

The Responsibility to Protect and the Syrian Civil War

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Executive Summary

This thesis examines the applicability of the Responsibility to Protect in the context of the Syrian civil war as well as the principle's effectiveness for ending the conflict. It begins with a history of humanitarian intervention, focusing mainly developments from post-World War II until current day, while also analyzing the current legality of humanitarian intervention and the Responsibility to Protect. Next, it examines the case studies of Bosnia-Herzegovina, Kosovo, Libya, and Syria while using lessons learned from these conflicts to provide recommendations for the United States to engage in to end the Syrian conflict under the guise of the Responsibility to Protect.

This thesis concludes that the Responsibility to Protect can be applied to the Syrian civil war, but as currently constituted the principle does not prevent a wide range of options to end the violence. While R2P does not provide a many avenues to end the conflict due to the present situation on the ground, it does provide the United States with a realistic and legal option under the guise of R2P in the form of a negotiated settlement. Geopolitical and other strategic interests of world powers, especially permanent members of the Security Council can prevent effective action from being taken under R2P, and the Syrian situation shows that the principle cannot be fully effective when these interests are present. If the United States or other international actors want to take the most effective action to end large-scale violence such as the Syrian civil war, they may need to resort to policies that fall outside R2P or even international law.

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Introduction

The Syrian civil war began in March 2011 with anti-government protests against President Bashar al-Assad and quickly turned into an armed uprising and civil war.¹ The United States supported the rebels, while Russia and Iran have supported the Assad government.² Over six years later the war still has not ended, with hundreds of thousands of people dead and millions as refugees and displaced persons.³ Currently there is a stalemate in the war, all sides looking for a way to end the conflict.⁴ The United States, as a main international actor in the conflict, has options to do so, and while at the time of completing this thesis its options are limited, there are still avenues it can pursue to end the conflict.

One principle that many have advocated as a means to end the conflict is called the Responsibility to Protect or R2P. The Responsibility to Protect was affirmed in the 2005 World Summit Outcome and holds that states have the responsibility to protect their own populations from genocide, war crimes, ethnic cleansing, and crimes against humanity.⁵ Further, “the international community should assist States in exercising that responsibility and in building their protection capacities.”⁶ Lastly, when a state is

¹ BBC News, ‘Syria: the Story of the Conflict’ (11 March 2016) available at: <<http://www.bbc.com/news/world-middle-east-26116868>> accessed 26 November 2017

² Ibid

³ Laura King, ‘Little Optimism as New Round of Syria Peace Talks Set to Open’ (Los Angeles Times 27 November 2017) available at: <<http://www.latimes.com/world/middleeast/la-fg-syria-talks-20171127-story.html>> accessed 27 November 2017

⁴ Ibid

⁵ UN Secretary-General, ‘Report of the Secretary-General on Implementing the Responsibility to Protect’ (12 January 2009) UN Doc A/63/677, summary, available at: <https://www.un.org/ruleoflaw/files/SG_reportA_63_677_en.pdf> accessed 1 November 2016

⁶ Ibid

“manifestly failing” to protect its own population from these crimes, under R2P the international community is “prepared to take collective action in a ‘timely and decisive manner’ through the Security Council and in accordance with the Charter of the United Nations.”⁷ Many believe the principle could provide a solution to the Syrian conflict, as the last part of R2P is an expansion and evolution of the theory of humanitarian intervention.

This thesis examines the Syrian civil war and looks at the United States’ options for ending the conflict under the guise of the Responsibility to Protect. In making recommendations, it considers past cases of humanitarian interventions and lessons learned from those examples for policy proposals, as well as considering the options’ legality under current international law. The thesis concludes that there are options to resolve the Syrian conflict in line with R2P and international law, but that these options are extremely limited and not the most effective.

The first chapter of the thesis details the history and evolution of humanitarian intervention and the Responsibility to Protect. The chapter begins with the early sources of humanitarian intervention but focuses on post-World War II developments, as they are more relevant for principle’s current legal situation and the issue at focus in this thesis. The chapter moves from post-World War II to the 1990s, where there were significant advances for the principle of humanitarian intervention. Next, the chapter details the forming of R2P up to its current iteration. Finally, the chapter analyzes the current legal status of the Responsibility to Protect and humanitarian intervention.

⁷ Ibid

In the second chapter, the thesis first details three prior case studies relevant to the Syrian civil war and lessons that can be learned for the current conflict. First, it will discuss the intervention in Bosnia-Herzegovina during the Yugoslav wars. The conflict in Bosnia-Herzegovina was important for the development of humanitarian intervention and the Responsibility to Protect, and it provides important lessons for Syria and any other current situation where R2P is applicable. It showed the consequences of an inefficient response to a humanitarian situation and was evidence of how ineffective the Security Council can be in such a case.

Next, the chapter discusses the NATO intervention in Kosovo in 1999 following the Balkan wars. The Kosovo intervention again showed how the Security Council can be ineffective in a situation requiring an international response, but provides a strong example of what actors other than the Security Council can do in the face of Council inaction. The Kosovo intervention provides two main lessons for current and future conflicts. The first is that preemptive intervention before large-scale atrocities are committed is an effective course of action, and the second is that post-conflict capacity building is necessary to maintain the situation following the violence.

Chapter II then discusses the Libya intervention in 2011, when the Security Council authorized a humanitarian intervention to protect civilians in the Libyan civil war using R2P principles.⁸ The chapter discusses how the situation evolved and how the intervention was a success. It recognizes that the situation in Libya is not perfect, but that the intervention has left the country in a better situation than it would have been without

⁸ UN Security Council Resolution 1973 (17 March 2011) S/RES/1973 available at: <http://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2011_03/20110927_110311-UNSCR-1973.pdf> accessed 11 February 2017

any intervention, as well as saving lives. The chapter discusses the intervention's importance for R2P as well, and the lessons that can be used for the Syrian conflict.

Last, Chapter II discusses the Syrian civil war and its evolution from 2011 until current day. It sets up the details of the conflict and the situation on the ground in order to analyze and discuss the Responsibility to Protect's applicability for the civil war as well as the best policy options. The chapter finishes with where the conflict stands in November 2017.

In Chapter III, the thesis discusses the United States' options to end the civil war, evaluating the legality and feasibility of the choices. At the beginning of writing the thesis, the United States' options were much more expansive, but by time of completing the thesis the options were significantly limited due to the situation on the ground. The chapter first discusses the possibility of a military intervention, but discusses why at this time it is not feasible and how it is illegal under international law. The chapter then discusses the other option, which is a negotiated settlement. It provides a recommendation of how the U.S. should pursue a negotiated settlement and provides a plan for the negotiated settlement. The chapter concludes with stating that a negotiated settlement is the only realistic option at the time as well as the only legal option, even if it is not a perfect option.

In Chapter IV, the thesis presents conclusions regarding U.S. actions in the Syrian civil war and the Responsibility to Protect's applicability and usefulness for the conflict and similar conflicts. The thesis determines that R2P is applicable in the Syrian situation due to multiple factors. It concludes that while the Responsibility to Protect can be used to end the conflict in the form of a negotiated settlement, it may not be the most effective

solution to the Syrian conflict or any other conflict where the geopolitical interests of world powers are at play. Lastly, it discusses that intervention outside the umbrella of R2P or international law may be necessary in such situations if the actor involved is most concerned with saving lives.

Chapter I: The History and Development of Humanitarian Intervention and the Responsibility to Protect

The term “humanitarian intervention,” while having no one universally accepted meaning, can reasonably be defined as,

“coercive action by states involving the use of armed force in another state without the consent of its government, with or without authorisation from the United Nations Security Council, for the purpose of preventing or putting to a halt gross and massive violations of human rights or international humanitarian law.”⁹

While the exact definition of humanitarian intervention (“HI”) may not have a universally accepted meaning, what is commonly accepted is the purpose behind the intervention. In order to be considered HI, the actions must be carried out in order to prevent or end large-scale atrocities against populations.¹⁰

The principle of humanitarian intervention is still not universally accepted as legitimate, however it is being developed through state practice and international doctrine, allowing debate as to whether it has become an international custom.¹¹ While

⁹ Danish Institute of International Affairs, *Humanitarian Intervention, Legal and Political Aspects* (1999) 11

¹⁰ Pinar Gözen Ercan, *Debating the Future of the ‘Responsibility to Protect’ – The Evolution of a Moral Norm* (Palgrave MacMillan 2016) 18

¹¹ Anne Ryniker, ‘The ICRC’s Position on “Humanitarian Intervention”’ (2001) 83 *International Review of the Red Cross*, 527-528 available at:

HI is widely seen as a relatively new concept, its roots can be traced back at least to early religious writings, with St. Augustine's 'just war' theory holding some comparable qualities to the theory of HI today.¹² Additionally, Thomas Aquinas discussed the idea of a ruler's responsibility to defend against unjust treatment of people, which falls in line with the responsibility to take action in the Responsibility to Protect.¹³

Later, secular philosophers such as Grotius continued the argument in the 1600s "that every war must have a just cause," and that rulers who seize and hold power unlawfully can have war permissibly waged against them.¹⁴ While theories of HI began much earlier, the event often cited as the first real humanitarian intervention occurred in 1827 with Great Britain, France, and Russia intervening on the side of Greek insurgents against Turkish rule.¹⁵ Actions considered humanitarian intervention may have begun in the 1800s, however this paper will review its legal development post-World War II ("WWII"), with a focus on the 1990s onward.

The following factors may be considered when determining what constitutes international law:

- "a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- b. international custom, as evidence of a general practice accepted as law;
- c. the general principles of law recognized by civilized nations;

<https://www.icrc.org/eng/assets/files/other/527-532_ryniker-ang.pdf> accessed 28 September 2017.

¹² Gözen Ercan (n10) 27

¹³ Ibid 28

¹⁴ V.S. Mani, *"Humanitarian" Intervention Today* (The Hague Academy of International Law, Brill, Nijoff Leiden 2005) Collected Courses of the Hague Academy of International Law vol. 313, 95

¹⁵ Simon Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law* (Oxford University Press 2001) 28

d. ...judicial decisions and teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.”¹⁶

International custom, or customary international law (“CIL”) is based on “state practice and...*opinio juris*.”¹⁷ State practice can be considered CIL if it, “is supported by a vast majority of states, is fairly consistent and evidences an opinion of states that they were legally entitled or obliged to pursue this practice.”¹⁸ The state must assert and the majority of states must agree with a legal justification, however, as justifications based on political or moral considerations cannot create a new legal norm.¹⁹

Therefore, international law is based on international treaties, CIL, and generally accepted principles, with judicial decisions and writings of the most qualified individuals considered in a subsidiary role. While all of the above factors can be considered, humanitarian intervention and later the Responsibility to Protect have mostly been developed through international agreements and customary international law. The following section will evaluate the legality of humanitarian intervention and the Responsibility to Protect using the above considerations.

1.1 Post-World War II

While justifications for the use of force began with religious texts, the most important developments concerning the legality of the use of force followed World War II, with the

¹⁶ Statute of the International Court of Justice (18 April 1946) art 38(1)(a)-(d) available at: <http://legal.un.org/avl/pdf/ha/sicj/icj_statute_e.pdf> accessed 4 October 2017

¹⁷ Chelsea O'Donnell, ‘The Development of the Responsibility to Protect: an Examination of the Debate over the Legality of Humanitarian Intervention’ (2014) 24 *Duke Journal of Comparative & International Law* 557, 578 available at: <<http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1409&context=djcil?>> accessed 4 December 2016.

¹⁸ *Danish Institute* (n9) 26

¹⁹ *Ibid*

international community searching for ways to prevent such massive conflicts.²⁰ Directly following WWII, the most important source currently governing armed force by states, the Charter of the United Nations (“UN Charter” or “Charter”), was established. The very first purpose of the UN enunciated by the Charter is the maintenance of “international peace and security.”²¹

Under Article 2(4), the Charter holds that, “[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state.”²² Next, the Charter gives the power to exercise the use of force solely to the Security Council, first stating that it has the, “primary responsibility for the maintenance of international peace and security.”²³ Further, the Council is entrusted with determining the, “existence of any threat to the peace, breach of peace, or act of aggression.”²⁴ Under Article 42, if the Council determines that peaceful measures are inadequate to resolve a threat to the peace, “it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.”²⁵ Additionally, UN members are to, “undertake to make available to the Security Council, on its call and in accordance with a special agreement...armed forces, assistance, and facilities...necessary for the purpose of maintaining international peace and security.”²⁶ The Charter therefore gives the Security Council almost the sole right for

²⁰ Gözen (n10) 37-38

²¹ United Nations, ‘Charter of the United Nations’ (24 October 1945) 1 UNTS XVI, 1(1) available at: <<https://treaties.un.org/doc/publication/ctc/uncharter.pdf>> accessed 28 September 2017.

²² Ibid art 2(4)

²³ Ibid art 24

²⁴ Ibid art 39

²⁵ Ibid art 42

²⁶ Ibid art 41(1)

the use of force in line with UN law, and UN member states appear to be subservient to the Council's decisions regarding international peace and security. However, the UNSC possess only the *primary* responsibility to maintain international peace and security, and other UN organs like the General Assembly can also play a role.²⁷

Article 51 states, “[n]othing in the Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security.”²⁸ Even if a state is attacked, the armed measures must be, “both necessary and proportionate to the attack.”²⁹ Additionally, following an incident called the *Caroline* affair, the right to anticipatory self-defense has been argued to exist, but only if the threat is, “instant, overwhelming, and leaving no choice of means, and no moment for deliberation.”³⁰

Additionally, the Charter doesn't prevent regional arrangements from, “dealing with such matters relating to the maintenance of peace and security as are appropriate for regional action.”³¹ The Charter holds, however, that any arrangement and its actions must be, “consistent with the Purposes and Principles of the United Nations.”³² Further, under Article 53, the Security Council may use regional arrangements for enforcement action,

²⁷ *Mani* (n14) 185

²⁸ *UN Charter* (n21) art 51

²⁹ Ian Hurd, ‘Is Humanitarian Intervention Legal? The Rule of Law in an Incoherent World’ (2011) 25 *Ethics & International Affairs* no. 3, 296

³⁰ *Ibid*, quoting letter from Daniel Webster to Lord Ashburton, August 6, 1842

³¹ *UN Charter* (n21) art 52

³² *Ibid*

however Security Council authorization is required for the arrangement to actually take action.³³

Under the UN Charter, the Security Council appears to possess the sole responsibility and authorization to engage in any action that would be considered humanitarian intervention. The Charter forbids any use of force by a state for any reason besides self-defense and even preemptive self-defense would not fall under the category of HI. Therefore, following the words of the Charter, if humanitarian intervention is to be legal, it must be carried out or at the very least approved by the Security Council and carried out by a regional arrangement.

Another treaty with some effect on the legalization of humanitarian intervention was the Convention on the Prevention and Punishment of the Crime of Genocide (“Genocide Convention”), enacted in 1948 and criminalizing genocide under international law.³⁴ Article 1 of the Genocide Convention states, “[t]he Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law *in which they undertake to prevent and to punish*.”³⁵ While it is notable that the parties agreed to prevent and punish the crime of genocide, the Genocide Convention is still limited. The limitation that most affects the legality of humanitarian

³³ Ibid art 53(1)

³⁴ Nicholas Wheeler and Justin Morris, ‘The Genocide Convention and Cold War Humanitarian Intervention’ in Alex J. Bellamy and Tim Dunne, *The Oxford Handbook of the Responsibility to Protect* (Oxford University Press 2016) 40

³⁵ United Nations General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide* (9 December 1948) Resolution 260 (III) A, 1, available at: <https://www.oas.org/dil/1948_Convention_on_the_Prevention_and_Punishment_of_the_Crime_of_Genocide.pdf> accessed 4 October 2017 (emphasis added)

intervention is the exclusion of any agreement that states should or were even allowed to engage in humanitarian intervention in other states to prevent or end genocide.³⁶

While the Genocide Convention does not give parties themselves the right to take unilateral action to prevent or stop genocide, they are enabled to request that “competent organs of the United Nations” so do, as long as that action is in line with the Charter.³⁷

While this may indicate approval for Security Council action against genocide, any action must be appropriate under the Charter, and under the Charter the only organ allowed to take such action is the Council. Therefore, the Genocide Convention did not create a right to unilateral humanitarian intervention without Security Council approval, but it was further evidence that the international community viewed genocide as worthy of international attention and prevention.

