against Assad's regime in a proposed Security Council resolution. However, in response to fears that Russia and China would prevent that resolution from passing, a new U.N. resolution was drafted to instead threaten sanctions only in the event of continued repression.¹¹⁵ Despite these changes, on October 4, 2011, Russia and China vetoed a resolution calling on Syria to end the violence against its citizens.¹¹⁶ Many have criticized the vetoes, claiming that they would embolden Assad to continue his violent tactics.¹¹⁷ Meanwhile, South Africa, India and Brazil also opposed sanctions on Syria by the Security Council in October, despite their cautious support of Resolution 1973 in March 2011.¹¹⁸

On October 31, 2011, as it drew down its Libyan operation, NATO formally announced that it had rejected the possibility of military intervention in Syria with a statement by the organization's Secretary-General Anders Fogh Rasmussen that he "can completely rule that out."¹¹⁹ Nevertheless, in response to the Russian and Chinese vetoes of the Security Council resolution, Human Rights Watch and other organizations addressed a letter to the U.N. General Assembly, asking it to condemn the violence in Syria in the context of these events.¹²⁰ According to the Resolution 377A of the U.N. General Assembly, if the Security Council fails to exercise its responsibility to maintain international peace and security due to a permanent member's veto,

¹¹⁵ BBC NEWS, *supra* note 95.

¹¹⁶ *UN General Assembly: Condemn the Violence in Syria*, HUM. RTS. WATCH (Oct. 20, 2011), <http://www.hrw.org/news/2011/10/20/un-general-assembly-condemn-violence-syria>; Laura Smith-Spark, *U.N. Secretary-General Disappointed by Syria Veto*, CNN (Oct. 5, 2011), http://articles.cnn.com/2011-10-05/middleeast/world_meast_syria-unrest.

¹¹⁷ Laura Smith-Spark, *supra* note 116.

¹¹⁸ BBC NEWS, *supra* note 95.

¹¹⁹ *Arabs Revel Plan, Syria Silent*, THE DAILY STAR, Nov. 1, 2011, <http://www.dailystar.com.lb/News/Middle-East/2011/Nov-01/152759-arabs-reveal-plan-syria-silent.ashx#axzz1cS8Bbj6i>.

¹²⁰ HUM. RTS. WATCH, *supra* note 116.

the General Assembly should consider the matter.¹²¹ Instead, the General Assembly passed a non-binding resolution condemning the Syrian crackdown on November 23, but it lacked any legal significance and merely sent a message to Assad.¹²² In mid-December 2011, Russia circulated its own resolution condemning the violence by both sides in Syria but lacking any mention of an arms embargo or other sanctions.¹²³ It also came as the Russian Foreign Minister accused the West of encouraging opposition groups to provoke humanitarian catastrophe. The draft also included a prohibition on military interference as an interpretation of the resolution.¹²⁴ Thus, the proposed resolution would cement Russia's opposition to concrete actions and likely have no actual effect on the situation.

The Arab League and individual Middle Eastern countries have confronted the Syrian government more forcefully than the U.N. has. On October 17, 2011, the Arab league gave Syria a fifteen-day deadline to enact a cease-fire or risk suspension from the Arab League.¹²⁵ Those supporting Syria's suspension included Gulf nations such as Saudi Arabia, whereas those opposed to the suspension included Sudan, Algeria, Lebanon and Yemen.¹²⁶ The only other instance of an Arab League suspension in the history of the 22-state organization came in March 2011 when the League suspended Libya's membership in response to Gaddafi's crackdown.¹²⁷ The threat of Syria's suspension signaled a serious blow to Assad's regime in that it deepens its

¹²¹ *Id.*

¹²² *Syrian Regime Condemned by UN Resolution*, CBC NEWS (Nov. 22, 2011, 3:45 PM), <http://www.cbc.ca/news/world/story/2011/11/22/syria-turkish-pm.html>.

¹²³ Ivan Watson & Joe Sterling, *Russia Offers New U.N. Resolution on Syria*, CNN (Dec. 15, 2011, 5:05 PM), <http://www.cnn.com/2011/12/15/world/meast/syria-main/index.html>.

¹²⁴ *Russia Accuses West of 'Immoral' Stance*, BBC NEWS (Dec. 13, 2011, 7:25 AM), <http://www.bbc.co.uk/news/world-middle-east-16158584>.

¹²⁵ *Arab League Gives Syria 15 Days to End Crackdown or Face Suspension*, HAARETZ.COM, Oct. 17, 2011, <http://www.haaretz.com/news/middle-east/arab-league-gives-syria-15-days-to-end-crackdown-or-face-suspension-1.390395>.

