

TAKING STOCK OF THE RESPONSIBILITY TO PROTECT

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INTRODUCTION

Through ten years of contentious debate, the responsibility to protect has proven to be both one of the most promising recent developments in international affairs and one of the most disappointing. The concept of a responsibility to protect—the notion that states have a responsibility to protect their own people, and that the international community has a responsibility to step in when the state fails its responsibility—has unsettled traditional understandings of state sovereignty, destabilized the principle of nonintervention, and inspired a robust debate on the use of military force to protect human rights. The question of whether there is a responsibility to protect, and what the content of that responsibility should be, has preoccupied heads of state, civil society groups, and U.N. organs and has earned intense and sustained scholarly attention over the past decade.

In recent months, following on the decision of the U.N. Security Council to impose a no-fly zone in Libya in response to escalating violence against civilians,¹ observers have elevated the status of the responsibility to protect from notable development to triumphant achievement.² U.N. Secretary-General Ban Ki-moon declared that the decision to authorize military intervention “affirm[ed], clearly and unequivocally, the international community’s determination to fulfill its responsibility to protect civilians from violence perpetrated upon them by their own government.”³ In an article entitled *End of the Argument*, Gareth Evans, one of the minds behind the responsibility to protect, announced that the world had reached an

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¹ See S.C. Res. 1973, ¶¶ 6, 8, U.N. Doc. S/RES/1973 (Mar. 17, 2011) (imposing a no-fly zone and authorizing member states to “take all necessary measures” to enforce it).

² See, e.g., Philippe Boloïon, *After Libya, The Question: To Protect or Depose*, L.A. TIMES, Aug. 25, 2011, at 15 (“[N]ever, until Libya, had [the responsibility to protect doctrine’s] most controversial aspect—the use of force as a last resort—been put to the test.”); *The Lessons of Libya*, ECONOMIST, May 21, 2011, at 67 (asserting that the Libya intervention “set the stage for the first full-blown test of a principle that the UN adopted in 2005 and has been refining since”).

³ Press Release, Secretary-General, Secretary-General Says Security Council Action on Libya Affirms International Community’s Determination to Protect Civilians from Own Government’s Violence, U.N. Press Release SG/SM/13454 SC/10201 AFR/2144 (Mar. 17, 2011).

“overwhelming consensus, at least on basic principles,” on the responsibility to protect.⁴ In addition to this international significance, many have viewed the decision to intervene in Libya as a marker of the first time the United States has demonstrated a full-throated acceptance of a responsibility to protect.⁵ The Obama Administration had expressed its support for the principle before,⁶ but with the Libya intervention, it seemed that it was at last putting its words to action.⁷

U.S. government support for the principle of a responsibility to protect certainly has grown in recent years. But was the decision to intervene in Libya a manifestation of Washington’s commitment to the principle? Perhaps, but without a look at internal government documents, or at the memoirs sure to be written in decades to come, the answer is not so clear. Indeed, the public remarks articulating a justification for the intervention suggest that the decision was driven far more by singular national interests than by any sense of responsibility. Based on an analysis of those remarks, this Essay argues that characterizing the U.S. decision to support intervention in Libya as a triumph of the responsibility to protect ignores both disputes over the content of the concept and the motivations expressed by the United States for supporting the intervention.⁸ The Libya intervention shows an advancement of the principle, indeed; nonetheless, the decision to initiate military action remains far from a successful implementation of the responsibility to protect, and identifying it as such risks conflating an interest in intervention with a responsibility to intervene.

This Essay proceeds in three Parts. Part I explains the concept and evolution of the responsibility to protect, from its origins as an ambitious response to the horrors of the 1990s to its erosion in debates in the United Nations. This Part

⁴ Gareth Evans, *End of the Argument: How We Won the Debate Over Stopping Genocide*, FOREIGN POL’Y (Dec. 2011), http://www.foreignpolicy.com/articles/2011/11/28/gareth_evans_end_of_the_argument.

⁵ See, e.g., Stewart Patrick, *A New Lease on Life for Humanitarianism*, FOREIGN AFF. (Mar. 24, 2011), <http://www.foreignaffairs.com/articles/67674/stewart-patrick/a-new-lease-on-life-for-humanitarianism?page=show> (asserting that the Obama administration “champion[ed] RtoP’s basic principle” in the decision to enforce a no-fly zone in Libya).

⁶ See, e.g., THE WHITE HOUSE, NATIONAL SECURITY STRATEGY 48 (2010), available at http://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf (noting that the United States, along with all U.N. members, has endorsed the concept of the responsibility to protect); Ambassador Susan E. Rice, Remarks Before the U.N. Security Council (Jan. 29, 2009) (transcript available at <http://www.state.gov/p/io/rm/2009/115579.htm>) (declaring that “[t]he United States takes . . . seriously” the responsibility to protect populations from abuses when their governments are unable or unwilling to do so).

⁷ See Stewart Patrick, *Libya and the Future of Humanitarian Intervention*, FOREIGN AFF. (Aug. 26, 2011), <http://www.foreignaffairs.com/articles/68233/stewart-patrick/libya-and-the-future-of-humanitarian-intervention?page=show> (citing “Obama administration’s vocal leadership in seeking to consolidate RtoP as a vital global norm”).

⁸ This Essay focuses on the initial decision to resort to military action, rather than on the question of how the states involved carried out the intervention. Indeed, the manner in which the intervention was undertaken—causing scores of civilian casualties—has generated heated criticism of NATO’s tactics and of the unintended consequences of the responsibility to protect principle. See Alex J. Bellamy & Paul D. Williams, *The New Politics of Protection? Côte d’Ivoire, Libya and the Responsibility to Protect*, 87 INT’L AFF. 825, 846 (2011) (describing views that NATO caused excessive civilian casualties and exceeded the powers granted in Resolution 1973); David Rieff, *R2P, R.I.P.*, INT’L HERALD TRIB., Nov. 8, 2011, at 6; Richard Falk, *Obama’s Libyan Folly: To Be or Not To Be . . .*, FOREIGN POL’Y J. (Apr. 7, 2011), <http://www.foreignpolicyjournal.com/2011/04/07/obamas-libyan-folly-to-be-or-not-to-be%E2%80%A6/> (arguing that the military intervention “seemingly plunged Libya into a protracted violent conflict”).

concludes that the core of the responsibility to protect is not merely a call to intervention, but rather a call to intervention regardless of narrow national interests. Part II examines the form that the principle has taken in the U.S. approach to the crisis in Libya. While the responsibility to protect originated as a way to realize individuals' right to be protected against genocide, crimes against humanity, and other massive abuses of human rights, the Libya intervention reveals a primary focus not on the rights and needs of oppressed populations, but rather on the needs and interests of the intervening state. The decision by the United States to support intervention in Libya represents at best a partial version of the responsibility to protect—a responsibility triggered only when state interests align with that duty. Instead of a triumph of the responsibility to protect, the decision should be viewed as an occasion on which national interests coincided with the principle, not one on which the principle of responsibility to protect moved a state to take action.

Part III explores the implications of characterizing the U.S. decision to support intervention as a triumph of the responsibility to protect. Because the responsibility to protect constituted only one part of the government's motivation to intervene, identifying the intervention as being driven by the responsibility to protect risks undermining the core of the responsibility to protect, mutating the principle into a new form that envisions a responsibility only when other state interests motivate intervention. This deference to state interests, however, was exactly what the responsibility to protect principle sought to overcome. Moreover, identifying an intervention motivated by interests as an exercise of the responsibility to protect risks equating the principle of responsibility with mere interest, thus confirming the fears of many states that the responsibility to protect provides political cover for powerful states' military adventurism and imperialism. Should proponents of the principle wish to further their goal of convincing otherwise uninterested states to take notice of foreign atrocities, and if they wish to avoid legitimating interventions based on narrow national interests, they should be careful not to conflate what motivated the Libya intervention with the responsibility to protect.