Following the Charter’s entry into force in 1945 and the Genocide Convention’s later in 1948, there was little development in both the practice and doctrine of humanitarian intervention until the end of the Cold War. There were multiple opportunities for humanitarian intervention, with many severe human rights violations, but the realities of the Cold War prevented the world from intervening in such situations.³⁸ During this period there was also a firm belief in state sovereignty, and due to the Cold War there were also no interventions carried out by the Security Council.³⁹

There was little development in treaty law, no Security Council interventions, and state practice with the related international debate showed a firm belief that humanitarian concerns were not a legally acceptable motivation to engage in the unilateral use of force

³⁶ *Wheeler and Morris* (n34) 41

³⁷ *Genocide Convention* (n35) art 8

³⁸ *Danish Institute* (n9) 12-13

³⁹ *Gözen* (n10) 51

against another state.⁴⁰ In 1971, India intervened in East Pakistan during the Pakistani civil war after the bombing of Indian airfields, and while there were humanitarian concerns, India framed the intervention as self-defense.⁴¹ Next, beginning in 1978, Vietnam intervened in Cambodia to defeat the Khmer Rouge.⁴² Pol Pot and his Khmer Rouge regime engaged in horrendous acts that killed up to two million people, but like India, Vietnam argued it carried out the intervention for self-defense.⁴³ Further, during Security Council debate relating to the intervention, “no humanitarian case was accepted to constitute a reason to permit a breach of the principle of non-intervention.”⁴⁴

The third intervention during the Cold War that involved humanitarian concerns was Tanzania’s intervention in Uganda in 1978, and even though it ended the rule of a harsh dictator, Tanzania also used the self-defense rationale.⁴⁵ In India and Vietnam’s interventions, the General Assembly called for a withdrawal of troops, however there was virtually no international response to Tanzania’s intervention.⁴⁶ In all three of these cases, the human rights violations were serious enough to merit an argument for humanitarian intervention, but the countries’ bases for intervening shows that unilateral humanitarian intervention was not viewed as a legally justifiable basis for the use of force.

During the post-WWII period, the Security Council may not have engaged in humanitarian intervention or determined that massive humanitarian violations were situations constituting a threat to international peace and security, but there were two

⁴⁰ *Wheeler and Morris* (n34) 42

⁴¹ *Ibid* 42-43

⁴² *Ibid* 44

⁴³ *Ibid* 43-44

⁴⁴ *Gözen* (n10) 44

⁴⁵ *Wheeler and Morris* (n34) 43-44

⁴⁶ *Gözen* (n10)

instances that indicate that the Council's actions and beliefs in the 1990s were not a complete reversal from the Cold War. The first instance concerned Southern Rhodesia in 1965, where, "the Security Council for the first time in effect considered violations of basic human rights a threat to international peace."⁴⁷ In Resolution 217, the Security Council condemned the declaration of independence by the "racist...minority" and determined that it constituted a threat to international peace and security.⁴⁸ Next, in 1966, the Security Council even advocated for the United Kingdom to use force if necessary to prevent ships from carrying oil to the country.⁴⁹

The next situation where the Security Council considered a humanitarian crisis a threat to international peace and security during the Cold War was in 1977 in South Africa relating to the country's apartheid policy.⁵⁰ In Resolution 418, the Council condemned the country's government for its "massive violence against and killings of the African people...and others opposing racial discrimination," and determined that these policies and South Africa's buildup of arms constituted, "a threat to the maintenance of international peace and security."⁵¹ The Security Council's response to the situations in Southern Rhodesia and South Africa showed that while the Council was not ready to engage in intervention to stop humanitarian crises, it at least had begun to view such situations as threatening international peace and security.

⁴⁷ *Danish Institute* (n9) 63

⁴⁸ United Nations Security Council Resolution 217 (20 November 1965) S/RES/217, paras 3, 1, available at: <[http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/217\(1965\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/217(1965))> accessed: 9 October 2017

⁴⁹ *Danish Institute* (n9) 63

⁵⁰ *Ibid* 64

⁵¹ UNSC Res 418 (4 November 1977) S/RES/418, pp para 1, para 1, available at: <[http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/418\(1977\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/418(1977))> accessed 9 October 2017

While treaty law post-WWII did not appear to create a right of unilateral humanitarian intervention, and both Security Council and state practice offered little for the development of the principle, one General Assembly resolution has been argued by some as a basis for legality of intervention by a third organ – the General Assembly. General Assembly resolution 377 A(V), titled “Uniting for Peace,” was adopted on 3 November 1950, responding to the Union of Soviet Socialist Republics’ (“USSR”) blocking Security Council measures relating to the Korean War.⁵²

The most important part of the resolution states that the General Assembly:

“[r]esolves that if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making the appropriate recommendations to Members for collective measures, including...the use of armed force when necessary, to maintain or restore international peace and security.”⁵³

The resolution was argued to give the General Assembly the power to recommend enforcement action when the Security Council is failing to take action, however the action would require two-thirds majority support from the General Assembly members.⁵⁴ Thus, even if the resolution were to give legal authority to the General Assembly to act, it would be difficult to obtain the required support from the UN members. Further, it only

⁵² Christian Tomuschat, ‘Uniting for Peace’ (2008) United Nations Audiovisual Library of International Law, 1 available at: < http://legal.un.org/avl/pdf/ha/ufp/ufp_e.pdf > accessed 4 October 2017

⁵³ United Nations General Assembly Resolution 377 A(V) 3 November 1950 UN Doc A/RES/5/377, art 1

⁵⁴ James Pattinson, *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?* (2010 Oxford University Press), 47

allows the GA to make recommendations, which would lack legally binding force on its members.⁵⁵

The majority argument is that the Uniting for Peace resolution does not give the General Assembly the legal authority to authorize humanitarian intervention in the absence of Security Council authorization.⁵⁶ The only time the procedure under the Uniting for Peace resolution has been carried out to use force is in 1951 regarding the Chinese aggression in Korea.⁵⁷ The resolution found that the People's Republic of China had engaged in aggression in Korea by assisting those who were fighting against UN forces, called for the withdrawal of Chinese forces, and called, "upon all States and authorities to lend every assistance to the United Nations action in Korea."⁵⁸ This authorization also could be seen as self-defense, which adds to the claim that the Uniting for Peace resolution does not provide the General Assembly with the legal power to authorize the use of force for humanitarian intervention absent Security Council authorization.

While the time between the end of World War II and the end of the Cold War presented numerous opportunities for humanitarian intervention and strengthening of the principle, what instead happened was a strengthening in the belief of sovereignty and that the Security Council had the sole authorization for the use of force absent self-defense. Further, the Security Council did not appear to view humanitarian crises as constituting a

⁵⁵ *Tomuschat* (n52) 1

⁵⁶ *Danish Institute* (n9) 61

⁵⁷ *Tomuschat* (n52) 3

⁵⁸ UNGA Res 498 (V) 1 February 1951 327th Plenary Meeting, available at: <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/744/45/IMG/NR074445.pdf?OpenElement> accessed 4 October 2017

threat to the peace worthy of engaging in Council authorized use of force. There were many massive cases of human rights violations where up to millions of people were killed, but it shows that the Council did not consider this as a sufficient reason to violate a nation's sovereignty and engage in military action. While this time period did not develop the concept of humanitarian intervention significantly, but the 1990s marked a turning point in international opinion regarding the principle following a series of large and public humanitarian crises.

1.2 The 1990s

The end of the Cold War marked a turning point in the international community's views of humanitarian intervention and its practice regarding massive human rights violations. Starting in the 1990s, multiple humanitarian interventions were carried out using humanitarian justifications, with and without Security Council authorization.⁵⁹ One of the most significant factors in the sharply increased practice of HI was the change in the political climate following the Cold War, in which Council members, notably Russia and China, abstained from issuing a veto in many UNSC decisions.⁶⁰ The Security Council became much more active regarding humanitarian situations and the maintenance of international peace and security, adopting approximately 24 resolutions involving Chapter VII per year by 1993, the same amount as it adopted in its first 44 years of existence.⁶¹

⁵⁹ *O'Donnell* (n17) 563

⁶⁰ *Danish Institute* (n9) 64

⁶¹ *Chesterman* (n15) 121

Additionally, the Security Council expanded its view of what constituted a threat to international peace and security during this decade. The Council began to view non-international conflicts as threatening international peace and security, and “has considered that serious violations of human rights, international humanitarian law and even democracy may in themselves constitute a threat to international peace.”⁶² This expanded belief of what constituted a threat to international peace and security led the UNSC to use Chapter VII in many cases, including “Iraq, the former Yugoslavia, Liberia, Somalia, Haiti, Angola, Rwanda, Burundi, Zaire, Albania, the Central African Republic, Kosovo, and East Timor” during the 1990s.⁶³

In one of the first cases, following the Gulf War, the Security Council adopted a resolution condemning Iraq’s repression of the Kurds, stating its consequences threatened international peace and security.⁶⁴ In Resolution 688 (1991), the Council stated it was, “[d]eeply disturbed by the magnitude of human suffering involved,” demanded that Iraq end its repression, and requested the Secretary General to, “use all resources at his disposal...to address urgently the critical needs of the refugees and displaced Iraqi population.”⁶⁵ Many consider this as a preview for later humanitarian interventions because following its adoption, “a number of states undertook humanitarian relief operations in Northern Iraq backed by force,” while referring to Resolution 688 and also

⁶² *Danish Institute* (n9) 64

⁶³ *Ibid*

⁶⁴ *Ibid* 64-65

⁶⁵ UNSC Res 688 (5 April 1991) S/RES/688, pp para 4, para 2, para 5, available at: <<https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/596/24/IMG/NR059624.pdf?OpenElement>> accessed 11 October 2017

Resolution 678 (1990).⁶⁶ In Resolution 678, the Security Council authorized UN members, “to use all necessary means...to restore international peace and security in the area.”⁶⁷ Many of the subsequent interventions, both with and without initial UNSC authorization, would be similar to the situation in Iraq.

The next major situation the Security Council considered was the civil war following the breakup of the former Yugoslavia, where the Council authorized its first true humanitarian intervention and determined that the war and the “serious violations of international humanitarian law” were a threat to international peace and security.⁶⁸ First, in Resolution 743 (1992), the Council determined the situation was a threat to international peace and security and established a United Nations Protection Force (UNPROFOR).⁶⁹ In Security Council Resolution 770 (1992), the Council called, “upon States to take nationally or through regional agencies or arrangements all measures necessary to facilitate in coordination with the United Nations...humanitarian assistance to Sarajevo and...other parts of Bosnia Herzegovina.”⁷⁰

Later in 1993, Resolution 836 extended the UNPROFOR’s mandate, with the Council noting the “serious violations of international humanitarian law” and “ethnic cleansing,” stating that the situation “continues to be a threat to international peace and security.”⁷¹ In

⁶⁶ *Danish Institute* (n9) 65

⁶⁷ UNSC Res 678 (28 November 1990) S/RES/678 para 2, available at: <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/575/28/IMG/NR057528.pdf?OpenElement> accessed 11 October 2017

⁶⁸ *Danish Institute* (n9) 65

⁶⁹ UNSC Res 743 (21 February 1992) S/RES/743 available at:

⁷⁰ UNSC Res 770 (13 August 1992) S/RES/770 para 1, available at: <http://www.nato.int/ifor/un/u920813a.htm> accessed 12 October 2017

⁷¹ UNSC Res 836 (4 June 1993) S/RES/836 available at: <http://www.nato.int/ifor/un/u930604a.htm> accessed 12 October 2017

extending UNPROFOR's mandate, the Council authorized it to protect the safe areas and deter attacks against them.⁷² While the Council authorized the use of force earlier in this conflict, no significant military action was taken until 30 August 1995, with the NATO campaign Operation Deliberate Force following the massacres in Srebrenica.⁷³ While the response to the violence in the former Yugoslavia was not perfect, it is an important example of the Security Council's increased willingness to view such conflicts as constituting a threat to international peace and security and the first example of it engaging in humanitarian intervention.

The next major example of Security Council practice of humanitarian intervention was the civil war in Somalia, which the Council found to constitute a threat to international peace and security, even though the conflict was completely internal.⁷⁴ In its resolutions regarding the civil war, the Council gave UN member states and the Secretary General authorization to "use all necessary means" in order to aid the humanitarian relief operation in the country.⁷⁵ Due to the exclusively internal nature of Somalia's civil war, the Security Council practice was an important step forward in its acceptance of humanitarian situations constituting a threat to international peace and security and for the Council's use of force in such situations.

During the 1990s, the Council even began to view anti-democratic situations as a threat to international peace and security. The UN had supervised Haiti's first free,

⁷² Ibid para 5 (SCRES836)

⁷³ Richard Holbrooke, *To End a War* (Random House Publishing Group 1999) 101-103

⁷⁴ Ruth Gordon, 'Humanitarian Intervention by the United Nations: Iraq, Somalia, and Haiti' (1996) 31 *Texas International Law Journal* 43, 51 available at: <http://heinonline.org/HOL/Print?collection=journals&handle=hein.journals/tlj31&id=>> accessed 12 October 2017

⁷⁵ *Danish Institute* (n9) 66

democratic elections, and the elected president was ousted by a military coup shortly after.⁷⁶ In 1994, the Council determined that the coup constituted a threat to international peace and security and authorized a humanitarian intervention to bring democracy back to Haiti.⁷⁷ While the military government was the source of the humanitarian violations in the country, the Council's main goal in intervening was reinstating the democratic government instead of curtailing the human rights abuses.⁷⁸ The Security Council's intervention in Haiti shows that it was willing to intervene in another country even for purposes of restoring democracy, which was an expansion on its practice during the Cold War.

While there were multiple examples of the Security Council intervening to halt humanitarian tragedies in the 1990s, the decade would also give an example of the Council's inaction and failure to respond consistently to massive human rights violations. In 1994, genocide erupted in Rwanda, resulting in over 800,000 people being killed and more than two million refugees fleeing the country.⁷⁹ Even with advance warning of the atrocities, the Council intervened late in the conflict and through France.⁸⁰ While the response in Rwanda was a stain on the UN's reputation and was a missed opportunity to

⁷⁶ Ruth Gordon, 'United Nations Intervention in Internal Conflicts: Iraq, Somalia, and Beyond' (1994) 15 Michigan Journal of International Law 519, 557 available at: <<http://heinonline.org/HOL/Print?collection=journals&handle=hein.journals/mjil15&id=531>> accessed 12 October 2017

⁷⁷ *Danish Institute* (n9) 66

⁷⁸ *Ruth Gordon – Humanitarian Intervention by the UN* (n74) 52-53

⁷⁹ Ramesh Thakur, 'Rwanda, Kosovo, and the International Commission on Intervention and State Sovereignty, Intervention' in Alex J. Bellamy and Tim Dunne, *The Oxford Handbook of the Responsibility to Protect* (Oxford University Press 2016) 99

⁸⁰ *Ibid*

halt a genocide that took hundreds of thousands of lives, this conflict showed that gross human rights violations constitute threats to international peace and security.⁸¹

The 1990s provided multiple examples of Security Council-authorized humanitarian interventions, but it also provided one prime example of a humanitarian intervention without UNSC authorization. Following the UN intervention in the former Yugoslavia, tensions began to flare up in Kosovo, with the situation deteriorating quickly in 1998.⁸² The Security Council did respond to the situation, stating it constituted a threat to peace and security, demanding a ceasefire, and agreed to “consider further action” in order to end the violence and bring stability to the area.⁸³ The Security Council did not take further action, as Russia and China, “had threatened to veto any resolution authorizing the use of force.”⁸⁴ Due to Security Council inaction, NATO, backed strongly by the United States, conducted an aerial bombing campaign against the Serbs on 24 March 1999.⁸⁵

The international response to the bombing was varied, even among states that supported the campaign. The United States focused on U.S. interests and humanitarian concerns, while arguing that the Serbs had violated obligations under UNSC resolutions, the U.K. and Netherlands argued that it was a legal response as a last resort to resolve the humanitarian crisis in the region, and other states noted the humanitarian issues and “failure of diplomacy to achieve a peaceful resolution,” but even among those supporting

⁸¹ *Danish Institute* (n9) 67

⁸² *Chesterman* (n15) 208

⁸³ *Ibid*

⁸⁴ *Ibid* 210

⁸⁵ *Thakur* (n79) 101

the action, “few asserted a clear legal basis for it.”⁸⁶ Russia, China, and the Federal Republic of Yugoslavia (“FRY”) were the action’s biggest opponents, however Russia assisted in ending the violence.⁸⁷

Following the ending of the bombing campaign, the FRY, “brought the case before the International Court of Justice alleging...a violation of the prohibition on the use of force.”⁸⁸ The FRY requested the International Court of Justice (“ICJ”) to issue provisional measures to the U.S., ordering it to stop the bombing campaign and not to use any force or threat of force in the future.⁸⁹ In holding that it did not have jurisdiction to entertain the FRY’s claim and rejecting the request for provisional measures the Court stated:

“15. Whereas the Court is deeply concerned with the human tragedy, the loss of life, and the enormous suffering in Kosovo which form the background of the present dispute, and with the continuing loss of life and human suffering in all parts of Yugoslavia;

16. Whereas the Court is profoundly concerned with the use of force in Yugoslavia; whereas under the present circumstances such use raises very serious issues of international law.”⁹⁰

The ICJ was clearly concerned about the humanitarian issues in Kosovo, however it appears it was at least equally concerned with the unilateral intervention by NATO and the United States without Security Council authorization. This, combined with the

⁸⁶ *Chesterman* (n15) 210-211

⁸⁷ *Thakur* (n79) 101

⁸⁸ *Danish Institute* (n9) 93

⁸⁹ The Hague Justice Portal, ‘Legality of the Use of Force’ (Yugoslavia v. United States of America) <<http://www.haguejusticeportal.net/index.php?id=6211>> accessed 13 October 2017

⁹⁰ *Case Concerning Legality of Use of Force (Yugoslavia v. United States of America)* (Request for the Indication of Provisional Measures) Order of 2 June 1999, I.C.J. Reports 1999, p. 916, paras. 15-16, available at: <<http://www.icj-cij.org/files/case-related/114/114-19990602-ORD-01-00-EN.pdf>> accessed 13 October 2017

international response by both opposing and supporting states, would indicate a lack of belief in the legality of the intervention. The Independent International Commission on Kosovo determined that the, “intervention was illegal but legitimate.”⁹¹

The 1990s were an instrumental decade for the development of humanitarian intervention and its legality. The international community was significantly more willing to intervene in cases of massive human rights violations than it was during the Cold War. Additionally, the Security Council became much more involved in humanitarian crises due to the changed environment. The Council began to view internal situations and massive human rights violations themselves a threat to international peace and security, allowing it to intervene under the UN Charter.