¹²⁶ *Id.*

¹²⁷ HAARETZ.COM, *supra* note 125.

isolation from the world and further reduces Arab support.¹²⁸ On November 2, 2011, Syria agreed to a plan put forward by the Arab League.¹²⁹ The plan included requirements that Syrian government forces withdraw all troops from cities and immediately end all violence against protesters; in addition, Assad's regime had to release all prisoners, begin negotiations with members of the opposition, and allow journalists and human rights observers into the country.¹³⁰ However, violence escalated rather than decreased after Syrian officials signed the agreement,¹³¹ though Syrian officials insisted that they were committed to implementing the plan. In response to increasing violence resulting in calls for intervention by opposition groups, the Arab League agreed on November 12 to suspend Syria on November 16 if Assad's regime did not end this newest crackdown.¹³² The suspension was met by violent protests at diplomatic missions of Qatar, Turkey and Kuwait.¹³³ On November 16, League representatives ratified the suspension and gave Assad another three days before they imposed economic sanctions on his government.¹³⁴ The Arab League decided that Syria would remain suspended until it allowed observers into the country. Meanwhile, the organization as well as individual Member States have mounted increasingly harsh sanctions on Assad's regime.¹³⁵

¹²⁸ *Syria Calls for Emergency Arab League Meeting Over Suspension*, THE GUARDIAN, Nov. 13, 2011, <http://www.guardian.co.uk/world/2011/nov/13/syria-emergency-arab-league-meeting-suspension>.

¹²⁹ *Syria Agrees to Arab League Plan*, AL JAZEERA ENG. (Nov. 3, 2011, 8:48 AM), <http://www.aljazeera.com/news/middleeast/2011/11/2011112163044247764.html>.

¹³⁰ THE GUARDIAN, *supra* note 128.

¹³¹ *Syria Unrest: Activists Say 20 Killed in Homs*, BBC NEWS (Nov. 3, 2011, 1:38 PM), <http://www.bbc.co.uk/news/world-middle-east-15571427>.

¹³² THE GUARDIAN, *supra* note 128.

¹³³ *Syria Hits Back at Arab League Suspension*, AL JAZEERA ENG. (Nov. 14, 2011, 7:46 PM), <http://www.aljazeera.com/news/middleeast/2011/11/2011111492236108262.html>.

¹³⁴ *Arab League Extends Syria Deadline*, AL JAZEERA ENG. (Nov. 17, 2011, 5:44 PM), <http://www.aljazeera.com/news/middleeast/2011/11/20111116194842696136.html>.

¹³⁵ *Zeina Karam, Syria Says It's Still Open to Arab Observer Plan*, THE GUARDIAN, Dec. 4, 2011, <http://www.guardian.co.uk/world/feedarticle/9978890>.

IV. Factors in the International Community's Varying Responses to Libya and Syria

Muammar Gaddafi and Bashar Al-Assad both behaved in a manner that clearly signaled a willingness to use force against their own citizens in response to peaceful protesters. Neither head of state shied away from using extreme brutality against civilians in response to internal dissent. The protests and the responding violence began within a few weeks of one another. The Arab League, African Union, European Union, United Nations and NATO came together to reject Gaddafi as a legitimate ruler and to invoke the R2P doctrine as justification for a military intervention to prevent human rights abuses by Gaddafi's regime. The multilateral military intervention successfully saved countless civilian lives and provided the aerial support necessary for rebel forces to overthrow Gaddafi and take control of Libya. More than 5,000 Syrians have been killed in violent clashes directed by Assad over an eight-month period, but the global reaction has been only harsh words, economic sanctions, and political isolation, rather than any intervention of the scale or speed similar to that witnessed in Libya. Political and economic differences in the relationships that Libya and Syria had with their neighbors and the rest of the world play a large role in the different responses to violence by a regime against its own citizens, as do concern for the effect of regime change on the stability of the Middle East and policymakers' experiences and perceptions of history. It can be argued that if the U.N. and its Members States allow geopolitical motivations and national historical memories to prevent the international community from upholding its responsibility to protect civilians in Syria, the emerging international legal norm of R2P will be significantly undermined. Indeed, whereas Libya provided an example of swift and successful implementation of R2P, the case in Syria demonstrates how the influence of political, economic, and historical considerations on states' political will may preclude any possibility of utilizing the R2P doctrine.

A. Geopolitical, Economic and Domestic Concerns of International Actors

Syria has been a major trading partner for many world powers, including Russia, China, the United States and the European Union.¹³⁶ This has not stopped the U.S. and the European Union from condemning the violence in Syria and placing economic sanctions against its regime. However, Assad has retained powerful allies in Russia, China and Iran that leave him less isolated than Gaddafi had been. Therefore, a level of political protection exists that minimizes the likelihood of military intervention and provides Assad with a sense of security in his control over the country. In addition, because China relies on importing oil from Syria, Russia relies on exporting arms to Syria and Iran provides financial and militaristic support, many economic sanctions by Europe and other Western powers are less effective because Syria can still trade with Russia, China and Iran.¹³⁷

The U.S. seems extremely reluctant to respond with a Libya-style operation and seems to be hoping that the situation becomes resolved without outside intervention. This is due partly to intensifying lack of domestic political support. Obama faces a reelection campaign in 2012 and must contend with incredibly low poll numbers.¹³⁸ The Libyan Intervention did little to increase his popularity and a similar intervention in Syria most likely will increase public dissatisfaction with his administration. When Obama announced the plan for humanitarian intervention in Libya in March, many criticized his multilateral approach to the operation.¹³⁹ However, the minimal cost of the operation, which ended on October 31, 2011, and the lack of any American fatalities demonstrated the benefits of taking the back seat in the Libyan NATO intervention.