I. THE ORIGINS AND CONTROVERSY OF THE RESPONSIBILITY TO PROTECT

The concept of a responsibility to protect has undergone significant debate since its inception. In order to assess whether the Libya intervention marked a triumph of the responsibility to protect, it is important to understand what the responsibility to protect is and what it is not. Explaining the different approaches to the responsibility to protect, this Part examines the key areas of dispute in the responsibility to protect and identifies the key area of agreement: the notion that regardless of states' singular interest or lack of interest in intervention, individuals should never be allowed to suffer at the hands of their governments.

A. The Original Responsibility to Protect

The responsibility to protect originated in the international community's failures to respond adequately to massive human rights abuses in Rwanda, Bosnia,

and Kosovo.⁹ Each of these crises raised unique concerns. Rwanda exposed the tragedy of inaction, the shame of a lack of political will to intervene. When genocide erupted in Rwanda in 1994, the Security Council was aware of the degree of violence and potential for escalation, but it feared for the security of the U.N. peacekeepers who had been stationed in Rwanda since 1993.¹⁰ Instead of strengthening the U.N. presence in response to the crisis, the Council chose to cut the peacekeeping force from 2558 troops to a skeleton 270.¹¹ It was only several weeks later, after an estimated 500,000 individuals had been murdered in Rwanda, that the Council finally voted to authorize the deployment of a weak French military force.¹²

Bosnia revealed the horror of inadequate intervention. In 1992 the United Nations established a peacekeeping force in the region, known as the United Nations Protection Force (UNPROFOR). While its mandate in Bosnia, originally limited to securing the delivery of humanitarian aid, later expanded to deterring attacks against designated "safe areas,"¹³ it was given only limited resources that were "never . . . sufficient" to adequately defend those vulnerable cities.¹⁴ UNPROFOR was unable to stop the capture of Srebrenica by units of the Republika Srpska and failed to prevent the massacre of some eight thousand Bosnian Muslim men and boys in July 1995.¹⁵

Kosovo, finally, focused attention on the legality and legitimacy of unilateral humanitarian intervention. In response to increasing violence against ethnic Albanians in the Kosovo region of the Federal Republic of Yugoslavia (FRY), the Security Council imposed an arms embargo against the ruling Milosevic regime,¹⁶ demanded an immediate end to violence,¹⁷ and threatened "further

⁹ See INT'L COMM'N ON INTERVENTION & STATE SOVEREIGNTY, THE RESPONSIBILITY TO PROTECT 1 (2001) (discussing cases and controversy surrounding humanitarian intervention) [hereinafter RESPONSIBILITY TO PROTECT].

¹⁰ See Astri Suhrke, *Facing Genocide: The Record of the Belgian Battalion in Rwanda*, 29 SECURITY DIALOGUE 37, 37 (1998) (connecting decision to withdraw forces with the murder of ten Belgian peacekeepers in Kigali).

¹¹ See S.C. Res. 912, ¶ 8, U.N. Doc. S/RES/912 (Apr. 21, 1994) (endorsing proposal by Secretary-General to reduce size of peacekeeping force); RAMESH THAKUR, THE UNITED NATIONS, PEACE AND SECURITY 293 (2006) (citing figures); see also Colin Keating, *Rwanda: An Insider's Account*, in THE UN SECURITY COUNCIL: FROM THE COLD WAR TO THE 21ST CENTURY 483, 507-08 (David M. Malone ed., 2004) (describing negotiations leading to resolution).

¹² See S.C. Res. 929, ¶ 1, U.N. Doc. S/RES/929 (June 22, 1994) (establishing multinational military force); see also S.C. Res. 918, ¶¶ 3, 5, U.N. Doc. S/RES/918 (May 17, 1994) (expanding size and mandate of UNAMIR); Keating, *supra* note 11, at 517-18 (noting that three months passed before the first UNAMIR II troops arrived). France's involvement provoked severe criticisms on account of the state's ties with Hutu political and military leaders. See SEAN D. MURPHY, HUMANITARIAN INTERVENTION: THE UNITED NATIONS IN AN EVOLVING WORLD ORDER 247-48 (1996).

¹³ See S.C. Res. 836, ¶ 5, U.N. Doc. S/RES/836 (June 4, 1993).

¹⁴ U.N. Secretary-General, *Report of the Secretary-General Pursuant to Resolution 844 (1993)*, ¶13, U.N. Doc. S/1994/555 (May 9, 1994); see also ALEX J. BELLAMY & PAUL WILLIAMS, UNDERSTANDING PEACEKEEPING 201 (2d ed. 2010) (describing incompatibility of UNPROFOR's resources and mandate); ELINOR CAMILLE SLOAN, BOSNIA AND THE NEW COLLECTIVE SECURITY 29-30 (1998) (describing incompatibility of UNPROFOR's resources and mandate).

¹⁵ See S. NEIL MACFARLANE & YUEN FOONG KHONG, HUMAN SECURITY AND THE UN: A CRITICAL HISTORY 136 (2006) (discussing U.N. failures at Srebrenica).

¹⁶ See S.C. Res. 1160, ¶ 8, U.N. Doc. S/RES/1160 (Mar. 31, 1998) (requiring all states to ban sale or supply of arms to the FRY).

¹⁷ See S.C. Res. 1199, ¶ 4(a), U.N. Doc. S/RES/1199 (Sept. 23, 1998) (demanding that the FRY "cease all action by the security forces affecting the civilian population and order the withdrawal of

action.”¹⁸ Those preliminary measures, however, marked the limit of agreement within the Security Council. While the United States, United Kingdom, and France pushed for an authorization of military action in the FRY, Russia and China threatened to veto any resolution approving the use of armed force.¹⁹ The proponents of military intervention chose to act outside the Council, and NATO ultimately launched a seventy-seven-day bombing campaign on its own,²⁰ triggering heated debate on the relevance of the Security Council and the legal requirements for humanitarian intervention.²¹

In the face of these questions—how to generate political will to intervene, how to structure effective interventions, and how to overcome the paralyzing force of the permanent-member veto in the Security Council—the notion of a responsibility to protect was born. Throughout the 1990s, scholars and practitioners had called for fresh thinking about sovereign states and nonintervention, and some advocated a duty to intervene in humanitarian crises, especially for the purpose of providing humanitarian aid to victims.²² The most significant transformation in approaches to intervention in humanitarian crises took place in 2001, with the publication of *The Responsibility to Protect*, the report of the International Commission on Intervention and State Sovereignty (ICISS), an independent body established by Canadian Prime Minister Jean Chrétien. Aiming “to build a new international consensus on how to respond in the face of massive violations of human rights and humanitarian law,”²³ the report treated as its central premise the assertion that “sovereignty implies responsibility.”²⁴ Based on that foundation, it put forward two principles that form the responsibility to protect. First, “the primary responsibility for the protection of [a state’s] people lies with the state itself.”²⁵ Second, “[w]here 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.”²⁶ Responding to the problems of inaction

security units used for civilian repression”).

¹⁸ *Id.* ¶ 16.

¹⁹ See NICHOLAS J. WHEELER, *SAVING STRANGERS: HUMANITARIAN INTERVENTION IN INTERNATIONAL SOCIETY* 261 (2000).

²⁰ See Francis X. Clines, *NATO Opens Broad Barrage Against Serbs as Clinton Denounces Yugoslav President*, N.Y. TIMES, Mar. 25, 1999, at A1 (describing launch of air campaign).

²¹ See, e.g., INDEP. INT’L COMM’N ON KOSOVO, *THE KOSOVO REPORT* 4 (2000) (concluding that the NATO bombing campaign was “illegal but legitimate”); Lloyd Axworthy, Canadian Minister of Foreign Affairs, Canada’s Action Against Landmines, Remarks to the Empire Club of Canada (June 28, 1999) (transcript available at <http://speeches.empireclub.org/59835/data>) (noting in the aftermath of the Kosovo intervention that “[t]he views of some of its members have made [the Security Council] less relevant and flexible than it should be in adapting to the new global realities”).

²² See, e.g., FRANCIS M. DENG ET AL., *SOVEREIGNTY AS RESPONSIBILITY: CONFLICT MANAGEMENT IN AFRICA* xvii–xix (1996) (proposing that sovereignty represents not a right to nonintervention, but rather a responsibility to govern effectively); Carsten Stahn, *Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?*, 101 AM. J. INT’L L. 99, 113 n.97 (2007) (discussing the concept of a duty to intervene (*devoir d’ingérence*), made popular by Bernard Kouchner, founder of Médecins Sans Frontières, which sought to guarantee nongovernmental organizations “unrestricted access to victims of humanitarian catastrophes, even without the consent of the territorial state”).