Thus, following the 1990s, humanitarian intervention was in line with international law, however the situation had to be severe enough to constitute a threat to international peace and security, and the intervention authorized by the Security Council. While the Council’s action regarding humanitarian situations was not entirely consistent or effective, it was a step forward in the Council’s practice. Humanitarian intervention under the guise of the Security Council was finally deemed legal under international law, but unilateral intervention by states or regional organizations without UNSC authorization was still viewed as illegal by the majority of the international community. While state practice during this decade was, “neither sufficiently substantial nor” was there, “sufficient acceptance in the international community to support the view that a right to humanitarian intervention without Security Council authorization has become a part of

⁹¹ *Thakur* (n79) 105

international law,” there was at least a growing acceptance that unilateral intervention in some cases may still be legitimate.⁹²

1.3 The Responsibility to Protect

Following the humanitarian interventions in the 1990s, there was a renewed debate in the international community regarding HI. There was tension between upholding state sovereignty and not intervening, delaying the decision to intervene and thus accepting the costs, and intervening absent Security Council authorization, “undermining the UN system and mainstream interpretations of international law,” all of which had negative impacts on the United Nations.⁹³ This debate led UN Secretary General Kofi Annan to ask:

“if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity?”⁹⁴

The debate surrounding that question led to creation of the International Commission on Intervention and State Sovereignty (“ICISS”), which first created the term “The Responsibility to Protect.”⁹⁵ The ICISS was Canada’s initiative, but had a

⁹² *Danish Institute* (n9) 93

⁹³ Charles Cater and David M. Malone, ‘The Genesis of R2P: Kofi Annan’s Intervention Dilemma,’ in Alex J. Bellamy and Tim Dunne, *The Oxford Handbook of the Responsibility to Protect* (Oxford University Press 2016) 118

⁹⁴ Kofi Annan, ‘We the Peoples: The Role of the United Nations in the 21st Century’ (2000 United Nations), 48 available at:

<http://www.un.org/en/events/pastevents/pdfs/We_The_Peoples.pdf> accessed 13 October 2017

⁹⁵ *Cater and Malone* (n93) 114

diverse membership with countries including the United States, Russia, South Africa, Switzerland, and India.⁹⁶

The ICISS released its report in 2001, coining the phrase, ‘The Responsibility to Protect,’ or R2P, which is, “the idea that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe...but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states.”⁹⁷ Under R2P, states have the primary responsibility to protect their populations, but if, “a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.”⁹⁸ The principle of R2P is founded on the obligations that sovereignty entail, the Security Council’s Article 24 responsibility to maintain international peace and security, the obligations resulting from “human rights and human protection declarations, covenants and treaties, international humanitarian law and national law,” and the practice of the Security Council, regional organizations, and states.⁹⁹

The ICISS stated that there are three main responsibilities under the principle of the Responsibility to Protect:

“A. The responsibility to prevent: to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk.

⁹⁶ Ibid 119

⁹⁷ International Commission on Intervention and State Sovereignty, ‘The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty’ (December 2001 International Development Research Centre), VIII, available at: <<http://responsibilitytoprotect.org/ICISS%20Report.pdf>> accessed 13 October 2017

⁹⁸ Ibid XI art (1)A-B

⁹⁹ Ibid art(2)A-D

B. The responsibility to react: to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions, international prosecution, and in extreme cases military intervention.

C. The responsibility to rebuild: to provide, particularly after a military intervention, full assistance with recovery, reconstruction, and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert.”¹⁰⁰

The top priority of R2P is to prevent atrocities from occurring, and all options relating to prevention are to be exercised before turning to intervention.¹⁰¹ Additionally, the ICISS Report held that in order to carry out military intervention, there must be “large scale loss of life” or “large scale ‘ethnic cleansing’” either occurring or about to occur.¹⁰² Further, any intervention must have the right intention, be the last resort, use proportional means, and have reasonable prospects of success.¹⁰³

Another important issue for the ICISS was that any intervention be carried out under the right authority. The report stated that the UNSC is the best and most appropriate authority to authorize action under R2P, and that Council authorization should be requested before engaging in intervention.¹⁰⁴ The report also stated that the P5 members should refrain from exercising veto power in R2P situations where, “vital state interests are not involved.”¹⁰⁵ Lastly, the ICISS Report left open the possibility for action even in absence of Security Council authorization, stating that in the case of inaction by

¹⁰⁰ Ibid art(3)A-C

¹⁰¹ Ibid art (4)A

¹⁰² Ibid XII art (1)A-B

¹⁰³ Ibid art (2)A-D

¹⁰⁴ Ibid art (3)A-B

¹⁰⁵ Ibid XIII art (3)D

the Council, an R2P situation could be considered by the General Assembly under the “Uniting for Peace” procedure or by regional organizations.¹⁰⁶

Thus, the concept of the Responsibility to Protect was born. While sovereignty of states was still viewed as important, the report focused on the responsibilities states undertake when signing the UN Charter.¹⁰⁷ Both individual states and the international community are tasked with the responsibility to protect people from harm. Another important part of R2P stemming from the ICISS Report was the focus on post-conflict capacity building. After any type of intervention, this is absolutely necessary in order to prevent the situation from devolving back into violence.¹⁰⁸ The Responsibility to Protect’s focus on responsibility instead of the right of intervention and on capacity building after a conflict marked a turning point in the development of the concept of humanitarian intervention.

While the 2001 ICISS Report first introduced the concept of R2P to the international community, the 2005 World Summit Outcome constituted its first international acceptance, with “over 150 heads of state and government unanimously” endorsing the concept.¹⁰⁹ The document, adopted on 20 September 2005, announced the wide support of the Responsibility to Protect within the international community, stating that:

“138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

¹⁰⁶ Ibid art (3)E

¹⁰⁷ Ibid 13, para 2.14

¹⁰⁸ Ibid 40, para 5.5

¹⁰⁹ Adrian Gallagher and Garrett W. Brown, ‘The Responsibility to Protect 10 Years on from the World Summit: A Victory for Common Humanity?’ (2016) 53 International Politics 8 available at: <<https://doi.org/10.1057/ip.2015.34>> accessed 4 December 2016

This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter of the United Nations, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.”¹¹⁰

The World Summit Outcome was then adopted by the General Assembly on 24 October 2015.¹¹¹ The Outcome Document was a development of R2P from the 2001 ICISS Report, and it narrowed the concept, first by holding that there was a responsibility to protect from: genocide, war crimes, ethnic cleansing, and crimes against humanity.¹¹² This aided in the development and expanded acceptance of R2P as, “restricting the norm

¹¹⁰ UNGA, ‘World Summit Outcome 2005’ (20 September 2005) 60th Session UN Doc A/60/L.1, paras 138-139 available at:

<<http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/SSR%20A%2060%20L%201.pdf>> accessed 16 October 2017

¹¹¹ UNGA Res 60/1 (24 October 2005) UN Doc A/Res/60/1 available at:

<<http://www.un.org/womenwatch/ods/A-RES-60-1-E.pdf>> accessed 16 October 2017

¹¹² World Summit Outcome (n110) para 138

to the most heinous and conscious-shocking crimes...added to the norm's clarity and advanced its universal aspirations.”¹¹³ Additionally, there was no mention of carrying out an intervention under R2P without the Security Council as in the ICISS Report, with the Document stating that “collective action” was to be taken “through the Security Council” and in line with the Charter, while also mentioning international law. There was further no mention of the scale of atrocities necessary to justify intervention or that the P5 UNSC members should refrain from using the veto in R2P situations. Thus, the principle of R2P was restricted, however this was likely necessary to achieve its broad acceptance.

In 2009, the UN Secretary General released a report titled ‘Implementing the Responsibility to Protect,’ which followed the 2005 World Summit Outcome interpretation of R2P and was later “endorsed by the General Assembly.”¹¹⁴ The report stated the paragraphs relating to R2P in the Outcome Document did not create new law, but instead was sourced from current international law and was, “firmly anchored in well-established principles of international law,” because states were already required to take action against “genocide, war crimes and crimes against humanity.”¹¹⁵ The Secretary General then divided the Responsibility to Protect into three “pillars.”

The first pillar, or “[t]he protection responsibilities of the State,” holds that it, “is the enduring responsibility of the State to protect its populations, whether nationals or not, from genocide, war crimes, ethnic cleansing and crimes against humanity, and from

¹¹³ Thomas G. Weiss, ‘The Turbulent 1990s: R2P Precedents and Prospects’, in Alex J. Bellamy and Tim Dunne, *The Oxford Handbook of the Responsibility to Protect* (Oxford University Press 2016) 66

¹¹⁴ Anne Peters, ‘The Security Council’s Responsibility to Protect’ (2011) 8(1) *International Organisations Law Review* 6 available at: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1772702> accessed 16 October 2017

¹¹⁵ Report of the Secretary-General on Implementing R2P (n5) para 3

their incitement.”¹¹⁶ The Secretary General stated this responsibility was firmly settled in international law, and that the state has the primary responsibility to protect its population.¹¹⁷

The second pillar, titled, “[i]nternational assistance and capacity-building,” stated that the international community must help states in upholding the first pillar.¹¹⁸

Following this pillar, the international community must be committed to assisting states in protecting their populations from R2P crimes.¹¹⁹ In order to do this, the international community can: encourage states to protect their populations; help states protect their home populations; assist states in capacity building; and giving assistance to states when a conflict is imminent.¹²⁰

The third pillar, “[t]imely and decisive response,” states that it, “is the responsibility of Member States to respond collectively when a State is manifestly failing to provide” its population protection from R2P crimes.¹²¹ The third pillar contains both non-force and force responses to conflict, and has a higher threshold for action than pillar two responses.¹²² The Secretary General also noted that individuals who are involved in R2P crimes cannot use sovereignty as a shield for impunity.¹²³

While all three documents were vital for the introduction and development of the Responsibility to Protect, and showed the international community’s support for R2P, they are neither formal sources of law nor do they create new legal obligations for UN

¹¹⁶ Ibid para 11(a)

¹¹⁷ Ibid paras 13-14

¹¹⁸ Ibid para 11(b)

¹¹⁹ Ibid para 28

¹²⁰ Ibid

¹²¹ Ibid para 11(c)

¹²² Ibid paras 50, 51

¹²³ Ibid para 54

members or the international community. The ICISS Report, which introduced R2P to the world, while:

“a significant normative statement about both the transformation of sovereignty and the legal obligations of the territorial state and the international community to prevent atrocities...is not, however, a source of international law, nor even a statement of *opinio juris*, that is backed by appropriate state practice that could give rise to a rule of customary international law.”¹²⁴

Even the 2005 Outcome Document is not binding law.¹²⁵ Like the ICISS Report, it is not able to create international legal obligations, but instead expands upon current international law.¹²⁶ It “reaffirms existing rules of treaty and customary law prohibiting and requiring the prevention of war crimes, crimes against humanity, and genocide,” and may eventually constitute *opinio juris*, but would still require state practice that is widely supported and consistent to become customary international law.¹²⁷ While not creating new international law or binding obligations, the Outcome Document is still important as political support for R2P.¹²⁸

The Secretary General’s report and the subsequent General Assembly resolution adopting it also fail to constitute binding international law. It essentially restated what was said in the Outcome Document, in addition to elaborating upon it. Therefore, while these documents introduced the Responsibility to Protect and showed that it had widespread international support, they did not create any new legal obligations. States were already required to take actions regarding R2P crimes, and in the later evolutions of

¹²⁴ William W. Burke-White, ‘Adoption of the Responsibility to Protect,’ in Jared Genser and Irwin Cotler (eds), *The Responsibility to Protect: The Promise of Stopping Mass Atrocities in Our Time* (Oxford University Press 2011) 21

¹²⁵ *Peters* (n114) 11

¹²⁶ *Burke-White* (n124) 23

¹²⁷ *Ibid*

¹²⁸ *Ibid* 27

R2P in the Outcome Document and Secretary General Report, “collective action” or humanitarian intervention could only be taken with authorization of the Security Council.

Because the above R2P documents are considered not to have created new international law, the actual legal obligations under the Responsibility to Protect are not as broad as necessary to fully carry out the principle. The only true legal obligation for states under R2P at this time is the responsibility of the state to protect its own populations from R2P crimes and the incitement of those crimes.¹²⁹ Because the Responsibility to Protect has not created any new law and thus new legal obligations, the state’s responsibility in this area, “derives from both the nature of State sovereignty and from the pre-existing and continuing legal obligations of States, not just from the relatively recent enunciation and acceptance of the responsibility to protect.”¹³⁰ The responsibility of a state to protect its own population from R2P crimes is firmly established in current international law, backed by multiple human rights conventions, and no states deny this responsibility.¹³¹ Additionally, this obligation is unconditional and is not dependent on anything – it “applies everywhere, all the time.”¹³² Therefore, under the Responsibility to Protect, states have the legal obligation to protect their populations from the R2P crimes, but this obligation was already settled in international law before the creation of R2P.