Nevertheless, U.S. public interest in the Arab Spring has waned since March as economic

¹³⁶ Laura Smith-Spark, *supra* note 116.

¹³⁷ *Id.*

¹³⁸ O'Hanlan, *supra* note 98.

¹³⁹ Press Release, President Barack Obama, Remarks by the President in Address to the Nation on Libya (Mar. 28, 2011), <http://www.whitehouse.gov/the-press-office/2011/03/28/remarks-president-address-nation-libya>.

problems have become a main priority.¹⁴⁰ Domestic political pressure to address economic issues have detracted from the U.S. government's ability to take concrete actions in the Middle East.¹⁴¹ Sharing the financial burden of intervention was key, but even a shared burden will be less likely to gain American support in the case of Syria. Even so, in comparison to the situation in Libya, the U.S. has been strikingly slow and ineffective in using its political leverage to encourage an international response to the atrocities currently being committed by the Syrian government.¹⁴²

Throughout the months that Syrian security forces have been cracking down on protesters, the U.S. has been partially relying on Turkey for cues on how to handle the crisis in Syria. Turkey wants to be a regional power, which it can achieve by being the mediator between the U.S. and Syria and Iran. Prior to the uprising this year, Turkey had expected Syria to play a key role in its plans to become a political and economic leader in the Middle East.¹⁴³ Thus, Assad staying in power would help Turkey retain its role as mediator and regional leader, so Turkey was initially very resistant to the idea of regime change. Until November 2011, Turkey responded to Assad's crackdown by releasing statements urging Assad to make reforms, rather than suggesting he relinquish power altogether.¹⁴⁴ In addition, Turkish Prime Minister Recep Tayyip Erdogan had been pressuring Obama to keep his statements and reactions to the events toned down as well.¹⁴⁵ However, in early November, Erdogan noted that Syria had taken Turkey's friendship for granted. By November 15, 2011, following the attacks on Turkish diplomatic missions in Damascus, Erdogan stated that he no longer had confidence in the Syrian

¹⁴⁰ O'Hanlan, *supra* note 98.

¹⁴¹ *Id.*

¹⁴² Tony Badran, *Obama's Options in Damascus*, FOREIGN AFF., Aug. 16, 2011, <http://www.foreignaffairs.com/articles/68129/tony-badran/obamas-options-in-damascus>.

¹⁴³ Yigal Schleifer, *From Endearment to Estrangement: Turkey's Interests and Concerns in Syria*, Peace Brief 109, U.S. Peace Inst., Oct. 25, 2011.

¹⁴⁴ *Id.*

¹⁴⁵ Badran, *supra* note 142.

regime.¹⁴⁶ Additionally, Turkey threatened to cut the electricity it supplies to Syria in order to put pressure on Assad to end the violence.¹⁴⁷ On November 22, 2011, Erdogan called for Assad's resignation.¹⁴⁸ These latest statements may symbolize a willingness on Turkey's part to support harder sanctions and more concrete actions by the international community

Jordan's King Abdullah has also been quite reticent in discussing the Arab Spring uprisings. Unrest and internal war in Syria could have a detrimental spillover effect on Jordan's domestic stability. The uncertainty surrounding the potential collapse of Assad's regime has caused a great deal of anxiety within Jordan's government.¹⁴⁹ There has been a desire to prevent domestic opposition from using the violence in Syria as a platform for its own political gain.¹⁵⁰ Jordan hopes to become a member of the Gulf Cooperation Council ("GCC"), so its government has been attentive to GCC policy regarding Syria. Similarly, Jordan strives to maintain a good relationship with Washington and thus also looks to U.S. foreign policy to guide its own rhetoric.¹⁵¹ Despite this caution in addressing violence in Syria, public statements from Amman shifted toward harder criticism of Assad. In October, Abdullah gave an interview in which he said the Syrian regime remains strong enough that it would be difficult for Assad to be overthrown by the protesters. He also stated that the leaders in the Middle East had become "wary of dealing with the West" and would be less likely to coordinate with the West in the

¹⁴⁶ *Syria's 'bloodiest day' Leaves Scores Dead*, AL JAZEERA ENG. (Nov. 15, 2011, 6:34 PM), <http://www.aljazeera.com/news/middleeast/2011/11/2011111585457536920.html>.

¹⁴⁷ Ivan Watson, *Turkey Threatens to Cut Electricity as Syria is More Isolated*, CNN (Nov. 15, 2011, 11:51 AM), http://www.cnn.com/2011/11/15/world/meast/syria-isolation/index.html?hpt=hp_t3.

¹⁴⁸ Sebnem Arsu, *Turkish Premier Urges Assad to Quit in Syria*, N.Y. TIMES, Nov. 22, 2011, <http://www.nytimes.com/2011/11/23/world/middleeast/turkish-leader-says-syrian-president-should-quit.html>.