²³ RESPONSIBILITY TO PROTECT, *supra* note 9, at 81.

²⁴ *Id.* at xi.

²⁵ *Id.*

²⁶ *Id.*

and inadequacy of action that had plagued the 1990s, the report's key innovation was to shift the terms of the debate from questioning the right to intervene to declaring the responsibility to do so.

In articulating a responsibility to protect, the ICISS report envisioned three key duties. First, the responsibility to protect entails a responsibility to prevent "both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk."²⁷ Second, when the responsibility to prevent fails to avert a humanitarian crisis, a responsibility to react is triggered.²⁸ Third, after intervention, a responsibility to rebuild requires "full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert."²⁹ These three responsibilities arise from the ICISS's central concern: "the interest of all those victims who suffer and die when leadership and institutions fail."³⁰

Although the report articulated two levels of responsibility—that of the state and that of the international community—the responsibility of the international community has received far more attention than the responsibility of individual states, perhaps because the duty of a territorial state to protect its population and to govern effectively already has been solidified through the development of human rights law.³¹ It is now accepted that a state ought to protect its people, and that it ought not engage in atrocities against its own people. What happens when a state fails those responsibilities, however, is a more difficult question.

These challenges have stemmed more from political concerns than from legal ones. Despite its status as "one of the most potent . . . of all international principles," in the words of Vaughan Lowe, the principle of nonintervention in a state's internal affairs has not been a significant hurdle to the concept of intervention.³² Even before the ICISS was writing its report, the activities of the United Nations in the 1990s had begun to erode the traditional understanding that a state's domestic affairs were off-limits to foreign intervention. When violence erupted in Iraq, Somalia, and Haiti, the Security Council reframed domestic crises as matters of international peace and security and used its powers to authorize coercive interventions in each.³³ By the time the atrocities in Rwanda, Bosnia, and

²⁷ *Id.*

²⁸ *See id.* (defining responsibility to react as a responsibility "to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention").

²⁹ *Id.*

³⁰ *Id.* at 2.

³¹ *See, e.g.*, International Covenant on Civil and Political Rights art. 2.1, Dec. 16, 1966, T.I.A.S. No. 14,668, 999 U.N.T.S. 171 ("Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant. . . ."); Convention on the Prevention and Punishment of the Crime of Genocide art. 1, Dec. 9, 1948, 102 Stat. 3045, 78 U.N.T.S. 277 (requiring state parties to "prevent and punish" genocide); LOUIS HENKIN, *THE AGE OF RIGHTS* 6–10 (1996) (discussing obligations of governments under human rights law); *see also* Saira Mohamed, *A Neglected Option: The Contributions of State Responsibility for Genocide to Transitional Justice*, 80 U. COLO. L. REV. 327, 346–47 (discussing International Court of Justice decision that obligation to "prevent" the crime of genocide under Article 1 of the Genocide Convention entails an obligation not to perpetrate the crime of genocide).

³² VAUGHAN LOWE, *INTERNATIONAL LAW* 104 (2007).

³³ *See* S.C. Res. 940, ¶ 2, U.N. Doc. S/RES/940 (July 31, 1994) (recognizing the situation in Haiti as a "threat to peace and security in the region"); S.C. Res. 733, U.N. Doc. S/RES/733 (Jan. 23, 1992) (linking internal state failure in Somalia to regional stability and peace); S.C. Res. 688, ¶ 2, U.N. Doc.

Kosovo were taking place, the Council seemed to recognize that even internal crises had international consequences, so the Charter's restrictions on the Council's activities to matters of "international peace and security" did not present an insurmountable challenge.³⁴ The greater obstacle was convincing the members of the Security Council to use their powers, to sacrifice political capital, resources, or even lives to protect individuals in far-off places. The ICISS therefore sought to reframe questions about intervention in order to inculcate an understanding in all states, and especially in powerful states, that protecting individuals from harm was a matter of duty, regardless of particular national interests.

To convey this message, the ICISS carefully proposed a series of subsidiary responsibilities, beginning with the Security Council. Contrary to some characterizations, the responsibility to protect, as put forward in the original ICISS report, did not assert a right by any state to use military force to protect human rights in another state.³⁵ Instead, the report declared that, consistent with the U.N. Charter, any military intervention should be authorized by the Security Council,³⁶ an assertion followed with a reminder that the Security Council has a responsibility to exercise "clear and responsible leadership" and to undertake "prompt and effective engagement" when matters of international peace and security arise.³⁷ Nonetheless, the report acknowledged the reality that the Security Council is sometimes unable or unwilling to accept this responsibility, and for those cases, it proposed alternatives. First, regional organizations may have a role to play; although the ICISS conceded that "[i]n strict terms" military action by regional organizations requires Security Council authorization, the report acknowledged that past practice suggests that the Security Council has at times offered ex post facto approval of regional interventions.³⁸ Second, the ICISS supported a role for the General Assembly through the Uniting for Peace procedures, which allow the General Assembly to meet in an emergency special session when the Security Council is deadlocked. Even under these procedures, however, the ICISS cautioned that the General Assembly lacks authority to act on its own. Nonetheless, the report asserted that the General Assembly may still provide "an important additional form of leverage on the Security Council to encourage it to act decisively and

S/RES/0688 (Apr. 5, 1991) (demanding that Iraq end its repression of Kurds in Northern Iraq "as a contribution to remove the threat to international peace and security in the region"); U.N. SCOR, 50th Sess., 2982d mtg. at 58, U.N. Doc. S/PV.2982 (Apr. 5, 1991) (statement of U.S. representative that "[i]t is not the role or the intention of the Security Council to interfere in the internal affairs of any country," but noting that the "transboundary impact of Iraq's treatment of its civilian population threatens regional stability").

³⁴ U.N. Charter art. 24, para. 1 ("In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.").

³⁵ See, e.g., Alex J. Bellamy, *Whither the Responsibility to Protect: Humanitarian Intervention and the 2005 World Summit*, 20 ETHICS & INT'L AFF. 143, 151-52 (2006) (discussing argument by Russia that the ICISS report "countenanc[ed] unauthorized intervention" and thereby "risked undermining the [U.N.] Charter").

³⁶ RESPONSIBILITY TO PROTECT, *supra* note 9, at 53 ("We have made abundantly clear our view that the Security Council should be the first port of call on any matter relating to military intervention for human protection purposes.").

³⁷ *Id.* at 51-53.

³⁸ See *id.* at 53-54.

appropriately.”³⁹

The ICISS thus ultimately adhered to the prevailing interpretation of international law, which holds that military intervention is permissible only when undertaken with authorization by the Security Council; it did not advocate the use of military force by any individual state in response to a humanitarian crisis. Nonetheless, the report aimed to respond to the problems of Rwanda, Bosnia, and Kosovo by cautioning that the Security Council’s permanent members must fulfill their duties under the Charter, that the veto must not stand in the way of protecting human lives, and that the Security Council will lose legitimacy if it fails to fulfill its responsibility to act in the face of humanitarian crises. Ultimately, the goal of the ICISS was to convince the Security Council that individual interests must give way to the responsibility to protect.

The ideas in *The Responsibility to Protect* received strong support from the leadership of the United Nations. The Secretary-General’s High-Level Panel on Threats, Challenges and Change echoed the ICISS’s assertion that the debate over humanitarian intervention should focus not on “the ‘right to intervene’ of any State, but the ‘responsibility to protect’ of every State.”⁴⁰ The following year, the Secretary-General urged that the world should “move towards embracing and acting on the ‘responsibility to protect.’”⁴¹ States, however, responded more cautiously, and in the years after the ICISS presented its ambitious report, governments engaged in a contentious process of debate on the propriety and meaning of a responsibility to protect. The principle that emerged from this process differed significantly from the principle in its original form.

