

RESPONSIBILITY TO PROTECT: MORAL TRIUMPH OR GATEWAY TO ALLOWING POWERFUL STATES TO INVADE WEAKER STATES IN VIOLATION OF THE U.N. CHARTER?

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I. INTRODUCTION

During his Nobel Peace Prize Lecture in 2001, former U.N. Secretary-General Kofi Annan stated, “[t]he sovereignty of States must no longer be used as a shield for gross violations of human rights.”¹ However, is the concept of humanitarian intervention now being used as a sword for violating the sovereignty of states?

The United Nations was created after World War II in the hopes that it would prevent future wars.² This goal was to be achieved by mandating that Member States respect the sovereignty of other states so that powerful states could not invade weaker states.³ Despite this deference to sovereignty, the concept of humanitarian intervention lingered in the background and was occasionally used to justify invading sovereign states in the fifty years after World War II.⁴ Although the concept of humanitarian intervention remained controversial, it greatly increased in popularity after the humanitarian crisis in Kosovo in 1999.⁵ As a result, the International Commission on Intervention and State Sovereignty (ICISS) issued a report entitled “The Responsibility to Protect” (ICISS Report).⁶ The ICISS Report asserts that sovereignty gives states a responsibility to protect their inhabitants, and if they fail to do this, then other states have a responsibility to protect the inhabitants of that state through the “Responsibility to Protect”

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1. Kofi Annan, *Nobel Lecture*, NOBEL PRIZE.ORG (Dec. 10, 2001), http://www.nobelprize.org/nobel_prizes/peace/laureates/2001/annan-lecture.html.

2. *UN at a Glance*, UNITED NATIONS, <http://www.un.org/en/aboutun/index.shtml> (last visited Feb. 2, 2012).

3. Jean Bricmont, Brussels Tribunal Executive Committee, Talk Given Before the General Assembly of the United Nations: A More Just World and the Responsibility to Protect (July 23, 2009), <http://www.brussellstribunal.org/R2P.htm>.

4. Peter Hilpold, *The Duty to Protect and the Reform of the United Nations – A New Step in the Development of International Law?*, in 10 MAX PLANCK YEARBOOK OF UNITED NATIONS LAW 43 (A. von Bogdandy & R. Wolfrum eds., 2006).

5. *Id.* at 44.

6. Int’l Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Dec. 2001) [hereinafter ICISS Report].

doctrine.⁷ In 2005, the U.N. General Assembly (General Assembly) approved the concept of the Responsibility to Protect,⁸ but did not expressly endorse the contents of the ICISS Report.⁹ The General Assembly created an extremely flexible test for determining when humanitarian interventions are justified under the Responsibility to Protect.¹⁰ Under this test, humanitarian interventions are authorized when peaceful tactics are insufficient and the state is “manifestly failing” to protect its people from genocide, war crimes, ethnic cleansing, or crimes against humanity.¹¹

In March of 2011, the U.N. Security Council (Security Council) employed the Responsibility to Protect doctrine to authorize Member States to create a no-fly zone in Libya and to use military force to protect civilians.¹² Acting under the authority of the Security Council, NATO forces helped the rebel Libyan army overthrow Colonel Muammar Gadhafi’s regime.¹³ This Note will argue that, as shown by the intervention in Libya, the standard that the General Assembly created to determine when humanitarian interventions are authorized is too flexible, allowing states to invade sovereign nations under the pretext that the invasion is a humanitarian intervention.

Part II will explore the original meaning of sovereignty in the U.N. Charter; explain why the Responsibility to Protect was created; and analyze how the Responsibility to Protect seeks to alter the accepted definition of sovereignty under international law and the potential ramifications of this new definition of sovereignty. Part III will discuss the standards for determining when the Security Council can authorize an intervention pursuant to the Responsibility to Protect; describe the conflict and intervention in Libya in 2011; and analyze whether the intervention in Libya was warranted pursuant to the Responsibility to Protect. Part IV will describe the likely motives of the states that intervened in Libya. Part V will suggest alterations to the standard created by the General Assembly for determining when an intervention is authorized. Part VI will conclude that although humanitarian interventions are noble causes, a stricter standard than that adopted by the General Assembly is necessary to prevent states from invading other sovereign states under the pretense that they are engaging in humanitarian

7. *Id.* at XI.