¹⁴⁹ Edward Gnehm Jr., *Jordan and the Current Unrest in Syria*, U.S. Peace Inst., Nov. 7, 2011,

¹⁵⁰ *Id.*

¹⁵¹ Gnehm, *supra* note 149.

immediate future.¹⁵² On November 14, Abdullah changed his tune and urged Assad to turn over the leadership of Syria to reformists, becoming the first of the Arab leaders to actually call for his resignation, a move that resulted in an attack on the Jordanian diplomatic mission in Damascus.¹⁵³ In an interview, Abdullah stated that Assad had been unwilling to engage in dialogue with other countries and added that if Assad truly had "the interests of his country [in mind], he would step down."¹⁵⁴ These statements came after members of the GCC and Arab League had also condemned Assad, called for Syria's suspension from the Arab League and discussed economic sanctions, meaning Abdullah's sentiments would not incur regional backlash.

The Iranian government has been supporting Assad by providing weapons, surveillance equipment and training to the Syrian military.¹⁵⁵ There is some evidence that Iran sent some of its own forces to help Assad, as well as provided the regime with technology to monitor email, cell phones and social media.¹⁵⁶ Iran says that the uprising is a ploy by foreign governments to take down Assad.¹⁵⁷ The Iranian government responded to Turkey's criticism of Assad by partly blaming Turkey's Prime Minister for the unrest. Tehran also cut off funding to Hamas after it refused to hold rallies in the Gaza Strip in support of Assad.¹⁵⁸ Meanwhile, Iraq's security concerns as a nation bordering Iran and Syria has led to a view that Assad should remain in

¹⁵² Lally Weymouth, *Jordan's King Abdullah on Egypt, Syria and Israel*, WASH. POST, Oct. 24, 2011, http://www.washingtonpost.com/opinions/jordans-king-abdullah-on-egypt-syria-and-israel/2011/10/24/gIQAejhRDM_story_1.html.

¹⁵³ AL JAZEERA ENG., *supra* note 146.

¹⁵⁴ *Jordan's King Urges Syria's Assad to Step Down - Key Quotes*, BBC NEWS (Nov. 14, 2011, 2:17 PM), <http://www.bbc.co.uk/news/world-middle-east-15730128>.

¹⁵⁵ Geneive Abdo, *How Iran Keeps Assad in Power in Syria*, FOREIGN AFF., Aug. 25, 2011, <http://www.foreignaffairs.com/articles/68230/geneive-abdo/how-iran-keeps-assad-in-power-in-syria>.

¹⁵⁶ *Id.*

¹⁵⁷ Abdo, *supra* note 155.

¹⁵⁸ *Id.*

power for the sake of stability.¹⁵⁹ Iraqi Prime Minister Nouri al-Maliki has specifically pointed to concerns about sectarian violence spreading to the entire region as a result of Syria's internal clashes.¹⁶⁰

In Libya's case, Gaddafi lacked real allies and the continuation of his regime actually threatened regional stability. Therefore, taking action in Libya that would hasten regime change, in addition to protecting citizens, clearly benefitted the Western powers' national interests in the stability of North Africa. Assad remaining in power has mainly been viewed as providing the best chance at maintaining stability, as long as he yields to some of the protesters' demands.¹⁶¹ The demographic dynamic of Syria is very different from that of Libya. Assad's Alawite sect of Shia Islam that rules Syria makes up only twelve percent of the population.¹⁶² Other minorities include Druze, Catholics, Orthodox Christians, and Kurds.¹⁶³ As civil war appears imminent, there is a concern about its implication for the ethnic and religious divides within Syria. Lately, however, opinion seems to be shifting in that Assad has been increasingly viewed as detrimental to regional stability. Unlike in Bahrain and Yemen, where the U.S. needs governments to remain in power to retain regional stability and thereby ensure the security of U.S. political and economic interests near the Gulf, the U.S. does not need Assad for any particular strategic purpose.¹⁶⁴ In fact, a new regime may be beneficial to U.S. interests in the region, particularly

¹⁵⁹ Press Release, The White House, Remarks by President Obama and Prime Minister al-Maliki of Iraq in a Joint Press Conference (Dec. 12, 2011), <http://www.whitehouse.gov/the-press-office/2011/12/12/remarks-president-obama-and-prime-minister-al-maliki-iraq-joint-press-co>.

¹⁶⁰ *Id.*

¹⁶¹ Ed Husain, *Is the US better off sticking with Syria's Assad?*, CNN GLOBAL PUBLIC SQUARE BLOG (Oct. 5, 2011, 11:00 AM), <http://globalpublicsquare.blogs.cnn.com/2011/10/05/the-u-s-is-better-off-sticking-with-syrias-assad>.

¹⁶² *Id.*

¹⁶³ Husain, *supra* note 161.