B. *Responsibility to Protect in the United Nations*

The responsibility to protect has undergone a series of debates and discussions in the U.N. system, with no real consensus emerging on the propriety of the principle—except, perhaps, that it should remain a principle and not be codified as any binding legal obligation. The first formal discussion among world leaders of the responsibility to protect took place during the 2005 World Summit, a meeting of some 170 heads of state billed as the “largest gathering of world leaders in history.”⁴² The World Summit ultimately endorsed a responsibility to protect in its Outcome Document, which was formally adopted by the General Assembly later the same year. The principle that the meeting endorsed, however, represented a severely scaled-back version of the ICISS’s original proposal.⁴³

The Outcome Document devoted two paragraphs to the responsibility to

³⁹ *Id.* at 53.

⁴⁰ High-Level Panel on Threats, Challenges & Change, *A More Secure World: Our Shared Responsibility*, ¶ 201, U.N. Doc. A/59/565 (Dec. 2, 2004).

⁴¹ U.N. Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights for All*, ¶ 132, U.N. Doc. A/59/2005 (Mar. 21, 2005).

⁴² Daily Press Briefing by the Office of the Spokesman for the Secretary-General (June 7, 2005), <http://www.un.org/News/briefings/docs/2005/db050706.doc.htm>.

⁴³ See Thomas G. Weiss, *R2P After 9/11 and the World Summit*, 24 WIS. INT’L L.J. 741, 750 (2006) (“The World Summit approved ‘R2P-lite.’”); see also Stahn, *supra* note 22, at 110 (concluding that the Outcome Document “leaves considerable doubt concerning whether and to what extent states intended to create a legal norm”).

protect. Echoing the ICISS's articulation of the responsibility of territorial states to protect their populations,⁴⁴ the first paragraph affirmed that "[e]ach individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity," a responsibility that "entails the prevention of such crimes."⁴⁵ The second paragraph recognized a responsibility on the part of the international community, but this responsibility was narrower than that envisioned by the ICISS. While the Outcome Document asserted a responsibility "to use appropriate diplomatic, humanitarian and other peaceful means . . . to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity,"⁴⁶ it did not go farther in asserting any responsibility to undertake coercive measures to protect populations from massive humanitarian crises. Instead, the document only expressed states' willingness to take action if necessary:

[W]e 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 manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.⁴⁷

The statement of "prepared[ness]" rather than responsibility signaled a retreat from the duty put forward in the original statement of the responsibility to protect, which had appeared in earlier drafts of the Outcome Document.⁴⁸ Primarily because of opposition from the United States, the Outcome Document was then scaled back to announce merely an inclination, a willingness to step in, rather than an obligation or even a political commitment.⁴⁹ Even this statement of willingness to intervene was confined to a narrower set of cases than the ICISS report had addressed. The Outcome Document restricted its statement of preparedness to situations in which "national authorities manifestly fail" to protect their populations, a higher bar to intervention than the ICISS proposal that the international community should step in when the territorial state "is unwilling or unable" to protect its own people.⁵⁰ Moreover, the World Summit limited its

⁴⁴ See *supra* note 9 and accompanying text (discussing ICISS proposal).

⁴⁵ 2005 World Summit Outcome, G.A. Res. 60/1, ¶ 138, U.N. Doc. A/60/L.1 (Sept. 20, 2005).

⁴⁶ *Id.* ¶ 139.

⁴⁷ *Id.*

⁴⁸ See Revised Draft Outcome Document of the High-level Plenary Meeting of the General Assembly of September 2005 Submitted by the President of the General Assembly, ¶ 118, U.N. Doc. A/59/HLPM/CRP.1/Rev.2 (Aug. 5, 2005) (stating that "we recognize our shared responsibility to take collective action . . . through the Security Council under Chapter VII of the UN Charter").

⁴⁹ See Letter from John R. Bolton, U.S. Permanent Representative to the United Nations, to President Ping, President of the United Nations Gen. Assembly (Aug. 30, 2005) [hereinafter Bolton Letter], available at http://www.responsibilitytoprotect.org/files/US_Boltonletter_R2P_30Aug05%5B1%5D.pdf; see also José E. Alvarez, *The Schizophrenias of R2P*, in HUMAN RIGHTS, INTERVENTION, AND THE USE OF FORCE 275, 276–77 (Philip Alston & Euan Macdonald eds., 2008) (noting limits of statement); Stahn, *supra* note 22, at 109 (interpreting announcement of "prepared[ness]" as an expression of "a voluntary, rather than a mandatory, engagement").

⁵⁰ Compare 2005 World Summit Outcome, *supra* note 45, ¶ 139, with RESPONSIBILITY TO PROTECT, *supra* note 9, at xi. See also Bellamy, *supra* note 35, at 165 (noting that this change

overall statement of support for a responsibility to protect to situations of genocide, war crimes, ethnic cleansing, or crimes against humanity, in contrast to the ICISS's broader vision of responsibility in any case of large-scale loss of life or large-scale ethnic cleansing.⁵¹ Finally, the Outcome Document refused to consider what should happen if the Security Council fails to act, and even failed to acknowledge that possibility. The ICISS, in contrast, proposed alternative routes through the General Assembly or through regional organizations and warned of the ill effects on the legitimacy of the Council in the event of inaction.

The responsibility to protect emerged from the World Summit significantly bruised. The statement of preparedness to take action was notable, especially given the suspicion that surrounded intervention in the aftermath of the Iraq War and the years of inaction in the face of mass atrocity in Darfur.⁵² Nonetheless, the statement of preparedness was not a statement of responsibility. Instead, it represented merely an announcement of a particular fact, barren of any normative weight, and weakened further by the qualification that that preparedness would give rise to action only "on a case-by-case basis."⁵³ Without a recognition of responsibility, the statement of preparedness was merely a declaration that at that time, the international community agreed that it would impose coercive measures in particular situations as it so decided. Indeed, a later president of the General Assembly explained that this language was chosen to preclude any understanding that the document was advocating "systematic responsibility."⁵⁴ This measured statement, clearly a compromise position, was a result of U.N. member states' disagreement on whether the Security Council *should* act in cases of mass atrocity, the question that lay at the core of the ICISS's efforts.⁵⁵

Perhaps because of its limitations, the World Summit's cautious approach to the responsibility to protect gained popularity. The year after the World Summit endorsed its limited version of the responsibility to protect, the Security Council took on the controversial concept. Reflecting its own disputes about intervention in mass atrocity,⁵⁶ the Security Council merely affirmed the Outcome Document's statement; it refused to go farther.⁵⁷ Some lauded the resolution as a "significant

"significantly rais[ed] the threshold" for intervention); ADELE BROWN, REINVENTING HUMANITARIAN INTERVENTION: TWO CHEERS FOR THE RESPONSIBILITY TO PROTECT? 24 (2008), available at <http://www.parliament.uk/briefing-papers/RP08-55.pdf>.

⁵¹ Compare 2005 World Summit Outcome, *supra* note 45, ¶ 138, with RESPONSIBILITY TO PROTECT, *supra* note 9, at xii.

⁵² See Alvarez, *supra* note 49, at 276–77 (acknowledging achievements of the creators of the concept and noting that "R2P was widely considered the only 'unequivocal success' of the World Summit of September 2005, where it was endorsed by both John Bolton, then US Ambassador to the UN, and the Non-Aligned Movement").

⁵³ 2005 World Summit Outcome, *supra* note 45, ¶139; see also Office of the President of the General Assembly, *Concept Note on Responsibility to Protect Populations from Genocide, War Crimes, Ethnic Cleansing and Crimes Against Humanity*, 3, U.N. Doc. A/63/958 (Sept. 9, 2009) [hereinafter *Concept Note*], available at www.un.org/ga/president/63/interactive/protect/conceptnote.pdf (emphasizing the "cautious" approach of the document based on the use of "qualifiers," including the "mere[]" statement of preparedness and a case-by-case approach).

⁵⁴ *Concept Note*, *supra* note 53, at 1.

⁵⁵ See Bellamy, *supra* note 35, at 151–52 (describing disagreements).