8. *Responsibility to Protect*, INTERNATIONAL CRISIS GROUP, <http://www.crisisgroup.org/en/publication-type/key-issues/thematic/responsibility-to-protect.aspx> (last visited Dec. 15, 2011).

9. *The Responsibility to Protect in the Case of Humanitarian Crises: An Emerging Norm of International Law?*, INTERNATIONAL BAR ASSOCIATION, 3, available at http://www.ibanet.org/Human_Rights_Institute/About_the_HRI/HRI_Activities/Responsibility_to_Protect.aspx (linking to a PDF of the article under “Related Documents”).

10. U.N. Secretary-General, *Implementing the Responsibility to Protect: Report of the Secretary-General*, ¶ 49, U.N. Doc. A/63/677 (Jan. 12, 2009).

11. *Id.*

12. See S.C. Res. 1973, U.N. Doc. S/RES/1973 (Mar. 17, 2011) [hereinafter S/RES/1973] (permitting Member States to enforce a no-fly zone across Libya and take “all necessary measures” to ensure the safety of civilians).

13. Vivienne Walt, *Why Syria Won't Get the Libya Treatment from the West*, TIME (Mar. 18, 2012), available at <http://www.time.com/time/world/article/0,8599,2109372,00.html>.

interventions.

II. THE TRANSITION FROM DEFERENCE TO SOVEREIGNTY TO THE CREATION OF THE RESPONSIBILITY TO PROTECT

A. *The United Nations' Initial Deference to Sovereignty*

The United Nations was founded in October of 1945 after World War II,¹⁴ to “save succeeding generations from the scourge of war,” referring to World Wars I and II.¹⁵ The United Nations was created with the goals of ensuring international peace and security and promoting human rights, better standards of living, and social progress.¹⁶ These ends were to be achieved by strictly respecting the sovereignty of states so that powerful states could not invade weaker states, no matter how they justified their invasions.¹⁷ The United Nations’ creators felt that the concept of sovereignty was invaluable because it is all that protects weak states from the self-interested powerful states.¹⁸

According to the U.N. Charter, the United Nations was founded on the maxim of the sovereign equality of each Member State.¹⁹ Therefore, the Charter prohibits Member States from threatening to use or using force to interfere with the political independence or territorial integrity of another state.²⁰ Similarly, the Charter prohibits the United Nations from interfering in situations that are essentially within a state’s domestic jurisdiction,²¹ unless intervention is necessary to “restore international peace and security.”²² In that case, if actions that do not utilize armed force are inadequate, then the Security Council “may take such action by air, sea, or land forces as may be necessary to restore international peace and security.”²³ Additionally, the U.N. Charter declares that “[n]othing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations.”²⁴

B. *Development of the Responsibility to Protect*

A humanitarian intervention is “the intervention into the territorial state by another state or a collective of states . . . for the promotion or protection of basic human rights where the territorial state is perpetuating abuses or is unable or

14. *UN at a Glance*, *supra* note 2.

15. U.N. Charter pmb.

16. *Id.*

17. Bricmont, *supra* note 3.

18. *Id.*

19. U.N. Charter art. 2, para. 1.

20. *Id.* art. 2, para. 4.

21. *Id.* art. 2, para. 7.

22. *Id.* art. 42.