¹⁶⁴ *Id.*

with regard to offsetting the power of Iran. Yet others argue that a change from Shiite to Sunni leadership actually would not affect Syria's positive partnership with Iran.¹⁶⁵

B. Role of History on Policymakers' Decisions

The "legacy of the past" theory posits that events of the past contribute to shared national memories and beliefs that shape countries' foreign policy.¹⁶⁶ National history's influence on state leaders' policy has played a major role in the disparity between the international community's responses to Libya and Syria. The memories of the United States and other countries that feel responsible for previous genocides lead to determination to prevent those atrocities that can be prevented. Meanwhile, Russia, China and other states that have a history of subjugation by Western powers feel threatened by the broad interpretation of Resolution 1973 and will reject interference in Bashar al-Assad's crackdown for the purpose of preserving the principle of state sovereignty.

The collective experience of Obama's advisers has contributed to his foreign policy, which emphasizes collective security and protection of civilians when feasible and appropriate. In 2005, Obama sought out genocide scholar Samantha Power after reading her book, "A Problem from Hell," which chronicles the many bungled responses by the U.S. to genocides throughout the 20th century.¹⁶⁷ Power argues that governments like the Clinton administration have consciously averted their attention from atrocities despite a moral responsibility to intervene.¹⁶⁸ Now, as Obama's anti-genocide adviser on the National Security Council, Power has pushed for a number of atrocity prevention measures. The White House created a full-time

¹⁶⁵ Husain, *supra* note 161.

¹⁶⁶ JOHN GARVER, FOREIGN RELATIONS OF THE PEOPLE'S REPUBLIC OF CHINA 2-28 (1st ed. 1993).

¹⁶⁷ Sheryl Gay Stolberg, *Still Crusading, but Now on the Inside*, N.Y. TIMES, Mar. 29, 2011, <http://www.nytimes.com/2011/03/30/world/30power.html>.

¹⁶⁸ *Id.*

position for monitoring atrocities in 2010.¹⁶⁹ The August 2011 Presidential Study Directive on Mass Atrocities ("PSD") designated the prevention of mass atrocities as a main national security interest and moral responsibility of the U.S. and created a standing Atrocities Prevention Board to develop strategies.¹⁷⁰ In accordance with the R2P doctrine, the PSD provided for the development of various options other than military action in response to or in prevention of mass atrocities, with military action as a last resort.¹⁷¹ The concern with preventing genocide has prompted Obama to echo the sentiments of former British Prime Minister Tony Blair, Kofi Annan and other world leaders by stating that just because states do not always have the capacity to act, does not mean they should never act.¹⁷²

Some members of Obama's national security team worked for the Clinton administration during the Rwandan genocide in 1994. The current U.S. ambassador to the United Nations staff and former staff member of Clinton's National Security Council, Susan Rice, has expressed regret for inaction in Rwanda and has subsequently promoted the R2P doctrine. In a 2009 speech to the U.N. Security Council, Rice reminded Member States that they had agreed in 2005 to protect civilian populations from violations of international humanitarian law, and asserted that the Obama administration "rejects the false choice between...security and... values."¹⁷³ Throughout the period of unrest in Syria, Rice repeatedly accused Assad of losing legitimacy by using force on his people and denounced the October 4 Security Council veto, stating that "Libya has been overused and misused as an excuse for countries to not take up their responsibilities

¹⁶⁹ Stolberg, *supra* note 167.

¹⁷⁰ Memorandum from President Barack Obama, Presidential Study Directive on Mass Atrocities, PSD-10 (Aug. 4, 2011), <http://www.whitehouse.gov/the-press-office/2011/08/04/presidential-study-directive-mass-atrocities>.

¹⁷¹ *Id.*

¹⁷² Press Release, President Barack Obama, *supra* note 138.

¹⁷³ Press Release, U.S. Permanent Representative to the U.N. Susan E. Rice, Statement to the Security Council on Respect for International Humanitarian Law (Jan. 29, 2009), <http://usun.state.gov/briefing/statements/2009/january/127018.htm>.

with respect to Syria."¹⁷⁴ Hillary Rodham Clinton, now Secretary of State, also shares regret over Rwanda because she advocated for intervention in Rwanda but failed to convince former President Clinton.¹⁷⁵ Secretary Clinton, Ambassador Rice, Power and other advisers familiar with the humanitarian failures of the 1990s urged Obama to intervene in Libya. In response to Syria, the U.S. has joined Canada and the European Union, which also have a shameful legacy of failure to prevent atrocities, in issuing mounting targeted sanctions, such as asset freezes and trade sanctions.