⁵⁶ For an account of the variety of views on the concept in the Security Council, see U.N. SCOR, 60th Sess., 5319th mtg., U.N. Doc. S/PV.5319 (Dec. 9, 2005) and U.N. SCOR, 60th Sess., 5319th mtg., U.N. Doc. S/PV.5319 (Resumption 1) (Dec. 9, 2005).

⁵⁷ S.C. Res. 1674, ¶ 4, U.N. Doc. S/RES/1674 (Apr. 26, 2006) ("[r]eaffirm[ing] the provisions . . .

statement of support” for the responsibility to protect, but it is better regarded as a limited statement of support for one part of the responsibility to protect.⁵⁸ The failure of the Council to go beyond an affirmation of the Outcome Document was no surprise in light of the six months of contentious debate that preceded the adoption of the resolution in the Security Council, during which Argentina, Brazil, China, the Philippines, and Russia cautioned against support for the responsibility to protect.⁵⁹ These countries’ views shaped the ultimate position of the Council. By “[r]eaffirm[ing]” the Outcome Document, the Security Council underlined the preparedness of the international community to take coercive measures without suggesting any sense of responsibility to undertake coercive action. The normative component of the ICISS’s original proposal had disappeared.

Despite disagreements within the membership of the United Nations, the Secretary-General has continued to advocate for the responsibility to protect, issuing a report in 2009 entitled *Implementing the Responsibility to Protect*. The report began with an understanding that the responsibility to protect principle, as outlined in the Outcome Document, “does not alter” but instead “reinforces the legal obligations of Member States to refrain from the use of force except in conformity with the Charter.”⁶⁰ Moving from the content of the responsibility to protect principle, the report called on the permanent members of the Security Council to refrain from exercising the veto on issues related to the responsibility to protect, and it highlighted the capacity of the General Assembly under the Uniting for Peace procedure to act when the Security Council fails to do so.⁶¹ To determine whether to formally adopt the Secretary-General’s report, the General Assembly held a debate on the responsibility to protect later that year. The President of the General Assembly at the time, Father Miguel d’Escoto Brockmann of Nicaragua, strongly criticized the responsibility to protect, rejecting the possibility of endorsing the Secretary-General’s report and proposing instead a debate on the very idea of a responsibility to protect.⁶² Delegates from several other states sided with d’Escoto, but during the debate, many delegates expressed some support of both the responsibility to protect principle and the Secretary-General’s report. Ultimately, the General Assembly endorsed the report, though in a very measured way. The resulting resolution “recall[ed]” the 2005 Outcome Document and merely “[ook] note of the Secretary-General’s report.” Instead of endorsing the responsibility to

of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity”). It should be noted that the resolution did not necessarily alter the legal status of the responsibility to protect. Although the Security Council has the power to make binding law under Article 25 of the U.N. Charter, *see* U.N. Charter art. 25 (“The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.”), it is difficult to characterize this statement as a decision with which member states must comply. Accordingly, the resolution is more appropriately considered a political commitment rather than a binding legal obligation.

⁵⁸ ALEX J. BELLAMY, *RESPONSIBILITY TO PROTECT: THE GLOBAL EFFORT TO END MASS ATROCITIES* 133 (2009).

⁵⁹ *See* U.N. SCOR, 61st Sess., 5577th mtg. at 2, U.N. Doc. S/PV.5577 (Dec. 4, 2006); *see also* BELLAMY, *supra* note 58, at 133.

⁶⁰ U.N. Secretary-General, *Implementing the Responsibility to Protect*, ¶ 3, U.N. Doc. A/63/677 (Jan. 12, 2009).

⁶¹ *Id.* ¶¶ 61, 63.

⁶² *See Concept Note*, *supra* note 53, at 1 (“Colonialism and interventionism used responsibility to protect arguments.”).

protect, the General Assembly “[d]ecide[d] to continue its consideration” of the principle.⁶³

C. *The Current State of the Responsibility to Protect*

This account of the transformation of the responsibility to protect from the original ICISS proposal to the more limited incarnation adopted in the General Assembly and Security Council shows the points of agreement and discord in discussions of the principle. Governments agree that states have a responsibility to protect their own populations; that much has been replicated from the original ICISS document. The responsibility of the international community, in contrast, has been reduced from its original form. It originated as a moral and political duty, a duty that in the ICISS’s formulation affects legitimacy and authority, existing independent of state interests. That duty, however, has failed to attain sufficient support of governments in the context of coercive action. Instead, states are willing to express only their readiness to intervene, without any sense of obligation or even consistent commitment to do so. As a mere statement of willingness to intervene in some cases, this version of the responsibility to protect might well be compatible with the international community’s responses to Rwanda, Bosnia, and Kosovo, the experiences that drove the ICISS to propose the principle in the first place. When it comes to the international community, there is little responsibility remaining in the responsibility to protect.

II. THE RESPONSIBILITY TO PROTECT AND THE LIBYA INTERVENTION

Despite the international community’s failure to wholly embrace the concept of a responsibility to protect, the principle has remained a central point of discussion in debates about humanitarian intervention, most recently in the response to violence in Libya. Indeed, the decision by the U.N. Security Council to authorize military intervention in Libya has been greeted in political and media circles as a triumph of the responsibility to protect. Gareth Evans asserted that the responsibility to protect now enjoys an “overwhelming consensus, at least on basic principles.”⁶⁴ *The Economist* declared that the Libya intervention “set the stage for the first full-blown test” of the principle.⁶⁵ No matter how much controversy the principle had stirred up during General Assembly debates and in negotiations on drafting Security Council resolutions, the decision to intervene in Libya was seen as a sign that the principle had prevailed, and that at least in this case, the controversy was minimal.

While the intervention may appear at first glance to be a shining moment for the responsibility to protect, a closer examination reveals both the narrowness of the principle as represented in the Libya intervention and the limited role the responsibility to protect appeared to play in the U.S. government’s decision to support military action. This Part analyzes the responsibility to protect as it was

⁶³ G.A. Res. 63/308, at 1, U.N. Doc. A/RES/63/308 (Oct. 7, 2009).

⁶⁴ Evans, *supra* note 4.

⁶⁵ *The Lessons of Libya*, *supra* note 2, at 67.

manifested in the decision to initiate military intervention in Libya, examining both the international justifications and those of the United States. Because this Part is primarily interested in how the decision was represented to the public, it looks exclusively at public remarks. I do not suggest in this focus that these public statements necessarily represent the genuine justifications for the decision to initiate military action; rather, I look at them to assess the consequences of celebrating as “responsibility” a decision that was publicly justified as a choice.

A. Responsibility to Protect in Security Council Resolution 1973

After isolated antigovernment protests in Libya escalated into widespread violence throughout the country, the Security Council began to consider options for how to respond. It first imposed targeted sanctions and referred the situation in Libya to the International Criminal Court,⁶⁶ but when Colonel Muammar al-Qaddafi vowed to show “no mercy and no pity” to the rebels, the Security Council turned to military action, announcing in Resolution 1973 the imposition of a no-fly zone in Libya and authorizing member states to use armed force to enforce the no-fly zone and to protect civilians.⁶⁷ The resolution was noteworthy for several reasons. First, the very fact of its successful adoption surprised observers, especially in light of the history of inaction by the Council in other crises and the objections expressed by China and Russia, which both chose to abstain despite their capacity to veto.⁶⁸ Second, the resolution declined to include details on how the intervention was to be carried out. The authorization of use of “all necessary measures” by U.N. member states left open whether those intervening states would eventually use ground troops in Libya.⁶⁹ Finally, the rationale for intervention seemed to mark a significant embrace by the Security Council of humanitarian intervention.⁷⁰

This embrace, however, had its limits. Resolution 1973 made no mention of the international community’s responsibility to protect. Instead, the resolution cited only Libya’s responsibility to protect its own population.⁷¹ Commentaries like those of *The Economist*, which claimed that “no mission has been authorised by the UN Security Council that so explicitly cited the new principle,”⁷² failed to note that

⁶⁶ See S.C. Res. 1970, at 2–5, U.N. Doc. S/RES/1970 (Feb. 26, 2011).

⁶⁷ Dan Bilefsky & Mark Landler, *As U.N. Backs Military Action in Libya, U.S. Role Is Unclear*, N.Y. TIMES, Mar. 18, 2011, at A1.