¹²⁹ Report of the Secretary-General on Implementing R2P (n5) para 11(a)

¹³⁰ Ibid

¹³¹ Luke Glanville, ‘The Responsibility to Protect Beyond Borders’ (2012) 12:1 Human Rights Law Review 3 available at: <<https://academic.oup.com/hrlr/article-abstract/12/1/1/562103>> accessed 20 November 2017

¹³² Alex J. Bellamy and Tim Dunne, ‘R2P in Theory and Practice’ in Alex J. Bellamy and Tim Dunne, *The Oxford Handbook of the Responsibility to Protect* (Oxford University Press 2016) 8

Beyond the first pillar responsibility of states to protect their own populations, however, the Responsibility to Protect does not provide states with many legal obligations. Currently, states are obligated to do the following in line with R2P: “prevent and punish genocide, war crimes, and crimes against humanity; assist states to fulfill their obligations under international humanitarian law; and promote compliance with the law.”¹³³ Generally, under international law and thus R2P, states are not obligated to take action to protect human rights outside of a state’s own jurisdiction.¹³⁴ Additionally, while again not emanating directly from R2P because it did not create new legal obligations, under the principle of the Responsibility to Protect states currently may incur additional obligations relating to the crime of genocide, being required to take “all means reasonably available to them” to prevent its commission.¹³⁵ However, as detailed before, this obligation is also quite limited. Under the Genocide Convention, there is no right for states to take unilateral action, and they may only request United Nations organs to take action to prevent or stop genocide, as long as that action is in line with the Charter.¹³⁶

Regarding its third pillar, R2P does not obligate states to take action to prevent or stop the commission of its enumerated crimes. Even if R2P were to create new law, there are key words regarding its third pillar in the 2005 Outcome Document. Regarding intervention, paragraph 139 states, “we are *prepared* to take collective action...*on a case-*

¹³³ Ibid

¹³⁴ Sheri P. Rosenberg, ‘Responsibility to Protect: A Framework for Prevention’ (2009) 1 Global Responsibility to Protect 460 available at: <[http://responsibilitytoprotect.org/The%20Responsibility%20to%20Protect%20A%20Framework%20For%20Prevention%20\(Rosenberg\).pdf](http://responsibilitytoprotect.org/The%20Responsibility%20to%20Protect%20A%20Framework%20For%20Prevention%20(Rosenberg).pdf)> accessed 20 November 2017

¹³⁵ Glanville (n131)

¹³⁶ Genocide Convention (n35) art 8

by-case basis” as opposed to having a “responsibility” under other sections of R2P.¹³⁷

These terms would indicate that states do not have the obligation to take collective action to prevent R2P crimes and that they merely may take such action through the Security Council after evaluating the circumstances.¹³⁸ Thus, beyond the obligations in the preceding paragraphs, states do not have any legal obligations under the Responsibility to protect, as the remaining obligations under the principle “are essentially moral and political.”¹³⁹

While some may believe that under R2P the Security Council is required to take action to prevent or stop the commission of R2P crimes, especially as it concerns genocide, this is most likely not the case under current international law. While the Council is primarily responsible for the maintenance of international peace and security, it is not obligated “to assume responsibility for *every* problem of international security,” and has “almost unlimited discretion to define its own business, develop its repertoire of measures, and respond to situations however it sees fit.”¹⁴⁰ Further, the Council is only required to follow what is in the Charter provisions “and is the ultimate judge of its own legality.”¹⁴¹ While the Security Council may determine whether a situation constitutes a threat or breach of international peace under Article 39 of the Charter, the article gives the Council the right to take action but not an obligation, and its decision regarding a potential breach of peace, “is a political, not a legal, decision, and is not subject to

¹³⁷ World Summit Outcome 2005 (n110) paras. 138-139

¹³⁸ *Glanville* (n131) 13

¹³⁹ Gareth Evans, ‘R2P: The Next Ten Years’ in Alex J. Bellamy and Tim Dunne, *The Oxford Handbook of the Responsibility to Protect* (Oxford University Press 2016) 915

¹⁴⁰ Alex J. Belamy, ‘UN Security Council’ in Alex J. Bellamy and Tim Dunne, *The Oxford Handbook of the Responsibility to Protect* (Oxford University Press 2016) 253-254

¹⁴¹ *Ibid* 254

judicial review.”¹⁴² Some states, notably France, have called for limiting “the use of the veto in situations characterized by genocide and mass atrocities,” but other permanent Council members, including the United States, do not appear prepared to accept such a proposal.¹⁴³ Therefore, even the UN Security Council (and its members) are not required to take collective action to prevent or stop R2P crimes under the principle of international law as currently situated.

Following the introduction of the Responsibility to Protect, there was some practice of the principle through the Security Council. First, the Security Council confirmed the World Summit Outcome Document.¹⁴⁴ Resolution 1674 (2006) is important, as it “reaffirmed” the portions of the Outcome Document relating to R2P, but it still did not require UN members to “implement the Responsibility to Protect.”¹⁴⁵ Security Council resolutions are important as development of R2P as a legal norm, but still fall short of making R2P binding law itself.¹⁴⁶

While the Security Council’s reaffirmation of the Outcome Document was important for the development of the Responsibility to Protect as a legal norm, the Council also implemented R2P in practice in Resolutions 1973 and 1975.¹⁴⁷ Security Council resolutions are binding and can express *opinio juris*.¹⁴⁸ Security Council Resolution 1973 was passed in 2011, and “implemented a no-fly zone over Libyan airspace and authorized Member States to ‘take all necessary measures’ to protect

¹⁴² Ibid

¹⁴³ *Belamy and Dunne* (n132)

¹⁴⁴ *Peters* (n114) 5

¹⁴⁵ *Burke-White* (n24) 29-30

¹⁴⁶ Ibid 30

¹⁴⁷ *Peters* (n114) 5

¹⁴⁸ Ibid 12

civilians.”¹⁴⁹ In Resolution 1975, the Security Council reaffirmed R2P principles regarding the situation in Côte d’Ivoire.¹⁵⁰

While the Security Council has responded to humanitarian situations using the Responsibility to Protect, its practice has not been entirely consistent. Regarding the situation in Sri Lanka in 2009, where there was considerable evidence that mass atrocities were being committed, the UNSC did not even hold one formal meeting during the conflict’s last months.¹⁵¹ As will be detailed in the following chapter, the situation in Syria has presented the Council with substantial evidence that massive human rights violations were being committed, however the UNSC did not authorize any humanitarian intervention.¹⁵² The failure to intervene was caused by Russia and China’s vetoes of multiple Security Council resolutions.¹⁵³ The Security Council’s inaction in the Syrian situation shows that not all Council members believe that they have an obligation to react to massive humanitarian violations, thus damaging the development of the principle of R2P.

Thus, while the Responsibility to Protect represents an important development for the concept of humanitarian intervention and demonstrates a broad acceptance of preventing and stopping humanitarian tragedies, it is neither a new legal rule nor does it bind any parties to take action in an R2P situation. While R2P does not constitute new

¹⁴⁹ O’Donnell (n 17)

¹⁵⁰ UNSC Res 1975 (30 March 2011) S/RES/1975 available at: <<http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Cote%20d'Ivoire%20SRES%201975.pdf>> accessed 23 October 2017

¹⁵¹ Melissa Labonte, ‘R2P’s Status as a Norm’ in Alex J. Bellamy and Tim Dunne, *The Oxford Handbook of the Responsibility to Protect* (Oxford University Press 2016) 139

¹⁵² Bessma Momana and Tanzeel Hakak, ‘Syria’ in Alex J. Bellamy and Tim Dunne, *The Oxford Handbook of the Responsibility to Protect* (Oxford University Press 2016) 903

¹⁵³ O’Donnell (n17) 570

international law due to the fact that it, “has not been codified in an international treaty; it lacks the state practice and sufficient *opinio juris* to give rise to customary international law; and it does not qualify as a general principle of law,” what it may constitute is a “norm of international conduct.”¹⁵⁴ R2P is currently involved when mass atrocities and how to respond are being debated, and its norms have assisted in fostering the requisite political will to take R2P action.¹⁵⁵ R2P’s wide acceptance shows that it has force in the world among entities with the ability to prevent and end humanitarian catastrophes, and while it does not create any new legal obligations currently, it may do so in the future.

1.4 Current Legal Status

While the principle of humanitarian intervention has developed considerably over time, the general legal status of HI has not changed much since the adoption of the UN Charter. Even with R2P’s broad acceptance, current international law holds that Security Council authorization is required for any use of force. Additionally, the Council must determine that the situation constitutes a threat to international peace and security in order to take action. The definition of what constitutes a threat to international peace and security has expanded significantly since the early Charter days, with many R2P situations being viewed as such by the Council, even in entirely internal conflicts.

What is not currently legal however, is intervention by a third party such as NATO or an individual state without UNSC authorization. Even though this has been done in the past, the state practice is not nearly consistent enough, nor has there been an accompanying *opinio juris* with non-Council authorized interventions. Therefore, if a

¹⁵⁴ *Burke-White* (n124) 34

¹⁵⁵ *Labonte* (n151) 145

state or regional organization wants to carry out a humanitarian intervention, it may be seen as legitimate (i.e. Kosovo), but it will not be legal under international law.

Additionally, while the Security Council may authorize humanitarian interventions if the situation is a threat to international peace and security, it is not legally required to intervene in all situations where humanitarian intervention could be used. There are many obstacles to UNSC authorization of the use of force, and political considerations can prevent action being taken even in appropriate circumstances. While the Responsibility to Protect discusses the international community's willingness to intervene in humanitarian crises, it only states that the international community is "willing" to take action, not that it is obligated to. Thus, even if the Responsibility to Protect becomes binding law, it is highly questionable whether it would legally require humanitarian interventions in appropriate situations.

Chapter II: Case Studies

The United States has intervened militarily, usually in a coalition of other mainly Western countries, in multiple humanitarian disasters since the 1990s, when the doctrine humanitarian intervention reemerged and began to gain ground. The atrocities that occurred in that decade in which the United States failed to intervene or intervened too late, namely Srebrenica and Rwanda, contributed to the emergence of the Responsibility to Protect as well. The failure to intervene in these situations lead to NATO intervention in Kosovo, which was viewed as a necessary, but not legal, response to massive human rights violations.

The atrocities of the 1990s led to wide adoption of R2P in the 2005 World Summit Outcome Document, and later R2P's invocation in humanitarian crises. After the idea of R2P emerged as a growing norm, it was invoked by the UNSC in Libya. However, due to issues that arose surrounding the intervention in Libya as well as geopolitical factors, the Security Council has been unable to apply the doctrine to the Syrian conflict, due to the continual vetoes of Russia and China. The lessons learned from these conflicts can provide guidance for how to resolve the Syria crisis from a policy perspective. These case studies will be discussed in the following chapter.

2.1 Bosnia-Herzegovina

Richard Holbrooke, who led the negotiations that ended the Yugoslav wars of the 1990s, stated that the situation in the former Yugoslavia was the, “greatest collective security failure of the West since the 1930s.”¹⁵⁶ According to Holbrooke, five main factors contributed to this failure:

“[F]irst, a misreading of Balkan history; second, the end of the Cold War; third, the behavior of the Yugoslav leaders themselves; fourth, the inadequate American response to the crisis; and, finally, the mistaken belief of Europeans that they could handle their first post-Cold War challenge on their own.”¹⁵⁷

While there were many factors contributing to the outbreak of conflict, the inadequate response to the crisis resulted in severe consequences that could have been avoided had the parties with the ability to intervene done so decisively.

¹⁵⁶ Holbrooke (n73) 21

¹⁵⁷ Ibid 21-22

The post-communist disintegration of Yugoslavia began in 1990, and Slovenia and Croatia were the first republics to declare independence on 25 June 1991.¹⁵⁸ Bosnia-Herzegovina, which was, “43 percent Muslim, 45 percent Orthodox Serb, and 18 percent Roman Catholic Croat,” would follow soon after.¹⁵⁹ On February 29, 1992, a referendum was held, with the Bosnian Muslims and Croats voting for independence, while the Bosnian Serbs boycotted and then taking territory by force and calling it Republika Srpska.¹⁶⁰ The Bosnian Serbs, with the support of Serbian leader Slobodan Milošević, then joined forces with the Yugoslav National Army, increasing the inequality in military power between the Serbs and the Bosnian Croats and Muslims.¹⁶¹ This alliance intensified an already unequal situation, as the United Nations imposed an arms embargo on the region in 1991, favoring the Serbs due to the fact that the vast majority of “armaments and weapons factories were located in Serbia.”¹⁶²

The United States and European Community granted recognition to Bosnia-Herzegovina, however this did not prevent Milošević from responding forcefully to the newly independent nation.¹⁶³ Almost immediately after Bosnia’s declaration of independence, Bosnian Serb forces detained, beat, and even executed Bosnian Muslim and Croat intellectuals, musicians, and professionals, and Serb forces began to use heavy

¹⁵⁸ Geoffrey Nice and Nena Tromp, ‘Bosnia-Herzegovina’ in Jared Genser and Bruno Stagno Ugarte (eds), *The United Nations Security Council in the Age of Human Rights* (Cambridge University Press 2014) 291

¹⁵⁹ Samantha Power, *A Problem From Hell: America and the Age of Genocide* (Basic Books 2013) 247

¹⁶⁰ Nice and Tromp (n158) 293-294

¹⁶¹ Power (n159) 249

¹⁶² Holbrooke (n73) 30

¹⁶³ Power (n159) 249

weaponry against Sarajevo.¹⁶⁴ This use of force against civilians would be just a preview of what was to come throughout the conflict.

The Serbs' campaign of attacking civilians and forcing non-Serbs out of the territory during the conflict became known as 'ethnic cleansing.'¹⁶⁵ Security Council resolutions later in 1992, following media exposure of crimes being committed, described crimes such as "forcible expulsions," "mass killings," and "massive, organized, and systematic rape of women, in particular Muslim women," but the resolutions did not directly implicate any side of the hostilities.¹⁶⁶ In 1993, the resolutions' direction finally pointed towards crimes being committed by the Bosnian Serbs and Federal Republic of Yugoslavia ("FRY") forces, including the first mention of genocide, but this did not make the violence subside.¹⁶⁷

The United States and the international community also "imposed economic sanctions, deployed peacekeepers, and helped deliver humanitarian aid," and set up the International Criminal Tribunal for the former Yugoslavia to try offenders, but what they all failed to do was to intervene decisively with military force to prevent genocide, even with knowledge of what was transpiring in the region.¹⁶⁸ Many U.S. diplomats and officials, recognizing the severity of the situation, recommended a policy called "lift and strike," in which the arms embargo would be lifted for the Bosnian Muslims and the Serbs would be bombed, however President Bill Clinton decided not to pursue this policy, instead opting for the creation of "safe areas" in towns such as Srebrenica,

¹⁶⁴ Ibid

¹⁶⁵ Ibid

¹⁶⁶ *Nice and Tromp* (n158) 300

¹⁶⁷ Ibid 301

¹⁶⁸ *Power* (n159) 251

Sarajevo, and others.¹⁶⁹ Also, in 1994, the U.S. and its allies began small, intermittent airstrikes against single Serb military objects and often with substantial warning.¹⁷⁰

Serb military forces began to shell Srebrenica on 6 July 1995, and three days later they took the Dutch peacekeepers protecting the “safe area” hostage.¹⁷¹ In the ensuing days, Serb forces executed thousands of Muslims, many of who had surrendered.¹⁷² In addition to expelling tens of thousands of women and children, over 7,000 men were murdered in Srebrenica.¹⁷³

The atrocities committed in Srebrenica finally spurred the international community to act decisively and cease the strategy of half measures. The U.S. finally adopted a leadership position, and pursued, “an aggressive negotiation style...combined with a military threat.”¹⁷⁴ Operation “Deliberate Force” ensued, a NATO bombing campaign of airstrikes on Bosnian Serb positions with the goal of pressuring the Serbs to accept a U.S.-led political settlement or face defeat.¹⁷⁵ The two-and-half week campaign was instrumental in forcing Milošević to negotiate.¹⁷⁶ After the NATO bombing campaign, Richard Holbrooke led peace negotiations in Dayton, Ohio.¹⁷⁷ The Dayton

¹⁶⁹ Ibid 302-303

¹⁷⁰ Ibid 324

¹⁷¹ Holbrooke (n73) 69

¹⁷² Ibid

¹⁷³ Ivo H. Daalder, 'Decision to Intervene: How the War in Bosnia Ended' *Brookings Institution* (1 December 1998) <<https://www.brookings.edu/articles/decision-to-intervene-how-the-war-in-bosnia-ended/>> accessed 15 February 2017.

¹⁷⁴ *Nice and Tromp* (n158) 312

¹⁷⁵ Ibid

¹⁷⁶ Ibid

¹⁷⁷ *Daalder* (n173)

Peace Accords helped to stabilize the region, and a 60,000 strong U.S. and NATO force was necessary to enforce the peace.¹⁷⁸

The war, and more specifically, Srebrenica, showed the dire consequences of failing to act decisively and collectively. The United States and its partners had numerous opportunities to resolve the conflict, but instead resorted to less effective measures. As a result, thousands of lives were needlessly lost, and genocide was again allowed to occur on the European continent. It showed that when dealing with a strongman such as Slobodan Milošević, forceful action must be taken. While the later strategy of coupling military force and thus the prospect of military defeat for Milošević and the Serbs with negotiations proved effective, this strategy should have been pursued earlier. Lastly, the situation in Bosnia-Herzegovina showed the necessity of post-conflict capacity building for the maintenance of peace in a region after war and for rebuilding society.

The conflict in Bosnia-Herzegovina would also provide many important lessons for the future of humanitarian intervention, and was instrumental in the development of the Responsibility to Protect. After witnessing inefficient responses to serious atrocities, the international community began to think of new ways to approach the problem. The failure to intervene also exposed some of the flaws in the responsiveness of the Security Council. The lessons learned in the Balkans regarding humanitarian intervention would be shown just a few years later in Kosovo.