23. *Id.*

24. *Id.* art. 51.

unwilling to provide the necessary protection to its inhabitants.”²⁵ In contrast to the mobilization of peace-keeping forces, humanitarian interventions occur without the target states’ permission.²⁶ The question of whether states should engage in humanitarian interventions is one of the most controversial debates in the field of international relations.²⁷

Before World War I, legal considerations had no bearing on states’ decisions to go to war.²⁸ However, the European countries considered moral or humanitarian justifications for war to keep their honor or their membership in the band of “civilized” nations, and to placate public opinion.²⁹ Nonetheless, these interventions were still criticized by those who believed that they were mostly inspired by the interveners’ own selfish motives.³⁰

Subsequent to World War II, many state actions could be considered humanitarian interventions.³¹ Some examples of these interventions are the 1964 Belgian interventions in Congo, the 1965 United States intervention in the Dominican Republic, and the 1971 Indian intervention in East Pakistan—now Bangladesh.³² Although these events can, in hindsight, be considered humanitarian interventions, they were not evidence of a new customary international law.³³ The states that intervened were reluctant to justify their actions as humanitarian interventions, and the situations in which states most eagerly proclaimed humanitarian reasons were those that in hindsight appeared to have the least justification.³⁴ For example, Adolf Hitler claimed his invasion of the Sudetenland was motivated by humanitarian considerations, and the Soviet Union justified its invasion of Afghanistan on humanitarian grounds.³⁵ Humanitarian interventions have been controversial when they have occurred—such as in Somalia, Bosnia, and Kosovo—and when they have not occurred—such as in Rwanda.³⁶

The 1978 Vietnamese invasion of Kampuchea best illustrates the

25. BETH VAN SCHAACK & RONALD C. SLYE, *INTERNATIONAL CRIMINAL LAW AND ITS ENFORCEMENT: CASES AND MATERIALS* 291 (2d ed. 2010).

26. Sarah Joseph, *Humanitarian Intervention in Libya*, CASTAN CENTRE FOR HUMAN RIGHTS LAW: THE OFFICIAL BLOG (Mar. 18, 2011), <http://castancentre.com/2011/03/18/humanitarian-intervention-in-libya/>.

27. ICISS Report, *supra* note 6, at VII.

28. See Hilpold, *supra* note 4, at 40 (stating that while no legal impediments surfaced regarding states’ decisions to engage in war, moral implications were evaluated).

29. *Id.*

30. *Id.* at 41.

31. *Id.* at 42.

32. See *id.* at 42–43 (noting additional examples including: the 1976 Israeli intervention in Uganda; the 1978 Vietnamese intervention in Cambodia; the 1978 French and Belgian intervention in Zaire; the 1978 and 1979 Tanzanian interventions in Uganda; the 1983 United States intervention in Grenada; the 1989–1990 United States intervention in Panama; and the 1999 NATO intervention in Kosovo).

33. *Id.* at 43.

34. Hilpold, *supra* note 4, at 43.

35. Rick Moran, *Libya and the Soros Doctrine*, FRONTPAGE MAGAZINE (Mar. 28, 2011), <http://frontpagemag.com/2011/03/28/libya-and-the-soros-doctrine/>.

36. ICISS Report, *supra* note 6, at VII.

controversial nature of the concept of humanitarian intervention.³⁷ Vietnam removed the malevolent Khmer Rouge regime from power, ending genocide and likely saving millions of lives.³⁸ Instead of justifying this invasion as a humanitarian intervention, Vietnam claimed it was exercising its right to self-defense due to the Khmer Rouge's border violations.³⁹ Vietnam's action was internationally condemned, even though the horrifying deeds of the Khmer Rouge regime were well-known, and could otherwise have justified a humanitarian intervention.⁴⁰

Another reason the doctrine of humanitarian intervention was used sparingly in the fifty years after World War II is that any military intervention during the Cold War carried a risk of nuclear conflict.⁴¹ After the Soviet Union's collapse, a myriad of crises encouraged U.N. members to begin to view the concept of humanitarian intervention more favorably.⁴² The Responsibility to Protect developed as a result of controversy throughout the 1990s—mainly over the conflicts in Rwanda, Bosnia, and Kosovo—between advocates of humanitarian intervention and those who contended that the concept of state sovereignty in the U.N. Charter prohibited intervention in domestic matters.⁴³