⁶⁸ See U.N. SCOR, 66th Sess., 6498th mtg. at 8, 10, U.N. Doc. S/PV.6498 (Mar. 17, 2011); see also Michael Ignatieff, *The Duty to Rescue*, NEW REPUBLIC, Sept. 24, 2008, at 41 (book review) (predicting that Russian and Chinese power “makes it unlikely that the Security Council will authorize humanitarian interventions again”).

⁶⁹ S.C. Res. 1973, ¶¶ 4, 8, U.N. Doc. S/RES/1973 (Mar. 17, 2011); see also Karen DeYoung & Peter Finn, *Questions Are Raised About Involvement, Goals*, WASH. POST, Mar. 21, 2011, at A1 (discussing “barrage of questions” faced by Administration officials about the scope of the U.S. involvement in the Libya operations).

⁷⁰ See Patrick, *supra* note 7 (noting that “Qaddafi’s utter defeat seemingly put new wind in the sails of humanitarian intervention”).

⁷¹ S.C. Res. 1973, pmb1., U.N. Doc. S/RES/1973 (Mar. 17, 2011) (“[r]eiterating the responsibility of the Libyan authorities to protect the Libyan population”); see also S.C. Res. 1970, pmb1., U.N. Doc. S/RES/1970 (Feb. 26, 2011) (“[r]ecalling the Libyan authorities’ responsibility to protect its population”).

⁷² *The Lessons of Libya*, *supra* note 2, at 67; see also David Rieff, *We Have No Idea What We Are Doing in Libya*, NEW REPUBLIC (July 21, 2011, 12:00 a.m.), <http://www.tnr.com/article/against-the-current/92259/libya-obama-qaddafi-un-r2p-intervention> (explaining responsibility to protect as a

the Council “explicitly cited” only one of the two pieces of the responsibility to protect. Even in the Security Council’s discussion of the resolution, there was little focus on the responsibility of the international community. Only the representative of France acknowledged the subsidiary responsibility of the international community, warning that “[e]very hour and day that goes by increases the burden of responsibility on our shoulders” and noting that not only state interests, but also “duty” required the Council to take action.⁷³ For the rest of the delegates in the Council chambers that day, the only responsibility to be discussed was that of the Libyan government.⁷⁴

B. Responsibility to Protect and the United States

Although the United States did not mention the responsibility of the international community in the Security Council meeting during which the decision to impose a no-fly zone was reached, President Obama made headlines when he justified the intervention to the American people by reference to “a responsibility to act.”⁷⁵ This was not the first time the Obama Administration had advocated a responsibility to protect vulnerable populations. In his Nobel address, President Obama argued that “all responsible nations must embrace the role that militaries with a clear mandate can play” to prevent violence against civilians or to stop civil wars.⁷⁶ In her first address before the U.N. Security Council in 2009, U.S. Permanent Representative Susan Rice avowed that the United States “takes . . . seriously” the responsibility of the international community to protect civilians from violations of international humanitarian law.⁷⁷ At the International Peace Institute later that year, Ambassador Rice gave a speech devoted to the responsibility to protect, in which she described the principle as “bold” and “important” and expressed the support of the United States for the principle.⁷⁸ Perhaps most significantly, the United States National Security Strategy stated that the United States, with its partners in the United Nations, had endorsed the concept of a responsibility to protect.⁷⁹

The Obama Administration’s mere expression of support for the principle marked a significant change from the Bush Administration,⁸⁰ which had supported

principle imposing a duty on outside powers to intervene when a nation is committing crimes against its population and asserting that “R2P is cited explicitly in U.N. Security Council Resolution 1973”).

⁷³ U.N. SCOR, 66th Sess., 6498th mtg. at 3, U.N. Doc. S/PV.6498 (Mar. 17, 2011).

⁷⁴ See generally *id.* (recording remarks of delegates).

⁷⁵ See, e.g., Ben Feller, *Our “Responsibility,”* CHI. SUN TIMES, Mar. 29, 2011, at 9; Scott Wilson, *Obama: U.S. Had Responsibility to Act in Libya*, WASH. POST, Mar. 28, 2011, at A1.

⁷⁶ President Barack Obama, Remarks by the President at the Acceptance of the Nobel Peace Prize (Dec. 10, 2009) (transcript available at www.whitehouse.gov/the-press-office/remarks-president-acceptance-nobel-peace-prize).

⁷⁷ Rice, *supra* note 6.

⁷⁸ Ambassador Susan E. Rice, U.S. Permanent Representative to the United Nations, Remarks on the UN Security Council and the Responsibility to Protect, at the International Peace Institute Vienna Seminar (June 15, 2009) (transcript available at <http://usun.state.gov/briefing/statements/2009/125977.htm>).

⁷⁹ THE WHITE HOUSE, *supra* note 6, at 48 (noting that the United States, along with all U.N. members, has endorsed the concept of the responsibility to protect).

⁸⁰ See S. Neil Macfarlane, Carolin J. Thickling & Thomas G. Weiss, *The Responsibility to Protect: Is Anyone Interested in Humanitarian Intervention?*, 25 THIRD WORLD Q. 977, 983 (2004)

the General Assembly and Security Council endorsements of responsibility to protect but also led the charge in diluting those statements.⁸¹ Thus, when the Obama Administration embraced what appeared to be a responsibility to protect principle in advocating for intervention in Libya, the policy seemed to mark a shift in the U.S. approach. A deeper examination of the U.S. position expressed in public remarks, however, reveals that although glimpses of the responsibility to protect appear in the justifications for intervention, the United States characterized its motivation for the action as guided primarily by U.S. interests and only secondarily by a sense of responsibility regardless of interest.

In his first speech on the Libyan intervention after the imposition of the no-fly zone, President Obama outlined his approach to the situation. Obama indeed cited a “responsibility to act,” but he did not frame this as the responsibility to protect doctrine does—as a responsibility to act when innocent persons are subjected to massive violence. Instead, Obama asserted that the responsibility to act is triggered “when our interests and values are at stake.” “That,” he said, “is what happened in Libya.”⁸² Obama went on to emphasize the unique characteristics of this conflict that made it appropriate for intervention. Anticipating concerns that involvement in Libya would invite U.S. military action in all situations where “innocent civilians face brutal violence at the hands of their government,”⁸³ he cautioned that the circumstances compelling intervention were unique: “In this particular country” and “at this particular moment,” the United States “had a unique ability to stop th[e] violence” in Libya.⁸⁴ Far from embracing a responsibility to protect, Obama explained that the exceptional situation in Libya called for intervention, while other crises would not. The clear emphasis of the justification was on the United States—the capacity of the United States to intervene and the national interest of the United States in doing so.

This is not to suggest that a duty to prevent the potential suffering of others did not play into Obama’s stated justification. After outlining the “particular” and “unique” circumstances that called for intervention, he discussed “America’s responsibility as a leader and—more profoundly—[its] responsibilities to our fellow human beings.” This is the moment in which the responsibility to protect shines—the expression of a belief that every nation has a moral responsibility to put aside its own narrow interests and work for the common good. Nonetheless, this part of the

(“[T]he Bush Administration does not and will not accept the substance of the [ICISS] report or support any formal declaration or resolution about it.”); *Responsibility to Protect: An Idea Whose Time Has Come—and Gone?*, *ECONOMIST*, July 23, 2009, at 30 (“Under the Bush administration, both the Pentagon and the State Department were intensely wary of signing up to anything that might bind them to take draconian action in the name of humanity.”).

⁸¹ See Bolton Letter, *supra* note 49; Theresa Reinold, *The United States and the Responsibility to Protect: Impediment, Bystander, or Norm Leader?*, 3 *GLOBAL RESPONSIBILITY TO PROTECT* 61, 66 (2011) (explaining that the Bush Administration “aimed at watering down the substantial obligations that R2P—at least in its original version—would impose on states”); Nicholas Wheeler, *A Victory for Common Humanity? The Responsibility to Protect after the 2005 World Summit*, 2 *J. INT’L L. & INT’L REL.* 95, 101 (2005) (discussing Bush Administration opposition to expression of responsibility to intervene during World Summit).