Another set of collective memories, the negative consequences of hasty and largely unilateral wars, has also shaped Obama's worldview. The historical legacy of the Vietnam War has often led U.S. leaders to incorrectly apply its lessons to current political situations. As the infamous Vietnam War came to an end, fatigue with military operations in the region led U.S. officials to ignore signs of genocide in neighboring Cambodia when dictator Pol Pot took over in 1975.¹⁷⁶ In 1993, media coverage of the Battle of Mogadishu prompted public outcry at the deaths of 18 American soldiers and resulted in U.S. withdrawal largely due to fear of another quagmire in a politically complex situation involving elements of guerrilla warfare.¹⁷⁷ Former President George W. Bush originally rejected the quagmire comparison of Iraq to Vietnam, but in 2007 he used his own interpretation of that analogy as an argument against withdrawal from Iraq.¹⁷⁸ The length, casualties and domestic unpopularity of the Iraq War, as well as the difficulties of withdrawal, will caution U.S. leaders even further in foreign affairs. Thus, the

¹⁷⁴ Press Release, U.S. Permanent Representative to the U.N. Susan E. Rice, Remarks at the Security Council Stakeout on the Veto of a UN Security Council Resolution on Syria (Oct. 4, 2011), <http://usun.state.gov/briefing/statements/2011/175028.htm>.

¹⁷⁵ David Jackson, *One Reason for Obama's Decisions on Libya: Rwanda*, USA TODAY, Mar. 24, 2011, <http://content.usatoday.com/communities/theoval/post/2011/03/one-reason-for-obamas-decision-on-libya-rwanda/1>.

¹⁷⁶ POWER, *supra* note 20, at 87-153.

¹⁷⁷ Dominic Johnson & Dominic Tierney, *A Mirage of Defeat in the Desert?*, INT'L HERALD TRIB., Nov. 29, 2006, <http://www.nytimes.com/2006/11/28/opinion/28iht-edjohnson.3695842.html>.

¹⁷⁸ Jim Rutenberg, Sheryl Gay Stolberg & Mark Mazzetti, *'Free Iraq' Is Within Reach, Bush Declares*, N.Y. TIMES, Aug. 23, 2007, <http://www.nytimes.com/2007/08/23/washington/23policy.html>.

mythical and selectively-used memory of Vietnam has taught U.S. politicians to be wary of involvement in uncertain internal conflicts. One exception that Obama seems to have derived from the lessons of previous U.S. wars is that U.N. approval and collective action, such as in the first Gulf War and the Libyan intervention, negate many of the risks of such military involvements. Therefore, U.S. historical legacy precludes the Obama administration from becoming involved in Syria's ethnically and politically complex unrest without consensus in the U.N. and collective burden-sharing among nations.

As can be seen in the development of humanitarian intervention and the Responsibility to Protect doctrine, many countries have been very skeptical of establishing international law that threatens their sovereignty and leaves them vulnerable to regime change through the guise of humanitarian intervention. Their apprehension is a reaction to sovereignty issues implicated in R2P generally and in NATO's interpretation of Resolution 1973 and the resulting regime change specifically. China's concern over sovereignty issues comes as a response to its own historical legacy concerning its myth of national humiliation., which serves as the center of China's political culture.¹⁷⁹ The century of national humiliation took place from 1839 to 1949, a period when Japan and several imperialist Western countries repeatedly subjected China to atrocities, destruction and degradation.¹⁸⁰ Since 1949, the Chinese Communist Party has committed itself to preventing any recurrence of such humiliation by staunchly opposing any form of imperialism.¹⁸¹ Therefore, China remains sensitive to breaches of territorial sovereignty by Western states in pursuit of forcing their values onto other countries, and accordingly views the R2P doctrine suspiciously.

¹⁷⁹ GARVER, *supra* note 166, at 2-28.

¹⁸⁰ *Id.*

¹⁸¹ GARVER, *supra* note 166, at 2-28.

Similarly, the legacy of centuries of invasions by its European and Asian neighbors as well as the decades of ideological and political friction with Western countries during the Cold War contributes to Russia's stern disapproval and suspicion of forced intervention in sovereign affairs. Another factor may be concerns about Russia's own political stability. The public statements by Russian officials regarding the Libyan intervention and the Responsibility to Protect reflect a level of paranoia about intervention as a legal norm. Above and beyond questioning the legality of Gaddafi's death or the expansive interpretation of Resolution 1973, Prime Minister Vladimir Putin and Foreign Minister Sergey Lavrov have gone to great lengths to pronounce that NATO's intervention was contrary to international law.¹⁸² In fact, Putin likened the Libyan intervention to a medieval crusade.¹⁸³ Russian officials have denounced the use of sanctions without authorization of the U.N. Security Council.¹⁸⁴ In October, Lavrov rejected the notion that NATO's intervention saved lives.¹⁸⁵ His statements regarding the Responsibility to Protect also reflected misunderstandings about the doctrine itself. He asserted that Western governments seek to use force under R2P "in all cases when peoples begin to show displeasure and... the authorities use force to restore order."¹⁸⁶ Lavrov additionally implied that even a resolution with only conditional sanctions signaled a desire by Western governments to act in Syria as they had in Libya, and that the "Libyan model was a flagrant violation of the Security

¹⁸² *Putin Says 'Dumbfounded' over NATO operation in Libya*, RIA NOVOSTI (Apr. 27, 2011, 6:53 PM), <http://en.rian.ru/russia/20110427/163739739.html>.