¹⁷⁸ Ibid

2.2 Kosovo

While the Dayton Peace Agreement may have ended the Balkan war, the deep ethnic and political tensions remained throughout the region.¹⁷⁹ Kosovo's exclusion from the peace talks, in addition to the Kosovar's wish for self-determination, led to an insurgency movement conducted by the Kosovo Liberation Army ("KLA").¹⁸⁰ It began with increased protests occurring throughout Kosovo, and after Serbian police violently cracked down on peaceful protests, the KLA started showing up at KLA soldiers' and sympathizers' funerals as well as directly confronting Serbian police in areas declared to be "liberated."¹⁸¹ The violence only intensified as KLA groups grew and Serbian forces pushed back.¹⁸²

As the conflict escalated, Slobodan Milošević initiated, "a brutal campaign of ethnic cleansing," mainly targeting the Albanian Kosovar civilian population.¹⁸³ There were also reports of KLA abuses against Serbs, but Serb offenses including, "[e]xtra-judicial executions, excessive use of force, and disappearances," far outmatched those committed by the KLA.¹⁸⁴ The Milošević campaign caused a mass exodus of civilians,

¹⁷⁹ Mark V. Vlasic, 'Europe and North America' in Jared Genser and Irwin Cotler (eds), *The Responsibility to Protect: The Promise of Stopping Mass Atrocities in Our Time* (Oxford University Press 2011) 164

¹⁸⁰ Søren Jessen-Petersen, 'Kosovo' in Jared Genser and Bruno Stagno Ugarte (eds), *The United Nations Security Council in the Age of Human Rights* (Cambridge University Press 2014) 380

¹⁸¹ The Independent International Commission on Kosovo, 'The Kosovo Report' (Oxford University Press 2000) 67 available at: <<http://reliefweb.int/sites/reliefweb.int/files/resources/6D26FF88119644CFC1256989005CD392-thekosovoreport.pdf>> accessed 10 February 2017

¹⁸² Ibid. 71

¹⁸³ Jessen-Petersen (n180)

¹⁸⁴ Kosovo Report (n181) 72

with 260,000 internally displaced persons and 200,000 externally displaced by August 1998.¹⁸⁵

In response to the violence, the UNSC passed a resolution demanding, “the withdrawal of Yugoslav forces from Kosovo and a halt to all actions targeting the civilian population.”¹⁸⁶ Milošević ignored this resolution, but did respond to a North Atlantic Treaty Organization (“NATO”) threat to respond with aerial attacks on Serb forces if they did not withdraw from Kosovo.¹⁸⁷ While Serb forces initially withdrew, the KLA forces took the opportunity to occupy those positions, and both Serbian and Kosovar groups did not completely adhere to the UNSC resolutions regarding the conflict.¹⁸⁸ The situation deteriorated further, and on January 15, 1999, Serb paramilitary forces massacred 45 civilians in Racak, Kosovo.¹⁸⁹ France, Germany, Italy, Russia, the United Kingdom, and the United States met to attempt to end the killing to no avail, with the Serbs being unwilling to sign the proposed agreement.¹⁹⁰

With the Security Council refusing to act and mass expulsions and widespread killing continuing unabated, NATO began a military campaign to end the conflict without the approval of the Security Council.¹⁹¹ The aerial bombardment began on March 24, 1999, after the “NATO Secretary-General warned of a humanitarian catastrophe resulting from the excessive force used by the FRY.”¹⁹² Initially, the NATO campaign resulted in

¹⁸⁵ Ibid 74

¹⁸⁶ *Jessen-Petersen* (n180) 380

¹⁸⁷ Ibid

¹⁸⁸ Kosovo Report (n181) 78

¹⁸⁹ *Jessen-Petersen* (n180) 380

¹⁹⁰ Ibid 382

¹⁹¹ Ibid

¹⁹² Kosovo Report (n181) 85

an even larger refugee exodus and increased Serb brutality.¹⁹³ Four weeks into the campaign and with Milošević refusing to negotiate, NATO expanded its targets to include, “military-industrial infrastructure, media, and other targets in Serbia itself,” including bridges, major highways, airports, telecommunications systems, industrial plants, and electric and oil facilities.¹⁹⁴ Additionally, NATO expanded the target list to include businesses and personal properties of Milošević and his partners.¹⁹⁵ The extended targeting list was criticized as attacking the Serbian civilian population however, with the NATO bombing destroying a significant percentage of Serbia’s infrastructure, electricity production, and oil refinery capacity.¹⁹⁶ However, many would argue that this expanded targeting of infrastructure and Serbian leader property was necessary to end the conflict, as Milošević and his associates would only quit when they were affected personally.¹⁹⁷

As the NATO bombing campaign continued, negotiations began to end the conflict, notably with the involvement of the Russian government.¹⁹⁸ The peace plan was formally approved on June 3, 1999, and NATO ended its aerial campaign on June 10.¹⁹⁹ Under the plan, the Kosovars were to “enjoy substantial autonomy,” however the agreement did not include a timeframe or structure to enact this.²⁰⁰ Following the agreement, Security Council passed Resolution 1244, establishing, “the framework for

¹⁹³ *Jessen-Petersen* (n180) 383

¹⁹⁴ Kosovo Report (n181) 93

¹⁹⁵ *Power* (n159) 456

¹⁹⁶ Kosovo Report (n181) 93

¹⁹⁷ *Power* (n159) 457

¹⁹⁸ Kosovo Report (n181) 93

¹⁹⁹ *Ibid* 96

²⁰⁰ *Ibid*

UN civil administration of the province and the establishment of an international security presence.”²⁰¹

Under Resolution 1244, the international security presence was to accomplish a number of objectives. The security presence was to deter the renewal of hostilities and maintain the ceasefire, as well as ensure the withdrawal of Serbian forces.²⁰²

Additionally, the security presence was to demilitarize the KLA and establish, “a secure environment in which refugees and displaced persons can return home in safety, the international civil presence can operate, a transitional administration can be established, and humanitarian aid can be delivered.”²⁰³ Lastly, it was to ensure “public safety and order” and assist in other functions to secure Kosovo.²⁰⁴

Resolution 1244 further authorized an international civil presence to, “provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia,” while assisting in the establishment of self-governing institutions for Kosovo’s inhabitants.²⁰⁵ The international civil presence’s responsibilities included promoting the establishment, “of substantial autonomy and self-government in Kosovo,”²⁰⁶ “performing basic civilian administrative functions,”²⁰⁷ and assisting in, “the development of provisional institutions for

²⁰¹ Ibid

²⁰² UNSC Res 1244 (10 June 1999) UN Doc S/RES/1244, 9(a) available at: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement>> accessed 10 February 2017

²⁰³ Ibid 9(b)-(c)

²⁰⁴ Ibid 9(d)-(h)

²⁰⁵ Ibid 10

²⁰⁶ Ibid 11(a)

²⁰⁷ Ibid 11(b)

democratic and autonomous self-government.”²⁰⁸ The civil presence was also to assist in establishing a police force, rebuilding Kosovo’s infrastructure, and assisting in the return of refugees and displaced persons.²⁰⁹ Lastly, the civil presence was to transfer the administrative responsibilities to the local Kosovo government.²¹⁰

The Resolution envisioned a three-phase process, consisting of: 1) an international civil administration; 2) a provisional self-government until a political settlement was reached; and 3) an administration established by the political settlement.²¹¹ The initial administration was slow and fraught with funding and personnel problems, however it was able to achieve some amount of success.²¹² Within two years of the UN administration, an election was held in which the Kosovo Albanians elected their own government.²¹³ Then, on February 17, 2008, Kosovo at long last became independent, and currently has been recognized by approximately 100 countries.²¹⁴

While the NATO intervention was able to stop the ethnic cleansing and assist in giving the Kosovo Albanians autonomy, many were still critical, arguing that, “U.S. officials lied and refugees exaggerated the atrocities, calling them “genocide: and making up huge numbers of murders...in order to stir up support for the bombing.”²¹⁵ To the contrary, historical evidence suggests that those who did estimate were careful when stating any numbers.²¹⁶

²⁰⁸ Ibid 11(c)

²⁰⁹ Ibid 11(g)-(k)

²¹⁰ Ibid 11(h)

²¹¹ Kosovo Report (n181) 106

²¹² *Power* (n 5!!) 465-466

²¹³ Ibid 466

²¹⁴ *Jessen-Petersen* (n180) 389

²¹⁵ *Power* (n159) 466

²¹⁶ Ibid 468

During the conflict, the U.S. determined that 100,000 men were missing and at least 4,600 had been summarily executed throughout Kosovo by May 7, 1999.²¹⁷ Given that there were similar reports of missing men during the Srebrenica massacre, it was logical to consider the missing men in Kosovo had suffered a similar fate. By November 2000, it was confirmed that, 4000 partial or full bodies were discovered at more than 500 graves.²¹⁸ This figure may still be low though, because Milošević ordered his subordinates to destroy war crimes evidence in Kosovo during the NATO bombing campaign.²¹⁹ These methods included removing bodies from kill sites and either reburying them in Serbia or incinerating the bodies.²²⁰ There were reports bodies of over 11,000 Albanians were buried just in Kosovo.²²¹

The actual death toll may have been lower than feared, and the intervention itself and subsequent post-conflict capacity building may not have been perfect, but the NATO intervention in Kosovo is a powerful example of the benefits of taking a proactive strategy regarding mass atrocities. It is believed that hundreds of thousands of people's lives were saved by the preventative intervention.²²² If NATO forces had waited to intervene or decided not to intervene, it is absolutely possible that many innocent people could have been slaughtered in addition to the hundreds of thousands of people who were displaced. Instead of waiting for a grave atrocity to occur, as in Bosnia-Herzegovina, NATO acted proactively which resulted in a much better situation.

²¹⁷ Ibid 469

²¹⁸ Ibid 470

²¹⁹ Ibid 472

²²⁰ Ibid

²²¹ Ibid

²²² Ibid

Additionally, after the military intervention there was a firm plan for post-conflict capacity building. The international security and civil presences were necessary to restore order in Kosovo, ensure the return of refugees, and assist in transitioning to a Kosovo government. Even if the transition was slow and faced numerous challenges, the situation could have been significantly worse without international support. The international presence was able to mainly preserve peace in the region, hand over government functions to Kosovo authorities, establish democratic elections, and assist in privatization of prior socialized institutions.²²³ The international presences was not without its flaws, however, including, “failure to achieve progress in the area of the rule of law and lack of results in resolving the tense situation in northern Kosovo.”²²⁴ Currently, the situation in Kosovo is stable, although a UN presence is still required to fulfill Resolution 1244.²²⁵

Thus, the two main lessons to be learned from Kosovo are: 1) preemptive intervention before massive atrocities are committed can result in numerous benefits; and 2) post-conflict capacity building is required to maintain any gains made during intervention, and an international presence may be required for a substantial period of time. Many advantages can be gained by intervening earlier in a conflict and often it is the best decision to do so. By intervening early, a significant number of lives can be saved, the conflict can be ended before it spreads, and regional stability can be maintained. Additionally, capacity building after any intervention is crucial to prevent the situation from deteriorating again. Capacity building can be costly, both monetarily and

²²³ *Jessen-Petersen* (n180) 390

²²⁴ *Ibid*

²²⁵ United Nations, 'Kosovo's Overall Security Situation Stable, But Abiding Tensions Require United Nations Mission to Fulfil Mandate, Security Council Told' *United Nations Meetings Coverage* (16 May 2016)

<<https://www.un.org/press/en/2016/sc12365.doc.htm>> accessed 11 February 2017.

in human capital, but it is necessary to prevent further violence and stabilize the country involved. This could also prevent another violent conflict, which may necessitate further military involvement. Therefore, Kosovo's example of post-conflict capacity building should be followed in current and future situations that require it.

2.3 Libya

In a revolutionary movement that became known as the 'Arab Spring,' protests against ruling autocratic regimes sprang up in the Middle East and North Africa.²²⁶ The Arab Spring began in Tunisia on December 17, 2010, spread to Egypt on January 25, 2011, and next moved to Libya on February 16, 2011.²²⁷ Unlike what transpired in Libya, however, the government forces in Tunisia and Egypt did not respond violently to the protestors advocating for regime change.²²⁸ Mummar Qaddafi's security forces and loyalists on the other hand instantly cracked down on protests with deadly force.²²⁹

After the initial crackdown, the violence began to escalate as the Qaddafi government began to lose control of large areas of the country.²³⁰ It became obvious that the Libyan government was not going to cede control in a peaceful manner, and instead was determined to remain in power.²³¹ By February 20, 2011, the anti-Qaddafi demonstrations transformed into a full-scale rebellion, with rebel forces occupying

²²⁶ Mohamed S. Helal, 'Middle East' in Jared Genser and Irwin Cotler (eds), *The Responsibility to Protect: The Promise of Stopping Mass Atrocities in Our Time* (Oxford University Press 2011) 225

²²⁷ Ibid

²²⁸ Ibid

²²⁹ Philippe Kirsch and Mohamed S. Helal, 'Libya' in Jared Genser and Bruno Stagno Ugarte (eds), *The United Nations Security Council in the Age of Human Rights* (Cambridge University Press 2014) 397

²³⁰ Ibid 398

²³¹ Helal (n226) 225

Benghazi and other cities throughout the country.²³² Shortly after, Qaddafi spoke publicly, stating that he would not resign but would, “fight and die in Libya, and urged the cleansing of the country ‘inch by inch, house by house, street by street, alley by alley, person by person’” of those rebelling against his rule.²³³ Qaddafi then further escalated attacks on those opposing him, bringing in foreign mercenaries and using heavy weapons and the Libyan Air Force, resulting in thousands of deaths according to reports emanating from the country.²³⁴

Qaddafi’s brutal response quickly provoked international condemnation, first from the League of Arab States (LAS) and then by United Nations bodies including the Security Council.²³⁵ On February 26, 2011, the Security Council adopted Resolution 1970, which expressed “grave concern” regarding the situation in Libya, condemned “the violence and use of force against civilians,” and deplored “the gross and systematic violation of human rights” in the country.²³⁶ The resolution further determined that the attacks against civilians may constitute crimes against humanity, and invoked the Responsibility to Protect, “[r]ecalling the Libyan authorities’ responsibility to protect its population.”²³⁷ Further, the Security Council demanded an immediate end to the violence and urged the Libyan government to, “respect human rights and international humanitarian law.”²³⁸ Additionally, the resolution referred the situation to the

²³² *O’Donnell* (n 17) 566

²³³ *Kirsch and Helal* (n229) 398

²³⁴ *Helal* (n226) 226

²³⁵ *Kirsch and Helal* (n229) 399-400

²³⁶ UNSC Res 1970 (26 February 2011) S/RES/1970 < <https://www.icc-cpi.int/NR/rdonlyres/081A9013-B03D-4859-9D61-5D0B0F2F5EFA/0/1970Eng.pdf>> accessed 11 February 2017

²³⁷ *Ibid*

²³⁸ *Ibid* 1-2(a)

International Criminal Court, imposed an arms embargo, and instituted a travel ban and asset freeze against Qaddafi and his close associates.²³⁹

Protestors and defecting Libyan military personnel joined together to create militias to fight the Qaddafi government, but with, “greater firepower and enjoying air superiority, Qaddafi’s forces launched an offensive that dealt heavy blows to rebel militias and began pushing them back toward Benghazi.”²⁴⁰ With regime troops approaching Benghazi, the international community, anticipating a massacre, began to debate more forceful measures.²⁴¹

On March 17, 2011 the Security Council adopted Resolution 1973, authorizing member states, “to take all necessary measures...to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi, while excluding a foreign occupation force of any form.”²⁴² Additionally the resolution imposed a no-fly zone on Libyan airspace in order to protect civilians.²⁴³ The Security Council further reiterated R2P principles, reminding the Libyan government of its responsibility to protect the population.²⁴⁴ The resolution was adopted with 10 members voting in favor and five, including Russia and China, abstaining.²⁴⁵

²³⁹ Ibid 9, 15, 17

²⁴⁰ *Kirsch and Helal* (n229) 400-401

²⁴¹ Ibid 401

²⁴² *UN Security Council Resolution 1973* (n8) para 4

²⁴³ Ibid para 6

²⁴⁴ Ibid

²⁴⁵ David P. Forsythe, 'The UN Security Council and Human Rights: State Sovereignty and Human Dignity' [2012], 5 <<http://library.fes.de/pdf-files/iez/09069.pdf>> accessed 12 February 2017

Two days later, an air campaign began, with French jets conducting bombing runs.²⁴⁶ NATO eventually took command of the operation, decimating Qaddafi's air force and air defenses within days, thus implementing the no-fly zone.²⁴⁷ Next, NATO turned its attention to regime troops on the ground, focusing mainly on forces in the vicinity of Benghazi.²⁴⁸ NATO planes may have been able to quickly destroy Qaddafi's air force, but rebel troops were no match for the highly trained regime forces and mercenaries, and the rebels relied heavily on NATO air support to gain ground.²⁴⁹ After months of fighting, the rebel fighters prevailed, and the Qaddafi regime was toppled on August 24, 2011, bringing an end to over 40 years of autocratic rule.²⁵⁰

Because Libyans had virtually no experience with democracy or participating in the political process, they faced considerable obstacles in reconstructing the nation.²⁵¹ Additionally, "tensions running along geographical, tribal, and familial lines" made rebuilding efforts even more complicated.²⁵² The international mission thus was unable to completely stabilize the country, and in May 2014 the country again descended into civil war.²⁵³ An additional concern is the increased presence of the Islamic State ("ISIL" or "ISIS" or "Daesh") in the country, however United States airstrikes have recently

²⁴⁶ *Kirsch and Helal* (n229) 402

²⁴⁷ *Ibid*

²⁴⁸ *Ibid*

²⁴⁹ *Helal* (n226) 228

²⁵⁰ *Ibid*

²⁵¹ *Ibid*

²⁵² *Ibid*

²⁵³ Shadi Hamid, 'Everyone says the Libya intervention was a failure. They're wrong.'