⁸² President Barack Obama, Remarks by the President in Address to the Nation on Libya (Mar. 28, 2011) (transcript available at <http://www.whitehouse.gov/photos-and-video/video/2011/03/28/president-obama-s-speech-libya#transcript>).

⁸³ *Id.* (“[S]ome question why America should intervene at all . . . [T]hey argue that . . . America should not be expected to police the world.”).

⁸⁴ *Id.*

remarks was a side point at best, less than one minute in a speech of more than twenty-six.⁸⁵ Moreover, instead of letting moral responsibility stand on its own as a convincing explanation, Obama buttressed that point by explaining the United States' "strategic interest" in preventing violence in Libya in order to prevent refugee flows into neighboring countries, to dispel the notion that "repressive leaders" could use "violence . . . to cling to power," and to preserve the "credibility" of the U.N. Security Council "to uphold global peace and security."⁸⁶ Obama emphasized the "price for America" of a failure to intervene, exactly the consideration that the responsibility to protect sought to subordinate. Similarly, in his own remarks a few days later, State Department Legal Advisor Harold Koh called attention to Qaddafi's failure to fulfill his responsibility to protect, but not to the United States' corresponding responsibility. Instead, he framed the rationale for U.S. involvement in terms of interests, warning that the failure of the Libyan government could lead to instability in the region with "dangerous consequences to the national security interests of the United States."⁸⁷ From this perspective, the work of protecting individuals around the world is important to the United States neither because others have a right not to suffer nor because states have a responsibility to prevent that suffering, but rather because enhancing those individuals' security enhances that of the United States.

The U.S. justification for intervention thus emphasizes not responsibility, but interest. This is not necessarily bad news for those who support intervention in humanitarian crises. That the United States views intervention as within the national interest is something of a triumph in itself. If the U.S. government sees the rights of others as affecting its national interests, then it is more likely that the United States will use its power and resources to protect those rights. Nonetheless, while this may well be an accurate assessment of how states make decisions to intervene, it is not a manifestation of the responsibility to protect. This is, rather, a confluence of American interests with circumstances under which the responsibility to protect doctrine calls for intervention.

It should come as no surprise that the U.S. government was careful not to voice deep support for the responsibility to protect as a justification for its approach to Libya. Especially after the war in Iraq, the American public is reluctant to go to war to help other nations. Whereas 47% of Americans polled in 2004 listed genocide prevention as a top foreign policy priority, only 36% listed it in 2008; similarly, protecting human rights declined as a top priority from 33% in 2004 to 25% in 2008.⁸⁸ To convince a war-weary public of the need for military

⁸⁵ *See id.*

⁸⁶ *Id.* Similarly, in his weekly radio address given the week before the speech, Obama explained the intervention as necessary both because "innocent people [we]re being brutalized" and because "Qaddafi threaten[ed] a bloodbath that could destabilize an entire region." President Barack Obama, Weekly Address: The Military Mission in Libya (Mar. 26, 2011) (transcript available at <http://www.whitehouse.gov/photos-and-video/video/2011/03/26/weekly-address-military-mission-libya>).

⁸⁷ Harold Hongju Koh, Legal Advisor, U.S. Department of State, Statement Regarding Use of Force in Libya (Mar. 26, 2011) (transcript available at <http://www.state.gov/s/l/releases/remarks/159201.htm>). The language in Koh's address echoes that of the President's letter to Congress on the commencement of military activities. *See* Letter to Congressional Leaders Reporting on the Commencement of Military Operations Against Libya, 2011 DAILY COMP. PRES. DOC. 1 (Mar. 21, 2011).

⁸⁸ *Declining Support for Public Engagement*, PEW RES. CENTER FOR PEOPLE & PRESS (Sept. 24,

intervention in a far-away place, U.S. officials had to frame the intervention as necessary primarily to protect U.S. strategic interests, and as an exercise of altruism or a statement on American character only secondarily.⁸⁹ In light of its own responsibilities to the American people, not to mention the constitutional requirements restraining its use of force, the Obama Administration surely had to minimize the importance of the rights of others in the decision to intervene.⁹⁰

Advocates of a responsibility to protect also might welcome the United States' cautious approach to the responsibility to protect principle, given the great concern on the part of many states that the responsibility to protect is a Western tool, an opportunity for abuse, a pretext for colonialist intervention.⁹¹ Nonetheless, an accurate description of the U.S. justification in its public remarks for intervention in Libya should recognize that what the United States has advocated is distinct from the responsibility to protect. It is perhaps a halfway point between the ICISS proposal and the version of the responsibility to protect that emerged from the United Nations. While the United States would not advocate a responsibility to protect regardless of national interest, as put forward in the ICISS report, President Obama did acknowledge the existence of such a responsibility, while cautioning that that responsibility should translate into action only when national interests demand.

III. DISTINGUISHING AND ALIGNING THE RESPONSIBILITY TO PROTECT AND INTEREST IN INTERVENTION

Simply as a matter of descriptive accuracy, it is important to recognize that the justifications put forward by the United States for intervening in Libya demonstrate a preoccupation with national interests, with only a secondary focus on a sense of duty to intervene. The recognition that violence inside another state triggers some responsibility on the part of the United States represents a step toward the goals of the responsibility to protect, but it is not an invocation of the responsibility to protect itself, despite the proclamations of some. This distinction also carries some normative weight. This Part explores the implications of characterizing the U.S. decision to intervene in Libya as a triumph for the responsibility to protect. Because it is important to separate a duty to intervene from an interest in intervention, it argues that proponents of the responsibility to protect should recognize the U.S. government's support for intervention as an advancement of the principle, but not as an absolute victory.

2008), <http://www.people-press.org/2008/09/24/declining-public-support-for-global-engagement/>.

⁸⁹ For another discussion of the balance of geostrategic interests and values in the Libya intervention, see Jon D. Michaels, *Private Military Firms, The American Precedent, and the Arab Spring*, 48 STAN. J. INT'L L. 277, 285–87 (2012).

⁹⁰ See Authority to Use Military Force in Libya, 35 Op. O.L.C. 6 (2011), <http://www.justice.gov/olc/2011/authority-military-use-in-libya.pdf> (explaining that the president may use military force without congressional authorization “for the purpose of protecting important national interests”).

⁹¹ See MATTHEW C. WAXMAN, COUNCIL ON FOREIGN REL., INTERVENTION TO STOP GENOCIDE AND MASS ATROCITIES 23 (2009) (“[S]ome states are intent on branding [the responsibility to protect] as a U.S. or colonialist tool.”). See generally Ryan Goodman, *Humanitarian Intervention and Pretexts for War*, 100 AM. J. INT'L L. 107 (2006) (responding to the “overriding concern that states would use the pretext of humanitarian intervention to wage wars for ulterior motives”).

A. Interests and Duty in the U.S. Decision to Intervene

In order to preserve the core position of the responsibility to protect principle—that states should intervene in humanitarian crises regardless of their national interests—it should be acknowledged that the United States articulated primarily an interest in intervention in Libya, and only secondarily a sense of a responsibility to do so. For proponents of a responsibility to protect, it may be a triumph that U.S. government officials viewed the violence against civilians in Libya as a matter of national interest. But there is a danger of celebrating this position as a triumph for the responsibility to protect, a danger that is illuminated when we consider a situation in which intervention does not raise vital national interests. In those cases, violations of rights will not be enough to convince uninterested states to take notice, and mass atrocities will continue unabated. The decision to intervene because “this particular moment” and “this particular country” call for it fails to account for the risks of situations like the genocide in Rwanda, when the particular moment and the particular country generated no particular interest in stopping the massacre of hundreds of thousands. Until protecting foreign individuals is seen as a vital national interest, the responsibility to protect seeks to instill in governments that they must intervene despite the lack of interest.⁹² Otherwise, the only beneficiaries of the responsibility to protect will be those states that matter, whether because of oil or location or the interest of the intervening state in regime change or its need to show its military might. Thus, when the United States justified intervention on the basis of its own national interest in stopping instability in the region, or sending a message to other dictators, it was failing to operate by the principle of the responsibility to protect. The responsibility to protect would have the United States support intervention regardless of that national interest.