¹⁸³ *Putin Says Western Coalition has no Mandate to Kill Gaddafi*, RIA NOVOSTI (Apr. 26, 2011, 7:42 PM), <http://en.rian.ru/world/20110426/163719575.html>.

¹⁸⁴ Press Release, Ministry of Foreign Affairs of the Russian Federation, Briefing by Russian MFA Spokesman Alexander Lukashevich (Oct. 13, 2011), http://www.mid.ru/bdomp/Brp_4.nsf/arh/069CDEB1885CBE39C325792A002C2471?OpenDocument.

¹⁸⁵ *Russia Doubts 'Success' of NATO's Libya Operation*, RIA NOVOSTI (Oct. 6, 2011, 1:03 PM), <http://en.rian.ru/world/20111006/167434720.html>.

¹⁸⁶ Press Release, Ministry of Foreign Affairs of the Russian Federation, Russian Foreign Minister Sergey Lavrov's Interview with Profil Magazine (Oct. 10, 2011), http://www.mid.ru/bdomp/Brp_4.nsf/arh/C4F7C92A4246C22AC3257926003B642F?OpenDocument.

Council decisions and therefore... international law."¹⁸⁷ He also suggested that limitations on freedom are necessary to prevent anarchy.¹⁸⁸ Incidentally, an election in December led to political protests, which Putin accused Secretary Clinton of provoking. As Putin has officially registered his candidacy for his third term as president, his strong denouncement of intervention in internal affairs has likely been linked to his personal concerns for internal stability during the upcoming elections.

Likewise, national memories of former colonies have traditionally generated resistance to the idea of humanitarian intervention. In the aftermath of Kosovo, developing nations that had been subject to colonialism in the early 20th century especially opposed Kofi Annan's assertions that some situations allowed for breach of territorial sovereignty in the name of humanitarianism.¹⁸⁹ Former colonies felt threatened by the indication that NATO, a group of past colonial powers, could legitimately decide to intervene in internal state affairs under a pretext of humanitarian necessity. In October 2011, South Africa, India and Brazil opposed sanctions on Syria in the aftermath of NATO's broad interpretation of Resolution 1973's mandate.¹⁹⁰ These countries usually put forth strong rhetoric in favor of human rights, yet their reactions to the Arab Spring have been inconsistent with such rhetoric, most likely as a result of NATO's broad interpretation of the U.N.'s mandate to protect civilians in Libya.¹⁹¹ India and Brazil cautiously approved of action against Libya but abstained on Resolution 1973, and South Africa actually voted in favor.¹⁹² As a result, South Africa received a regional and domestic backlash after supporting the Libyan intervention and is now refraining from supporting any foreign

¹⁸⁷ *Id.*

¹⁸⁸ Press Release, Ministry of Foreign Affairs of the Russian Federation, *supra* note 185.

¹⁸⁹ TRAUB, *supra* note 11, at 115.

¹⁹⁰ Mansour, *supra* note 90.

¹⁹¹ *Id.*

¹⁹² Mansour, *supra* note 90.

interference in Syria.¹⁹³ In the perspective of many African countries, the NATO operation seemed suspiciously reminiscent of colonial endeavors. Meanwhile, Brazil has appeared skeptical about allowing major power interventions to go forward in the future, and India had called for NATO airstrikes to cease prior to end of the NATO intervention. All three countries have opposed sanctions on Syria, denounced the use of force and agreed that there should be no repetition of a resolution like 1973 in Syria's case.¹⁹⁴ Therefore, even countries that allowed the Libyan Intervention to proceed are now hesitant to head down a similar path due to national memories of colonialism.

V. The Implications of the Arab Spring on the Future of the Responsibility to Protect Doctrine

In determining whether an emerging norm is a part of customary international law, there must be general practice of the doctrine, and that practice must be a result of the norm's acceptance as law ("opinio juris").¹⁹⁵ Minor deviations from a legal norm may occur without affecting the requirement for general practice, whereas major deviations from general practice will preclude a norm from becoming customary international law.¹⁹⁶ The key aspects of practice are generality and consistency.¹⁹⁷ If there is a high level of consistency from a substantial majority of states, then the fact that the practice has developed relatively recently is of less importance.¹⁹⁸ The "opinio juris" aspect of customary international law requires that the acts amount to a settled practice and are carried out in such a way that evidences a subjective belief that the practice is regulated obligatory by the existence of a rule of law.¹⁹⁹ Thus the issue is

¹⁹³ *Id.*

¹⁹⁴ Mansour, *supra* note 90.

¹⁹⁵ LORI F. DAMROSCH ET AL., INT'L LAW, CASES AND MATERIALS 60-61 (5th ed. 2009).

¹⁹⁶ *Id.* at 69-90.

¹⁹⁷ DAMROSCH ET AL., *supra* note 195, at 90-100.

¹⁹⁸ *Id.*

¹⁹⁹ DAMROSCH ET AL., *supra* note 195, at 90-100.

whether there has been sufficient state practice and acceptance of Responsibility to Protect as a legal norm for the doctrine to be part of international customary law.