Brookings Institution (12 April 2016)

<<https://www.brookings.edu/blog/markaz/2016/04/12/everyone-says-the-libya-intervention-was-a-failure-theyre-wrong/>> accessed 12 February 2017.

reversed many gains the group achieved.²⁵⁴ While the country is still not stabilized, it is still in a better situation than it would have been had Qaddafi remained in power.

According to the Secretary-General on the United Nations Support Mission in Libya, the political context and security situation remain challenging.²⁵⁵ While the situation in Libya is almost certainly better without Qaddafi, the intervention is still subject to criticism for not completely fixing the situation.

One of the largest and most consequential criticisms of the Libyan intervention came from states including Russia and China. These countries argued that the NATO intervention overstepped, “Resolution 1973’s civilian protections as a pretext for Libyan regime change.”²⁵⁶ As the intervention proceeded, there were drastic differences between the states siding with Russia and China, and those aligned with the United States. The differences materialized into two distinct beliefs about what type of action Resolution 1973 mandated:

“One approach favored the “selective containment” of Gaddafi’s troops, which entailed halting their westward advance toward Benghazi and protecting the civilian population against further attacks. The second, and broader, approach recognized that the Libyan crisis had turned into a zero-sum game. Protecting civilians, especially in the eastern Libya, was unsustainable unless Colonel Gaddafi was removed from power.”²⁵⁷

NATO decided to pursue the second option, and consequently states favoring the first approach became vocally concerned about issues including the air campaign’s scale,

²⁵⁴ United Nations, 'Report of the Secretary-General on the United Nations Support Mission in Libya' (1 December 2016) 22 available at: <<https://unsmil.unmissions.org/Portals/unsmil/Documents/UN%20SG%20Report%20on%20UNSMIL%2001%20December%202016.pdf>> accessed 12 February 2017

²⁵⁵ Ibid 2

²⁵⁶ *O'Donnell* (n17) 566

²⁵⁷ *Helal* (n226) 230

the nature of the selected targets, and the civilian deaths caused by the aerial campaign.²⁵⁸

While countries such as Russia and China believed that the NATO bombing overstepped the mandate, the second group of states argued that the campaign remained consistent with the resolution's mandate.²⁵⁹

The disagreements between the two groups of states could be broken down into two issues: 1) the nature and scope of the NATO air campaign and 2) the overall objectives of the campaign and how best to solve the Libyan crisis.²⁶⁰ All parties were in agreement that the primary focus was to protect Libyan civilians, but the rest was subject to disagreement. While NATO and its partners believed that Qaddafi must immediately step down, critics of the extended mandate realized that the intervention would result in the downfall of his rule, but believed in a negotiated settlement to achieve this.²⁶¹ These disagreements would evolve into substantial problems for future international cooperation on mass atrocities and the future of R2P as a doctrine.

The Libyan intervention, while a source of considerable controversy, had both positive and negative implications for the Responsibility to Protect. The intervention was able to establish that R2P, "and its underlying commitment to act collectively to prevent mass atrocities has become a firmly established principle in international relations."²⁶² Additionally, it has been recognized that R2P's three pillars are not to be implemented in a sequential manner when there is a serious threat of mass civilian casualties.²⁶³ There is

²⁵⁸ *Kirsch and Helal* (n229) 417-418

²⁵⁹ *Ibid* 418

²⁶⁰ *Ibid* 421

²⁶¹ *Ibid*

²⁶² *Ibid* 428

²⁶³ *Ibid* 429

still disagreement about the place of regime change in the doctrine of R2P, however. It is widely recognized that the Libyan intervention affected Russia and China's decision to veto the Security Council resolutions regarding Syria, as will be discussed in the next section.²⁶⁴ Following the Libyan intervention, Brazil also passed a letter around the UN regarding the perception that R2P could be misused for purposes such as regime change.²⁶⁵ The Libyan intervention showed, however, "that circumstances may arise when these two concepts become inseparable, and where pro-democratic intervention becomes necessary to protect civilians from mass crimes."²⁶⁶

The death toll in Libya, while significant, is considerably lower than in Syria. There were approximately 25,000 casualties in the initial conflict.²⁶⁷ While rival factions began fighting again after the overthrow of Qaddafi, it is still arguably a better situation than Syria.²⁶⁸ There were 2825 violent deaths in 2014 and 1523 in 2015, significantly lower than in Syria.²⁶⁹ This could indicate that the intervention, while not perfect, likely lowered the casualty count as opposed to Qaddafi staying in power.

Regardless of the controversy, the Libyan intervention should be considered mostly a success. It proved that the international community could respond in a quick and

²⁶⁴ Ibid 431

²⁶⁵ Ibid 431-432

²⁶⁶ *Helal* (n226) 230

²⁶⁷ Ian Black, 'Libyan Revolution Casualties Lower Than Expected, Says New Government' *The Guardian* (8 January 2013) available at: <<https://www.theguardian.com/world/2013/jan/08/libyan-revolution-casualties-lower-expected-government>> accessed 6 November 2017

²⁶⁸ Human Rights Watch, 'Libya – Events of 2016' available at: <<https://www.hrw.org/world-report/2017/country-chapters/Libya>> accessed 6 November 2017

²⁶⁹ Libya Body Count, available at: <<http://www.libyabodycount.org>> accessed 6 November 2017

decisive manner to situations threatening international peace and security.²⁷⁰

Additionally, it proved that, “respect for basic human rights and fundamental freedoms are among the tenets of peace and security in today’s world.”²⁷¹ Another important lesson is that regional actors are vitally important partners in implementing R2P and protecting human rights.²⁷² Even with the successes of the intervention in Libya, it has shown that serious problems can arise in implementing the Responsibility to Protect.

2.4 Syria

In 2011, the Syrian Arab Republic was a diverse country of 22 million people, with the population consisting of, “74 per cent Sunni Muslim, 10 per cent Alawite, 3 per cent other Shia Muslim, 10 per cent Christian and 3 per cent Druze.”²⁷³ Syria’s population also includes other minorities including Kurds, Assyrians, and Armenians.²⁷⁴ The Al Assad family has been ruling Syria since 1971, starting with Hafez Al Assad and now continuing with Bashar Al Assad, who took over in 2000.²⁷⁵ The Assads are Alawites, and members of that religious group have held important government positions even though the group is a minority in the country.²⁷⁶

Throughout the Assad rule in Syria, those suspected of opposing the government have been subjected to, “torture, detention and long prison sentences imposed under

²⁷⁰ *Kirsch and Helal* (n229) 432

²⁷¹ *Ibid*

²⁷² *Ibid*

²⁷³ United Nations Human Rights Council, 1st *Report of the Independent International Commission on the Syrian Arab Republic*, 23 November 2011, A/HRC/S-17/2/Add.1, para 15 available at: <http://www.ohchr.org/Documents/Countries/SY/A.HRC.S-17.2.Add.1_en.pdf> accessed 1 December 2016

²⁷⁴ *Ibid*

²⁷⁵ *Ibid* para 14

²⁷⁶ *Ibid* para 15

vaguely defined crimes relating to political activity.”²⁷⁷ Further, the government engaged in extensive surveillance of the public and suppression of freedom of expression.²⁷⁸ Protests began to break out in February 2011 concerning, “issues such as rural poverty, corruption, freedom of expression, democratic rights and the release of political prisoners.”²⁷⁹ The protests expanded, with demonstrators calling for respect for human rights and a number of reforms.²⁸⁰ The Assad government responded with a military crackdown, including firing on, detaining, and torturing civilians.²⁸¹ The Office of the United Nations High Commissioner for Human Rights (OHCHR) estimated government forces had killed a minimum of 3,500 civilians by March 2011.²⁸²

As the situation progressed, numerous government forces began to defect, with some forming the Free Syrian Army (FSA) and attacking government forces.²⁸³ A draft Security Council resolution was presented recommending Article 41 measures against Syria, however it was vetoed by the Russian Federation and China.²⁸⁴ As the violence continued to escalate, reports arose of government forces shooting unarmed protestors, unlawful detentions, enforced disappearances, and torture.²⁸⁵

By 2012, fighting between government and anti-government forces expanded in scope and area.²⁸⁶ The government forces focused mainly on controlling major cities,

²⁷⁷ Ibid para 17

²⁷⁸ Ibid

²⁷⁹ Ibid para 27

²⁸⁰ Ibid

²⁸¹ Ibid paras 27-28

²⁸² Ibid para 28

²⁸³ Ibid para 29

²⁸⁴ Ibid para 35

²⁸⁵ Ibid paras 41, 52, 59, 61

²⁸⁶ UNHRC, 3rd *Report of the Independent International Commission on the Syrian Arab Republic*, 16 August 2012, A/HRC/21/50, para 21 available at:

which led to extensive casualties of opposition fighters and civilians.²⁸⁷ Anti-government forces now began to have improved weapons and support.²⁸⁸ Additionally, radical groups began to emerge, including the Al-Nusra Front, which was associated with Al-Qaeda.²⁸⁹ The death toll rose quickly during this period, and while both sides were responsible, government forces were primarily responsible.²⁹⁰

The conflict became even more brutal in 2013, with the first reports of government use of barrel bombs, which, “did not discriminate between military targets and civilian objects.”²⁹¹ Additionally, the use of chemical weapons was reported, with use primarily by government forces.²⁹² The Assad government was known to possess various chemical weapons, and the UNHRC had “reasonable grounds” to believe chemical weapons were used by government forces.²⁹³ At this point, the government also began to engage in siege warfare, which was imposed on areas with a significant presence of anti-government forces as well as areas deemed sympathetic to the opposition.²⁹⁴

<http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-50_en.pdf> accessed 1 December 2016

²⁸⁷ Ibid para 23

²⁸⁸ Ibid para 28

²⁸⁹ Ibid para 30

²⁹⁰ Ibid para 51

²⁹¹ UNHRC, 5th *Report of the Independent International Commission on the Syrian Arab Republic*, 18 July 2013, A/HRC/23/58, para 105 available at:

<http://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/A-HRC-23-58_en.pdf> accessed 1 December 2016

²⁹² Ibid para 139

²⁹³ Ibid paras 137-138

²⁹⁴ Ibid paras 141, 143-144

By the end of 2013, the number of regional actors supplying both fighters and equipment had increased.²⁹⁵ The radicalization of opposition fighters grew, with the extremist group ISIS holding territory in Syria's north.²⁹⁶ The stronger abilities and access to support among extremist groups enabled them to become more powerful than many of the divisive moderate factions.²⁹⁷

By 2014, over 250,000 people were besieged in Syria, falling under relentless government attacks and denial of humanitarian aid.²⁹⁸ The government continued to shell and aeri ally bombard civilian areas, including continued use of indiscriminate barrel bombs.²⁹⁹ Further, the United Nations Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic confirmed the use of sarin gas in the civil war.³⁰⁰ In one such attack, in Al-Ghouta, large amounts of sarin gas were used in civilian-populated areas, resulting in "mass casualties."³⁰¹ The Mission further confirmed use of chemical weapons in other cities throughout the country.³⁰²

²⁹⁵ UNHRC, 6th *Report of the Independent International Commission on the Syrian Arab Republic*, 16 August 2013, A/HRC/24/26, para 23 available at: <<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Pages/ListReports.aspx>> accessed 1 December 2016

²⁹⁶ Ibid para 33

²⁹⁷ Ibid

²⁹⁸ UNHRC, 7th *Report of the Independent International Commission on the Syrian Arab Republic*, 12 February 2014, A/HRC/25/65, summary, available at: <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0ahUK Ewi2hMb7yObXAhXHHZAKHX8rAhkQFggyMAI&url=http%3A%2F%2Fwww.ohchr.org%2FEN%2FHRBodies%2FHRC%2FRegularSessions%2FSession25%2FDocuments%2FA-HRC-25-65_en.doc&usg=AOvVaw1ZagNs6E-ws_H42XAvN6t2> accessed 1 December 2016

²⁹⁹ Ibid para 86

³⁰⁰ Ibid para 127

³⁰¹ Ibid para 128

³⁰² Ibid para 127

The United States became more heavily involved by September 2014, bombing Daesh extremists in Syria.³⁰³ The war further intensified with increasing external support of the parties.³⁰⁴ At this point, none of the fighting groups were near to either defeat or military victory.³⁰⁵ The government was losing strategic areas and had been unable to advance.³⁰⁶

The Russian Federation first carried out air strikes in Syria in September 2015, hitting targets it stated belonged to Daesh.³⁰⁷ Russia intervened on the side of the Assad government, striking both moderate anti-government and extremist forces.³⁰⁸ Largely due the support of Russian airpower, the Syrian government began to make significant advances across the country, most notably in Aleppo.³⁰⁹ During this time, opposition forces began to be pushed back and, “failed to sustain the offensive momentum that allowed them to make significant gains in the first months of 2015.”³¹⁰ In early 2016, Daesh still maintained substantial territory in the eastern and northeastern areas of Syria,

³⁰³ Raddatz, Martha, Luis Martinez, and Lee Ferran, “Airstrikes ‘Successful’ Against ISIS Targets in Syria, US Military Says,” (*ABC News* 23 September 2014) <<http://abcnews.go.com/International/us-airstrikes-syria/story?id=25686031>> accessed 9 December 2016

³⁰⁴ UNHRC, *10th Report of the Independent International Commission on the Syrian Arab Republic*, 13 August 2015, A/HRC/30/48, para 7 available at: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A.HRC.30.48_AEV.pdf> accessed 1 December 2016

³⁰⁵ Ibid para 8

³⁰⁶ Ibid para 10

³⁰⁷ Payne, Ed, Barbara Starr, and Susannah Cullinane, “Russia Launches First Airstrikes in Syria,” (*CNN* 1 October 2015) <<http://edition.cnn.com/2015/09/30/politics/russia-syria-airstrikes-isis/>> accessed 9 December 2016

³⁰⁸ UNHRC, *Report of the Independent International Commission on the Syrian Arab Republic*, 11 February 2016, A/HRC/31/68, para 19 available at: <<http://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/A-HRC-31-68.pdf>> accessed 1 December 2016

³⁰⁹ Ibid para 21

³¹⁰ Ibid para 24

but airstrikes by the United States-led coalition and the Russian federation had diminished the group's capacities.³¹¹ Additionally, Kurdish and Arab and Assyrian groups allied together made large gains targeting Daesh in the north.³¹² The conflict grew evermore complex, with no side close to victory by February 2016.³¹³

The Russian Federation's intervention on the side of the Syrian government quickly led to accusations of civilian deaths.³¹⁴ By late 2015, there were already allegations of Russian air strikes appearing, "to have directly attacked civilians or civilian objects by striking residential areas with no evident military target, and even medical facilities."³¹⁵ Ignoring these allegations, Syrian government forces continued to advance under Russian support.³¹⁶ Especially in the government offensive against rebel-held areas in Aleppo, Russian airstrikes continued to hit civilian objects.³¹⁷ United States Secretary of State John Kerry even called for war crimes investigations for Russian and Syrian bombing of civilian objects.³¹⁸

³¹¹ Ibid paras 28-29

³¹² Ibid para 30

³¹³ Ibid para 32

³¹⁴ Amnesty International, "Syria: Russia's Shameful Failure to Acknowledge Civilian Killings," (23 December 2015), < <https://www.amnesty.org/en/latest/news/2015/12/syria-russias-shameful-failure-to-acknowledge-civilian-killings/>> Accessed 9 December 2016.