Moreover, to describe what happened in Libya as an exercise of the responsibility to protect takes away from the true focus of the doctrine: the human suffering that must be prevented or stopped because every person, regardless of citizenship or territory, possesses certain inviolable human rights.⁹³ Obama has expressed support for the rights of the Libyan people,⁹⁴ but these rights form a secondary basis for justification rather than a primary one. The responsibility to protect is a doctrine inspired by rights; it derives from a right to be protected against arbitrary deprivations of life, against crimes against humanity, against genocide.

⁹² See BELLAMY, *supra* note 58, at 23 (explaining position that a body with authority to intervene should “place the common good ahead of the national interests of its member states”).

⁹³ See Kok-Chor Tan, *The Duty to Protect*, in NOMOS XLVII: HUMANITARIAN INTERVENTION 84, 91 (Terry Nardin & Melissa S. Williams eds., 2006) (“The duty to protect derives from the commitment to human rights.”).

⁹⁴ President Barack Obama, Remarks by the President on Libya (Feb. 23, 2011) (transcript available at <http://www.whitehouse.gov/the-press-office/2011/02/23/remarks-president-libya>) (“The United States also strongly supports the universal rights of the Libyan people. That includes the rights of peaceful assembly, free speech, and the ability of the Libyan people to determine their own destiny. These are human rights. They are not negotiable. They must be respected in every country.”); Obama, *supra* note 82 (“I believe that this movement of change cannot be turned back, and that we must stand alongside those who believe in the same core principles that have guided us through many storms: our opposition to violence directed at one’s own people; our support for a set of universal rights, including the freedom for people to express themselves and choose their leaders; our support for governments that are ultimately responsive to the aspirations of the people.”).

The justification for force put forward by the United States, however, had little to do with rights. When Obama characterized “a Libya that belongs not to a dictator, but to its people” as merely a “goal,” he chipped away at the principle enshrined in human rights law that a Libya that is free of dictators is a right of the people, a right that gives rise to the responsibility to protect. When Obama asserted that these are “problems worth solving,” he suggested that the relative weight of the costs and benefits of intervention is what should drive action, not the duties that arise from the rights of the persons suffering from those “problems.”⁹⁵ They are indeed problems worth solving, but to accept the consequentialist U.S. approach to intervention as a manifestation of the responsibility to protect would distance the principle from its foundation: the right to be protected irrespective of the costs or benefits of protecting those rights.

Finally, framing the decision to intervene in Libya as a manifestation of the responsibility to protect risks reducing the principle to a mere right to intervene. By celebrating the U.S. decision to intervene as a responsibility to protect moment, the responsibility to protect becomes identified as an opportunity to protect, to be exercised whenever states see an interest in doing so. To the extent that the responsibility to protect serves to legitimate intervention, the identification of an interests-based intervention as a manifestation of a responsibility-based intervention could result in legitimating interventions that are undertaken solely to satisfy national interests. In light of the great concern on the part of many states that the responsibility to protect principle will allow powerful states to disguise their imperialist adventures in the cloak of altruistic responsibility, this conflation of terms around the Libya intervention may exacerbate fear and suspicion of the responsibility to protect. Those who seek further advancement of the principle thus should be wary of identifying it with decisions said to be based on ability and willingness of states to intervene, rather than on a duty of states to intervene.

Of course, these judgments are based on the stated explanations for the intervention. Perhaps a deep sense of moral duty did lie at the heart of the decision to intervene, and it was political expediency that motivated the talking points’ subordination of the responsibility to protect to other interests. This, too, is significant, as it raises important questions about whether a responsibility to protect can be sold to domestic publics.⁹⁶ Instead of a triumph, Libya might be a sign of the principle’s weakness. Even if the responsibility to protect does motivate world leaders, they cannot yet admit it.

All is not lost, however. Domestic publics are right to be wary of military intervention, in light of the destruction and costs that wars inevitably impose. If we are to understand the Obama Administration’s choice to understate the role the responsibility to protect played in its decision to support intervention as a political calculation rather than a reflection of the real judgments made, then proponents of the principle should take note of the public’s distaste for military intervention and consider putting more emphasis on the part of the responsibility to protect that do

⁹⁵ See Tan, *supra* note 93, at 91 (“Taking rights seriously entails taking seriously the duties generated by these rights.”).

⁹⁶ For a broader discussion of the connection between public opinion and uses of force, see JON WESTERN, *SELLING INTERVENTION AND WAR: THE PRESIDENCY, THE MEDIA, AND THE AMERICAN PUBLIC* (2005).

not involve military action—the often forgotten responsibility to prevent.⁹⁷ This might be the key not only to convincing world leaders to confess their belief in a responsibility to protect, but also, and more importantly, to compelling states to undertake intervention early, to take note of budding human rights crises, and to step in before gunships or ground troops are needed.

B. Transforming Duty into Interest

The responsibility to protect principle is at its core a challenge to foreign policy guided by national interests. Whether a utopian ideal that will never come to affect state preferences or a step on the way to an accepted norm of intervention in international law, the principle envisions a duty that “must transcend singular interests and become a core principle of humanity across all civilizations.”⁹⁸ To the ICISS, the tragedies of the 1990s could be overcome only by states recognizing that they could not let their narrow national interests stand in the way of adequate intervention in humanitarian crises. That said, the ultimate goal of the responsibility to protect movement might be to reframe states’ national interests to *include* protecting individuals in foreign nations, whose suffering presents no direct consequences to the intervening state. Rather than merely overcoming national interests that call for inaction, a triumphant responsibility to protect would shift the justifications for intervention to doing so because of a national interest in protecting the rights of citizens in foreign states.

President Obama made some gestures toward a statement that the national interest in intervention was rooted in something besides a need to stem refugee flows or deter violent dictators. During his March 2011 address to the nation, he proclaimed that beyond those security interests, intervention was necessary to protect the character of the American people and the identity of the United States as a country that does not turn its back on those in need, perhaps the most pronounced declaration in recent American history of a moral responsibility to respond to suffering across the globe. That is certainly a statement of interests that the responsibility to protect doctrine would and should support. Indeed, this might be a step toward that ultimate goal of envisioning a duty to intervene as an integral part of national interests. Nonetheless, this was a secondary reason, a footnote to President Obama’s main argument. It shows a step toward a triumphant responsibility to protect in U.S. policy, but only a step. The decision of the United States to support intervention in Libya has not ended the argument over a responsibility to protect, but it does suggest that the argument will continue.

CONCLUSION

This analysis does not intend to suggest that the responsibility to protect had no role in the decision to intervene in Libya. Although it remains merely a

⁹⁷ See *supra* text accompanying note 27 (describing ICISS formulation of the responsibility to prevent).

⁹⁸ U.N. SCOR, 61st Sess., 5577th mtg. at 3, U.N. Doc. S/PV.5577 (Dec. 4, 2006) (remarks of U.N. Undersecretary-General for Humanitarian Affairs and Emergency Relief Coordinator Jan Egeland).

concept, with no independent legal force, the principle of a responsibility to protect undoubtedly has emerged in world politics with an unusual amount of engagement, discussion, and prominence. The intervention in Libya has brought this principle to the forefront of debates about the proper role of the international community in general, and of the United States in particular, in internal crises happening in far-off places. The decision of the United States to support intervention in Libya, however, should be recognized for what it was: a decision defended primarily by the national interest and only secondarily by a sense of responsibility. For proponents of the responsibility to protect, this is a positive step, surely, but not a triumph; the avowed emphasis of this intervention was on the role of the intervener—the state that chooses to turn its back or step into the fray—rather than on the individuals who deserve protection from murder, rape, torture, and tyranny. The decision, moreover, should also be a wake-up call. Any assessment of the role that the responsibility to protect played in motivating the intervention must take note of the constraints that governments face not only in committing their nations to war, but also in convincing their publics that military action is necessary. A realistic analysis of the responsibility to protect and the Libya intervention—one which recognizes not only the advancement, but also the limitations of the principle—can help to maintain the distinction between interests and duty and help to influence states to take notice of humanitarian crises not only when singular national interests compel intervention, but also when they do not.