The history over the last few decades of the developing practice of humanitarian intervention and later the R2P doctrine demonstrates that there has been general practice of the norm by many states, including African and Arab countries, as well as international and regional organizations, most notably the United Nations. The legal foundations of R2P, as noted by the 2001 ICISS report, assert that it has a strong basis in international law. Furthermore, the amount of reports and resolutions endorsing the doctrine as an emerging norm and the number of statements by world leaders referring to R2P as an international obligation shows that the "opinio juris" requirement of customary international law has been met. Even after the Libyan intervention produced suspicion among many former colonies, most countries have continued to at least support the aspect of the R2P doctrine that urges non-military actions to protect civilians.

Therefore, the most controversial part of R2P is authorization for use of force under the doctrine. This results from the reality that strategic interests often accompany humanitarian intervention. In order for all aspects of this norm to become customary international law and truly prevent future atrocities, strategic interests must remain as removed as possible from the invocation of R2P so the doctrine can gain legitimacy through consistent application. For if fear and distrust of underlying motives leads to a rejection of the doctrine's option for use of force as a last resort, then the entire doctrine will be toothless and has no chance of deterring ruthless leaders like Gaddafi or Assad. Russia and China defended their vetoes of the Security Council resolution on sanctioning Syria by invoking the importance of state sovereignty and expressing concern that the Libyan intervention has encouraged a new trend of violating such

sovereignty.²⁰⁰ In particular, Russia has specifically stated that it rejects the Responsibility to Protect norm because of its concern for violations of state sovereignty and its inconsistent application based on ulterior motives of intervening countries. Rejection of a rule of international custom by one or a few countries does not negate its application as international law to other countries. However, if Russia remains a persistent and public objector to the R2P doctrine and continues to act in accordance with its rejection of the principle, then it may not be bound by the rule even if it is otherwise recognized as customary international law.

Russia's rejection of the R2P doctrine is particularly discouraging because of its position on the U.N. Security Council. At every stage of the R2P's development, the consensus has acknowledged that triggering the doctrine requires Security Council authorization. Since Russia has veto power, it can singlehandedly prevent the further practice of the norm. This has been demonstrated in its response to Syria's unrest, in that Russia has refused to allow even conditional sanctions, on the inaccurate basis that doing so would open the door to another Libyan-style intervention. If the international community wants to continue to apply the R2P doctrine to situations where governments fail to protect their citizens from atrocities, it must come together to strongly criticize Russia for thwarting effective actions in a situation where crimes against humanity have been consistently perpetuated against civilians. Alternatively, the U.N. Member States must find a substitute method for implementing R2P, perhaps by allowing regional bodies like the Arab League greater leeway in executing the doctrine without express Security Council authorization. Otherwise, the political determinations of five countries will continue to constrain the development of the R2P doctrine, due to the doctrine's reliance on the Security Council and the Council's outdated structure and voting rules.

²⁰⁰ Laura Smith-Spark, *supra* note 116.

Ultimately, the Libyan Intervention will be a tool for judging the legitimacy of the doctrine. It has been accused of exceeding the scope of authority granted by the Security Council, by creating regime change instead of merely protecting civilian life. It has been criticized for causing some civilian casualties. Some leaders have questioned the legality under international law of NATO's role in Gaddafi's death. Gaddafi's family announced on October 26 that they planned to file a war crimes complaint, with the International Criminal Court against NATO commanders and leaders of its Member States, concerning his demise and previous attacks on Gaddafi's family members.²⁰¹ In February 2011, Resolution 1970 referred the Libyan situation to the ICC, which therefore has the authority to prosecute any person responsible for commission of war crimes since then.²⁰² On October 27, the U.N. Security Council voted unanimously to end NATO's military operation in Libya.²⁰³ The operation's status as a success will be cemented if Libya's National Transition Council manages a peaceful transition to a democratic society, though this process will undoubtedly be riddled with difficulties. It can then be used as a model for future responses to such threats of mass atrocities, though the specifics should differ based on the details of the situation and the necessity of force as a last resort. In the meantime, a careful balancing of world powers' national interests, humanitarian concerns within Syria, and the outlook for regional stability will determine what type of action, if any, will take place in Syria.

²⁰¹ Fabien Thelma, *Kadhafi Accuse l'Otan de 'Crime de Guerre'*, EUROPE1 (July 13, 2011, 8:37 AM), <http://www.europe1.fr/Int'l/Kadhafi-accuse-l-Otan-de-crime-de-guerre-626989/>; Ann M. Simmons, *Moammar Kadhafi's Family Reportedly Will Sue NATO*, L.A. TIMES BLOG (Oct. 26, 2011, 11:06 AM), http://latimesblogs.latimes.com/world_now/2011/10/moammar-kadhafi-family-nato.html.

²⁰² S.C. Res 1970, *supra* note 86, at ¶ 81.

²⁰³ *UN Ends Mandate for NATO Mission in Libya*, CNN (Oct. 27, 2011, 10:22 PM), <http://www.cnn.com/2011/10/27/world/africa/un-libya/index.html>.