³¹⁵ Ibid

³¹⁶ Amnesty International, "Syria: Fears of Civilian Carnage in Aleppo Amid Threat of Impending Assault on City," (4 November 2016), <<https://www.amnesty.org/en/latest/news/2016/11/syria-fears-of-civilian-carnage-in-aleppo-amid-threat-of-impending-assault-on-city/>> accessed 9 December 2016

³¹⁷ Ibid

³¹⁸ Borger, Julian, "Russia and Syria Must Face War Crimes Investigations, Says John Kerry," (*The Guardian* 7 October 2016), < <https://www.theguardian.com/us-news/2016/oct/07/syria-russia-war-crimes-inquiry-john-kerry>> accessed 9 December 2016

By late 2016, Syrian government forces had besieged the anti-government area of Aleppo, and began a final offensive to retake the entire city.³¹⁹ Russian and Syrian forces have struck, “[r]esidential buildings, hospitals, medical clinics, and schools,” furthering allegations of war crimes.³²⁰ Additionally, there were reports that hundreds of men have disappeared after crossing into government-held areas of Aleppo.³²¹ It’s estimated that over 200,000 people remain trapped in Aleppo, and on 5 December 2016, Russia and China vetoed a resolution demanding a seven-day truce in Aleppo and an allowance of humanitarian aid.³²²

After the resolution was vetoed, Assad and his allies moved forward with the efforts to retake Aleppo. As of 13 December 2016, opposition forces held only five percent of Aleppo.³²³ Then, on 22 December, “the Syrian government declared that all of Aleppo was back under its control.”³²⁴ The regime’s offensive to retake Aleppo decimated the population, and those who were left were bussed out of city.³²⁵ Years of laying siege to the population, wide-scale indiscriminate aerial attacks, use of chemical weapons, and misinformation campaigns resulted in the Assad government’s retaking of

³¹⁹ Semaan, Diana, “We Are All Accomplices to the Slaughter of Aleppo,” (*Foreign Policy* 2 December 2016), < <http://foreignpolicy.com/2016/12/02/we-are-all-accomplices-to-the-slaughter-of-aleppo/>> accessed 9 December 2016

³²⁰ Ibid

³²¹ Al Jazeera, “Hundreds of Men from East Aleppo Go ‘Missing’” (*Al Jazeera*, 9 December 2016), < <http://www.aljazeera.com/news/2016/12/hundreds-men-east-aleppo-missing-161209111507380.html>> Accessed 9 December 2016

³²² Nichols, Michelle, “Russia, China Block U.N. Demand for Seven-Day Aleppo Truce” (*Reuters* 5 December 2016) <<http://www.reuters.com/article/us-mideast-crisis-syria-un-idUSKBN13U2LX?feedType=RSS&feedName=topNews>> accessed 9 December 2016.

³²³ The Atlantic Council of the United States, ‘Breaking Aleppo’ (Atlantic Council Policy on Intellectual Independence 2017) 5 available at: <<http://www.publications.atlanticcouncil.org/breakingaleppo/wp-content/uploads/2017/02/BreakingAleppo.pdf>> accessed 9 December 2016

³²⁴ Ibid 6

³²⁵ Ibid 2

the city, and it marked a turning point in the Syrian civil war.³²⁶ Aleppo's fall weakened the United States' position considerably, and recently elected President Donald Trump is now left with fewer options to solve the conflict.³²⁷

More than six years into the conflict, it is estimated that over 470,000 Syrians have died.³²⁸ The civil war has also created over 4.8 million refugees.³²⁹ Civilians are the largest victims of the conflict; constant violations of human rights and international humanitarian law continue with impunity.³³⁰ As peace talks fail, the violence continues to increase.³³¹ Sieges, "indiscriminate attacks on civilians, including medical workers and facilities, blocked humanitarian convoys, enforced disappearances, summary executions, and other crimes" have taken a devastating toll on the Syrian people.³³²

While the United States has bombed Daesh, it has so far mostly refused to directly engage with the Syrian government forces. The lone exception was the Tomahawk missile strike against a Syrian government airbase following a chemical attack carried out by the Syrian government.³³³ However, this was the sole attack carried out by the U.S.

³²⁶ Ibid 62

³²⁷ Ibid

³²⁸ Barnard, Anne "Death Toll From War in Syria Now 470,000, Group Finds" (*The New York Times* 11 February 2016)

<<http://www.nytimes.com/2016/02/12/world/middleeast/death-toll-from-war-in-syria-now-470000-group-finds.html>> Accessed 9 December 2016.

³²⁹ UNHRC, "Syria Regional Refugee Response" (*UNHRC*)

<<http://data.unhcr.org/syrianrefugees/regional.php>> Accessed 9 December 2016.

³³⁰ Ibid FN 36, Summary

³³¹ OHCHR, "Independent International Commission of Inquiry on the Syrian Arab Republic: As Peace Talks Stall, Violence Soars Once Again in Syria" (*OHCHR* 6 September 2016)

<<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20456&LangID=E>> Accessed 9 December 2016

³³² Ibid

³³³ Michael R. Gordon, Helene Cooper and Michael D. Shear, 'Dozens of U.S. Missiles Hit Air Base in Syria' *The New York Times* (6 April 2017) available at:

against the Syrian government, and while it likely discouraged Assad from carrying out further chemical attacks, it did not alter the power balance in Syria or affect Assad carrying out attacks with conventional weapons.³³⁴ Additionally, the domestic controversy surrounding the Trump administration relating to its possible ties with Russia at the time of the attack may have encouraged the U.S. to act.³³⁵ The lack of any further action after this bombing indicates that the U.S. under the current administration is unlikely to engage in military action against the Assad government in the future.

On 28 November 2017, the United Nations will hold an eighth round of peace talks in an attempt to bring an end to the conflict.³³⁶ The goal of the talks is to have a nationwide ceasefire in Syria and not to partition the country.³³⁷ Russia has additionally tried to hold peace negotiations of its own, with a new Syrian constitution as a topic.³³⁸ While President Assad has agreed to the negotiations, Syria's official opposition has refused to attend, leaving significant doubt as to the effectiveness of the Russian-held talks.³³⁹ While the UN talks hold more potential for some form of a settlement, but the

<<https://www.nytimes.com/2017/04/06/world/middleeast/us-said-to-weigh-military-responses-to-syrian-chemical-attack.html>> accessed 3 November 2017

³³⁴ Jeffrey A. Stacey, 'Trump's Syria Test – The Strikes Will Do Little to Achieve U.S. Interests' *Foreign Affairs* (10 April 2017) available at:

<<https://www.foreignaffairs.com/articles/united-states/2017-04-10/trumps-syria-test>> accessed 3 November 2017

³³⁵ Ibid

³³⁶ UN News Centre, 'Fresh Round of Intra-Syrian Talks Set for 28 November, UN Mediator Tells Security Council' *United Nations* (26 October 2017) available at:

<<http://www.un.org/apps/news/story.asp?NewsID=57969#.WfyUXsbMw0p>>

³³⁷ Ibid

³³⁸ Patrick Wintour, 'Syrian Opposition Rejects Russia Talks as West Frets Over Influence' *The Guardian* (1 November 2017) available at:

<<https://www.theguardian.com/world/2017/nov/01/syrian-opposition-refuses-to-attend-russian-peace-talks>> accessed 3 November 2017

³³⁹ Ibid

prior seven rounds have not achieved much, and due to the Syrian government's currently strong position in the country, the upcoming talks will also have difficulties.³⁴⁰

The United Nations has been unable to take decisive action through the Security Council due to continual vetoes of any resolutions by Russia and China.³⁴¹ Due to Russia's constant vetoing of any Security Council resolution calling for action in Syria, no intervention is likely to come as a result of a UNSC resolution. Additionally, with the exception of the attack on the Syrian government airbase, the United States has also not engaged in direct conflict with the Assad government. Any intervention is now inherently more difficult due to Russia's deep engagement and the resulting strengthened position of government forces. While U.S. Secretary of State, Rex Tillerson, stated that the U.S. position is a unified Syria without Bashar Al-Assad, at this point that end result appears difficult to attain.³⁴² While the United States' options to end the Syrian civil war are now considerably limited, there are still some options available within a Responsibility to Protect framework.

³⁴⁰ Jamey Keaten and Matthew Lee, 'Tillerson Again Insists Syrian Leader Assad Must Go' *The Washington Post* (26 October 2017) available at:

<https://www.washingtonpost.com/world/europe/un-syria-envoy-says-hell-meet-with-tillerson-in-geneva/2017/10/26/dd79660c-ba2e-11e7-9b93-b97043e57a22_story.html?utm_term=.213dd5be2f62> accessed 3 November 2017

³⁴¹ Gabriele Lombardo, 'The Responsibility to Protect and the Lack of Intervention in Syria Between the Protection of Human Rights and Geopolitical Strategies' (2015) 19:8 *The International Journal of Human Rights* 1192 available at:

<<http://dx.doi.org/10.1080/13642987.2015.1082833>> accessed 22 March 2017

³⁴² *Keaten and Lee* (n340)

Chapter III: Recommendations

During the approximately one year period from beginning this thesis in September 2016 to completing it in November 2017, the United States' options in the Syrian conflict have become significantly limited. Due to Russia and Iran siding with the Assad regime and providing various forms of military support, government forces again have control over much of the country again.³⁴³ The Assad government currently controls approximately "60 percent of the country's territory and 85 percent of its population."³⁴⁴ While various rebel groups mostly control the remainder of Syria, at this point it appears that after six years, they will be unable to force the Assad regime out of power.³⁴⁵

While U.S. options are now limited due to the realities of the situation on the ground, there are still avenues available to resolve the conflict. Therefore, while the resolutions the thesis originally planned to discuss are no longer feasible and/or less feasible, it will still discuss potential options to end the war under the Responsibility to Protect umbrella. As of now, the United States can either engage in a protracted and costly military engagement if it decided that Assad needed to be removed, or it can be involved in a negotiated settlement. The following options will be evaluated on the basis of practicability and legality.

³⁴³ Ibrahim al-Assil, 'Syria's Civil War is a Long Way From Over – and Here's Why That's Important' *The Washington Post* (11 October 2017) available at: <https://www.washingtonpost.com/news/democracy-post/wp/2017/10/11/syrias-civil-war-is-a-long-way-from-over-and-heres-why-thats-important/?utm_term=.b9a14b3fe71d> accessed 5 November 2017

³⁴⁴ Charles Glass, 'The Syrian Civil War is Decided' *Stratfor* (25 October 2017) available at: <<https://worldview.stratfor.com/article/syrian-civil-war-decided>> accessed 5 November 2017

³⁴⁵ Ibid

3.1 Armed Intervention

Due to the regime's battlefield gains, it is a near certainty that the rebel groups will be able to unseat Bashar al-Assad, even with continued support from the United States and other countries. If the rebels were unable to win before Russian and Iranian involvement, it is extremely unlikely that they have the ability to now, especially with the large amount of Syria controlled by the regime. Thus, if the United States wants to oust Assad as soon as possible, the only option is likely to engage in a full-scale military intervention. The United States has the capability to do this, however such a strategy is not likely to occur at this point in time for multiple reasons.

The Syrian conflict would certainly warrant an intervention under the Responsibility to Protect, even if it is unlikely to occur. As has been detailed above, the Assad government has been committing large-scale atrocities against its people, and close to 500,000 people are now dead, including over 200,000 civilians, with regime forces responsible for over 92% of the civilian casualties in the war.³⁴⁶ The regime's crimes could easily meet the definition of war crimes and crimes against humanity, and because the Assad government is committing the atrocities, it is clear that Syria's "national authorities are manifestly failing to protect their populations."³⁴⁷ Therefore, humanitarian intervention would be justified under the Responsibility to Protect in response to the Assad regime's crimes.

³⁴⁶ Syrian Network for Human Rights, '207,000 Civilians Have Been Killed Including 24,000 Children and 23,000 Females; 94% of the Victims were Killed by the Syrian-Iranian-Russian Alliance' (18 March 2017) available at: <http://sn4hr.org/wp-content/pdf/english/207_thousand_civilians_were_killed_by_hands_of_the_Syrian_alliance_Iranian_Russian_en.pdf> accessed 5 November 2017

³⁴⁷ World Summit Outcome 2005 (n110) paras 138-139

While a humanitarian intervention would be justified, it would not necessarily be legal. Under the current iteration of R2P, Security Council authorization is required to authorize forceful measures.³⁴⁸ This stems from the UN Charter's prohibition on the use of force outside of the circumstances of self-defense and Council-authorized force.³⁴⁹ Because Russia and China have exercised their veto on every Council resolution regarding taking action against the Syrian government and there is no indication they will vote any differently in the future, the chance of Charter-authorized and thus legal humanitarian intervention in Syria occurring is essentially zero. Even if the United States were to attempt to gain support under the "Uniting for Peace" General Assembly procedure, the following intervention would also be considered illegal under international law even if it were possible to gain the political support.

A United States-led intervention in Syria would likely be viewed by most as legitimate but not legal, similar to the NATO intervention in Kosovo. The United States has the ability to engage in a conflict like this, and could potentially gain partners in other Western nations or possibly NATO, although at this point in the war the political support to actually commit forces and engage regime forces is significantly weakened. Additionally, due to heavy Russian involvement, any U.S. intervention would run a significant risk of direct conflict with Russian forces and it is highly unlikely the United States would want to risk this sort of confrontation.

Another factor to consider is that military intervention by the United States could have serious consequences beyond what is already occurring in Syria. A military intervention would be nearly certain to cause "collateral damage and accidental

³⁴⁸ Ibid para 139

³⁴⁹ UN Charter (n21)

deaths.”³⁵⁰ Further, it would likely escalate the conflict when it is beginning to wind down, cause “even greater refugee flows, and chaos instead of moderate government in Damascus.”³⁵¹ A Western military intervention could even result in a cross-border, transnational war on a large scale.³⁵² Therefore, a United States-led military intervention into Syria could end up causing even greater harm than the harm it would be intended to end.

The inaction in Syria is extremely damaging for the principle of the Responsibility to Protect and is evidence that legal, R2P, intervention may not be possible when geopolitical considerations of world powers are present, even in the gravest of human rights situations. While Russia and China’s objections to the removal of Qaddafi in the Libya intervention and argued overstepping of the Security Council mandate certainly factor into the countries’ continual vetoes of action, what is likely a larger factor is Russia’s strategic interests in Syria.

Russia intervened heavily on the side of the Assad regime mostly due to its interests in Syria and in keeping the Assad regime in power. Russia’s relationship with the Assad regime has existed for a period of time due to “both ideological and pragmatic rationales.”³⁵³ Russia pragmatic interests include the fact that, “Putin reduced Syrian debt

³⁵⁰ Roland Paris, ‘The “Responsibility to Protect” and the Structural Problems of Preventative Humanitarian Intervention’ (10 October 2014) 21(5) International Peacekeeping, 575 available at: <<http://dx.doi.org/10.1080/13533312.2014.963322>> accessed 22 March 2017

³⁵¹ James Dobbins, Philip Gordon, and Jeffrey Martini, ‘A Peace Plan for Syria III: Agreed Zones of Control, Decentralization, and International Administration’ (2017) RAND Corporation Report, 10 available at: <<https://www.rand.org/pubs/perspectives/PE233.html>> accessed 5 November 2017

³⁵² *Momani and Hakak* (n152) 907

³⁵³ *Ibid*

to 70%” in 2005 and that the Russian navy uses the port of Tartous.³⁵⁴ Additionally, Syria is important geopolitically relating to oil, and Russian industries are also heavily invested in the country.³⁵⁵ Russia therefore was deeply interested in preventing the Western-backed rebels from removing Assad in order to protect its interests, and it proved that it was much more committed to keeping Assad than Western powers were to removing him.³⁵⁶

Following the intervention in Libya, the lack of any intervention under the guise of R2P in Syria, which arguably presented a stronger case to intervene than Libya, proves that the Responsibility to Protect “is flexible and dependent on geopolitical and strategic elements.”³⁵⁷ While many countries may have espoused support for the principle of R2P in the World Summit Document, and many supported at least the initial intervention in Libya, broad support for armed intervention depends on more factors than human rights and human suffering. Additionally, even if a country supports intervention, its willingness to intervene depends on significantly more than humanitarian considerations. The United States has been motivated to remove the Assad regime due to the massive human rights violations committed by government forces, but it is clearly not willing to accept the costs required to remove Assad and rectify the situation. This is even more so

³⁵⁴ Gabriele Lombardo, “The Responsibility to Protect and the Lack of Intervention in Syria Between the Protection of Human Rights and Geopolitical Strategies” (30 September 2015) 19:8 *The International Journal of Human Rights*, 1193 available at: <<http://dx.doi.org/10.1080/13642987.2015.1082833>> accessed 22 March 2017

³⁵⁵ *Momani and Hakak* (n152) 907-908

³⁵⁶ Lina Khatib, Tim Eaton, Haid Haid, Ibrahim Hamidi, Bassma Kodmani, Christopher Philips, Neil Quilliam, Lina Sinjab, ‘Western Policy Towards Syria: Applying Lessons Learned’ (March 2017) Chatam House Research Paper, 31 available at: <<https://www.chathamhouse.org/sites/files/chathamhouse/publications/research/2017-03-15-western-policy-towards-syria-lessons-learned.pdf>> accessed 5 November 2017

³⁵⁷ *Lombardo* (n354) 1193

after Russia's involvement on the side of the regime, as preventing direct confrontation with another world power is more important to a country like the United States than ending the atrocities being committed in Syria.

Thus, if a world power is determined to support a government due to geopolitical and strategic interests, even a government that is killing its civilians by the hundreds of thousands, the principle of the Responsibility to Protect appears to be an ineffective solution to end the suffering. R2P is even less effective when the world power is a P5 country with veto power over Security Council decisions. Because intervention without Council authorization is illegal under international law (and not in line with R2P), it will be even more difficult to foster the political support for intervention. The Syrian civil war has considerably weakened the principle of the Responsibility to Protect, and has proven that R2P is only applicable in situations where geopolitical and strategic interests do not take precedence.

3.2 Negotiated Settlement

Due to the situation on the ground in Syria following the Assad government's military gains, a forceful military intervention by the United States is almost certainly not a feasible or realistic option. This does not mean, however, that the United States is left without any options to end the Syrian civil war under the Responsibility to Protect framework in a realistic and legal manner. While using military force under the third pillar "timely and decisive response" R2P action is likely not an option, the United States can work to end the conflict using diplomacy under the third pillar and further assistance under R2P's second pillar, "international assistance and capacity-building."

While different situations, the United States, along with the broader international community could follow the example of Kenya, which showed that R2P's third pillar could be enacted without military intervention.³⁵⁸ Following post-election bloodshed in 2008, the Kenyan example proves that the international community has more options than using force or doing nothing.³⁵⁹ The international community used a "wide range of diplomatic, political, and economic tools," threatening cuts of aid and initiating travel bans for leverage.³⁶⁰ While Kenya differs from the case of Syria in that it was a mostly-preventative action instead of after the conflict has raged for years, it is important as an example where force was not used and the actors viewed the crisis under the Responsibility to Protect.³⁶¹ Another similarity that can be applied to the Syrian conflict is that strategic conditions will enable the diplomatic action.³⁶² Following the diplomatic and political action to bring a ceasefire and eventual political settlement, the United States and the other parties involved can engage in longer-term international assistance and capacity building in order to prevent large-scale conflict from reappearing in Syria.

By attaining a negotiated settlement through diplomatic and political means, the United States can incur the least cost while obtaining vital goals: "eliminating ISIS and al Qaeda safe havens, and protecting its Middle Eastern and European partners from the destabilizing dangers posed by foreign fighters and refugee flows."³⁶³ Further, while the

³⁵⁸ Ibid 1191-1192

³⁵⁹ Report of the Secretary-General on Implementing R2P (n5) para 11(c)

³⁶⁰ Serena Sharma, 'Kenya' in Alex J. Bellamy and Tim Dunne, *The Oxford Handbook of the Responsibility to Protect* (Oxford University Press 2016) 755

³⁶¹ Report of the Secretary-General on Implementing R2P (n5) paras 11(c), 51

³⁶² Sharma (n360) 757

³⁶³ Colin H. Khal, Ian Goldenberg and Nicholas A. Heras, 'A Strategy for Ending the Syrian Civil War' (June 2017) The Center for a New American Security Report, 1

United States wants to remove President Assad and a leader who committed such atrocities against his people should not be allowed to stay in power, bringing an end to the fighting will at least significantly curtail deaths in the country. The U.S. can also use a threat of use of force against Assad if he engages in attacks against civilians after any ceasefire is agreed to. This would also allow, at least in the near-term, for Russia and Iran to achieve their main goal, which is to keep Assad in power.³⁶⁴ Therefore, while a ceasefire and eventual negotiated settlement, an imperfect peace, but a peace nonetheless can be achieved in Syria.

The first factor that needs to be considered to end the Syrian civil war is the situation on the ground. Currently, the Assad regime “holds the military advantage, but lacks the capacity and resources to recapture and govern the whole of Syria.”³⁶⁵ Additionally, even though Russia and Iran have important interests in Syria and have been willing to intervene on the side of the Assad government, neither government likely has the capacity to supply the required amount of money to rebuild Syria after the massive destruction caused by the conflict.³⁶⁶ It is estimated to cost over \$100 billion per year to rebuild Syria’s infrastructure, and the United States and its Western allies can use their financial resources as leverage in obtaining concessions from Assad and his backers.³⁶⁷ Further, Russia desires a relationship with the United States in

available at: <<https://s3.amazonaws.com/files.cnas.org/documents/CNASReport-Syria-Final.pdf?mtime=20170607102853>> accessed 5 November 2017

³⁶⁴ *Dobbins, Gordon and Martini* (n351) 5

³⁶⁵ *Chatham House Research Paper* (n356) 2

³⁶⁶ *Ibid* 34

³⁶⁷ John R. Allen and Michael E. O’Hanlon, ‘Economics Could be the Key to Ending the Syrian Civil War’ *Brookings* (9 August 2017) available at: <<https://www.brookings.edu/blog/markaz/2017/08/09/economics-could-be-the-key-to-ending-the-syrian-civil-war/>> accessed 5 November 2017

counterterrorism operations, and the U.S. could also use this as leverage in forcing the Russians to cease actions against moderate rebel forces.³⁶⁸

Syria is currently divided into six zones, with different groups controlling each zone.³⁶⁹ The country is divided as follows: the Assad regime, backed by Russia and Iran controls “a statelet centered in the coastal and western-central region of the country;” the armed opposing, including an Al Qaeda-led group, controls the northwest; Turkish forces control a “buffer zone” north and east of Aleppo; United States-supported Kurds control a large portion of Syria’s north and east; moderate anti-government forces control the south; and ISIS still controls some parts of eastern Syria.³⁷⁰ The deep fracture of the country and control of large areas by different groups with different objectives makes it highly unlikely any one group could take and control the country itself. The United States can take advantage of the stalemate that currently exists in the Syrian conflict, following the “ripeness theory,” which holds “that peace can be achieved when combatants grow weary of fighting and can visualize an end-state that upholds their core interests.”³⁷¹ A peace agreement in Syria could result from this weariness, similar to how the Dayton Peace Agreement was achieved in Bosnia-Herzegovina’s “moment of ripeness.”³⁷²

The first step of this process would be to initiate a countrywide ceasefire between the respective groups, minus the extremist Al-Qaeda-led groups and ISIS, which should

³⁶⁸ *Khal and Heras* (n363) 7-8

³⁶⁹ Colin Khal, Ilan Goldenberg, Nicholas Heras, ‘Can Trump End the War in Syria? The “Art of the Syrian Deal” is Possible’ *Foreign Policy* (29 March 2017) available at: <<http://foreignpolicy.com/2017/03/29/can-trump-end-the-war-in-syria/>> accessed 5 November 2017

³⁷⁰ *Ibid*

³⁷¹ David L. Phillips, ‘How Syria’s War Ends’ *The Huffington Post* (23 September 2016) available at: <https://www.huffingtonpost.com/david-l-phillips/how-syrias-civil-war-ends_b_12153750.html> accessed 5 November 2017

³⁷² *Ibid*

not be given legitimacy and included in any possible settlement discussions. Brokering a ceasefire and ending the hostilities is the quickest way to significantly curtail the violence in Syria, and with exhaustion among the major groups in the six zones, a ceasefire is certainly possible at this time. The ceasefire could be enforced with “the major foreign actors in each zone of control being primarily responsible for enforcing the cease-fire, providing security, and ensuring unfettered distribution of humanitarian assistance.”³⁷³ This would allow civilians to receive the aid they desperately need and end regime attacks on civilians and civilian areas. Further, the major parties could focus military activities against extremist groups such as ISIS and Al Qaeda, and there would even be a possibility of collaboration between prior warring groups.³⁷⁴ If the United States wants to create peace in Syria, this is a necessary first step assuming large-scale military action is not realistic option.

Following a successfully enacted ceasefire, the parties could work to a more permanent settlement. The negotiated settlement would not result in Assad vacating power immediately, and a strategy with Assad leaving power in a more gradual manner has a higher likelihood for success.³⁷⁵ In order to ensure protection of civilians and a sustainable peace, international forces would likely be required in the initial period of the agreement and for some time.³⁷⁶ The United States would likely have to be at the forefront of providing an international presence, although it would likely join with other

³⁷³ Khal, Goldenberg, and Heras (n369) 5

³⁷⁴ Ibid 4

³⁷⁵ Michael O’Hanlon, ‘Deconstructing Syria’ *The National Interest* (November/December 2015) 27 available at: < <https://www.brookings.edu/blog/order-from-chaos/2015/06/30/deconstructing-syria-a-new-strategy-for-americas-most-hopeless-war/>> accessed 5 November 2017

³⁷⁶ Paris (n350) 577

countries in a coalition or a regional or international organization like NATO or the UN. While Assad would almost certainly remain in power in the near-term, removing his immediate status from negotiating topics, the United States would have to take a tough stance with Russia and Iran while also striving to cooperate to the fullest extent possible. Especially if any counterterrorism cooperation between the U.S. and Russia is possible, the U.S. would need guarantees that Russian and Syrian forces will refrain from striking moderate rebels and the U.S. government would need to remain willing to strike Assad if he used chemical weapons again and potentially if he strikes the moderate opposition.³⁷⁷ In order to assist in preventing Assad and Russia from striking the moderate opposition, the U.S. would need to convince the moderate groups to separate from extremist groups.³⁷⁸

Next, what would likely need to happen would be to formalize the decentralized zones achieved through the ceasefire, and hopefully eventually constitutional reform.³⁷⁹ In the distinct zones, it would be important, “to devolve major governance responsibilities to the local level, including administration, policing, and essential service provision.”³⁸⁰ International actors would have to continue to be present to assist the various zones, and actors in all zones would need to work to eliminate extremist groups like Al Qaeda and ISIS.³⁸¹

Additionally an international peace presence, similar to Bosnia-Herzegovina and Kosovo may be required, at least in certain areas. The eastern area of Syria will require

³⁷⁷ *Khal, Goldenberg, and Heras* (n369) 7

³⁷⁸ *Ibid*

³⁷⁹ *Dobbins, Gordon, and Martini* (n351) 7

³⁸⁰ *Khal, Goldenberg, and Heras* (n369) 10

³⁸¹ *Ibid*

governance once ISIS is removed, and the U.S. would likely prefer to have international administration instead of Assad government administration, and Turkey would most likely favor this option as well as opposed to Kurdish control.³⁸² While the international community, and especially the United States, may be wary of inserting international forces in a significant number on the ground, it may be necessary to secure all parties' goals and prevent the situation from devolving back into violence. Further, a UN force is certainly possible, which would reduce the burden from individual countries, including the United States. While China and Russia have vetoed every major Security Council resolution related to Syria so far, they would likely be more amenable to allowing a resolution to pass if it was regarding R2P action not including the use of force.³⁸³ This would be even more likely if Russia is heavily involved in the peace process in Syria. While it is unknown how long an international peace force would be required, it would likely contribute to the success of the deal, as the forces did in Bosnia-Herzegovina and Kosovo.

Chapter IV: Conclusion

A negotiated peace settlement along these lines discussed in the previous chapter is certainly feasible from a policy perspective. The major fighting parties are exhausted from fighting for over six years, and it is a near impossibility that any one group can retake, much less rule, the entire country. Additionally, the respective international actors

³⁸² *Dobbins, Gordon, and Martini* (n351) 9

³⁸³ Justin Morris, 'Libya and Syria: R2P and the Spectre of the Swinging Pendulum' (2013) 89 *International Affairs* 1278 available at: <http://www.operationspaix.net/DATA/DOCUMENT/8104~v~Libya_and_Syria__R2P_and_the_Spectre_of_the_Swinging_Pendulum.pdf> accessed 22 March 2017

can achieve most of their main goals through a negotiated peace settlement, and certainly achieve such goals at a lower cost than continuing to fight. While many rightly will argue that Bashar al-Assad needs to be held accountable for his crimes against the Syrian people, this is not a likely scenario in the near future. It would likely require an all-out war by the west to depose and bring Assad to justice, and bringing peace to Syria at least ends the violence and prevents Assad from killing more of his people. To achieve its goals, the United States will need to take a tough stance with the Syrian government and its international backers, using its economic and other leverage to obtain favorable terms in the settlement. While the U.S. needs to do this, it will also need to be open to working with Assad, Russia, and Iran in order to achieve peace. Also, the U.S. and other parties will need to be committed to long term capacity building in Syria, otherwise any peace deal will not likely remain effective. While this peace would not be anywhere close to a perfect peace, it at least ends the fighting, and is the most feasible scenario the United States has at this time.

In addition to being the only feasible option, a negotiated settlement within the Responsibility to Protect framework is also legal under international law. Following the second pillar of R2P, the U.S. and others could encourage Syria to uphold its responsibilities under R2P and assist Syria in doing so. Because such action would not include the unilateral use of force, the U.S. and its allies would have much better standing under international law. Further, the Assad government would be involved in any negotiations, and would ostensibly agree to an international presence in the country as a part of the negotiated settlement. Lastly, having Russia involved in the settlement would mean that Security Council, and thus legal under the Charter, action would be much more

likely. The fact that a negotiated settlement would be in line with international law is another factor indicating that it is the best current option.

The Syrian civil war has raged for over six years, and finally it could come to an end within the framework of the Responsibility to Protect. While R2P is unable to provide legal authorization for a humanitarian intervention into the country led by the United States, the U.S. can still follow R2P in enacting a negotiated settlement for the conflict. Unfortunately, this, like any armed intervention, is also subject to geopolitical interests of major powers, which again negatively affects R2P's status as an emerging norm. While a negotiated settlement under the umbrella of the Responsibility to Protect may not move the principle forward much in its norm development, it is at least the best current option to end the Syrian civil war.

The Syrian situation proves, however, that the Responsibility to Protect, while being an ambitious principle with wide support, may not always be an effective option to do what it was intended to do. If the principle is supposed to aid in protecting populations from genocide, ethnic cleansing, war crimes, and crimes against humanity, R2P can be a very useful situation when the right factors are present. This will likely require it to be in the strategic interests of at least one world power to intervene, and likely multiple world powers after viewing China and Russia's vetoing of Security Council resolutions regarding Syria. In addition to taking action being in the interest of a world power, inaction will definitely not have to be in the interest of a permanent member of the Council. Syria again has shown that when a P5 country has geopolitical interests in a country, it can prevent any effective action from being taken by the Security Council.

Because Security Council authorization is required for collective action under the Responsibility to Protect and international law, R2P is not the most effective solution to crises when a P5 member can prevent any legal action from being taken. This is a significant flaw of R2P, and shows that it may only be invoked when the interests of P5 countries are not involved. This is detrimental to the principle and its effectiveness for the present and future, as it cannot be used when such geopolitical interests are present. Thus, the Responsibility to Protect is not the most effective solution to the Syrian conflict, and may not be for future crises.

One final lesson the United States can learn from the Syrian civil war is that the consequences of failing to act decisively can be severe. This was shown in Bosnia-Herzegovina and again in Syria. In both cases, there was ample evidence of human rights violations occurring and the necessity for intervention, but inaction resulted in unnecessary loss of life. This lesson is especially present in the Syrian situation. The United States had the option to intervene earlier or take stronger positions in the Syrian conflict when the war was still winnable by the rebels. If the U.S. had intervened earlier in the conflict, before Russia became entrenched, the U.S. may have been able to overthrow Assad and prevent the continued loss of life and displacement of persons. While such action may not have been legal due to Russia and China's vetoing of Security Council resolutions, it would have likely resulted in saving many lives, as well as preventing Russia from gaining a stronghold in the country.

While a U.S.-led intervention in Syria without Security Council authorization would have been illegal and would not have followed the Responsibility to Protect, it would have likely been viewed as legitimate by the majority of the world, similar to the

NATO intervention in Kosovo. The Assad regime has been engaging in massive human rights violations and hundreds of thousands of people are dead, and the U.S. could have assisted in ending that violence. It would have had to risk the lives of U.S. forces and engaged in costly post-conflict capacity building, but it is already risking U.S. lives fighting ISIS and will most likely have to be involved following the war no matter what. Therefore, from a policy standpoint, if not a legal standpoint, it may have been better for the United States to engage in an intervention earlier in the conflict.

For future conflicts, the lesson is the same. Decisive and collective action is often necessary in situations of massive human rights violations, as has been proved from Bosnia-Herzegovina to Libya to Syria. The consequences of inaction are dire, and both the people suffering in the conflicts and the powers with interests in the situation can benefit from early and decisive action. Such action may not be legal under international law if a P5 member of the Security Council is opposed to intervention, but based on prior examples it may be the better choice. States should first try to gather support of the international community and the Security Council, but action not authorized by the Council may be necessary in some situations.

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