The humanitarian crisis in Kosovo in 1991 was a significant turning point.⁴⁴ “Probably never before in the post-war period had the concept of humanitarian intervention met with such wide-spread acceptance as a possible instrument for the solution of internal conflicts which had gone out of control.”⁴⁵ The crisis in Kosovo altered the manner in which many interpreted U.N. law in regard to the use of force.⁴⁶ Prior to the Kosovo conflict, the U.N. Charter's prohibition of force in Article 2 was one of the few principles of international law that every state across the political and ideological spectrum unconditionally supported, although they did not always adhere to it.⁴⁷ After Kosovo, it seemed feasible to alter this principle.⁴⁸

Following the crisis in Kosovo, the concept of humanitarian intervention was popularized, and its supporters attempted to show that it had always been acceptable under international law.⁴⁹ However, this assertion was problematic because, prior to the creation of the United Nations, the right of a state to intervene in a humanitarian crisis was genuinely unacknowledged. Additionally, after the

37. Hilpold, *supra* note 4, at 43.

38. *Id.*

39. *Id.*

40. *Id.*

41. Moran, *supra* note 35.

42. *Id.*

43. *Responsibility to Protect*, *supra* note 8.

44. Hilpold, *supra* note 4, at 44.

45. *Id.*

46. *Id.* at 39.

47. *Id.* at 39–40.

48. *Id.* at 39.

49. *Id.* at 40.

creation of the United Nations, the assertion conflicted with Article 2 of the U.N. Charter,⁵⁰ which states 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.”⁵¹

In former U.N. Secretary-General Kofi Annan’s 2000 Millennium Report to the General Assembly, he challenged the General Assembly by asking “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?”⁵² In September 2000, Canada formed the ICISS in response to Annan’s challenge.⁵³ The ICISS was created to engage in an extensive debate about the correct balance between sovereignty and intervention so that the international community could become more active and waste less time deliberating in times of crisis.⁵⁴

In December 2001, the ICISS released a report entitled “The Responsibility to Protect,” which expressed the ICISS’s beliefs regarding the tension between humanitarian intervention and state sovereignty, and its suggestions for how and when to act.⁵⁵ When the report was given to the U.N. General Assembly for approval, there was an intense debate.⁵⁶ The industrialized western states viewed the Responsibility to Protect as a “potent weapon to prevent another Rwanda.”⁵⁷ In contrast, the impoverished southern states, many of which were former colonies, saw the Responsibility to Protect as a legal justification for the powerful western states to invade them.⁵⁸

Nonetheless, at the 2005 World Summit, the General Assembly unanimously approved the Responsibility to Protect.⁵⁹ The U.N. Security Council has “also accepted the general principle.”⁶⁰ However, since the General Assembly did not expressly approve the ICISS Report in its entirety, it should be viewed as a mere guide to and framework for the Responsibility to Protect.⁶¹

50. Hilpold, *supra* note 4, at 40.

51. U.N. Charter art. 2, para. 4.

52. Kofi A. Annan, *We the Peoples: The Role of the United Nations in the 21st Century*, at 48, U.N. Doc. A/47/2000, U.N. Sales No. E. 00.1.16 (2000).

53. ICISS Report, *supra* note 6, at VII.

54. Moran, *supra* note 35.

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *The Responsibility to Protect (R2P): A Primer*, INTERNATIONAL CRISIS GROUP, <http://www.crisisgroup.org/en/publication-type/key-issues/thematic/responsibility-to-protect.aspx#primer> (last visited Dec. 15, 2011) [hereinafter *Responsibility to Protect: A Primer*].

60. *Id.*

61. INTERNATIONAL BAR ASSOCIATION, *supra* note 9, at 3.

C. The New Definition of Sovereignty under the Responsibility to Protect

There are two basic principles of the Responsibility to Protect. First, sovereignty imposes obligations on states, and states have the principal responsibility to safeguard their people.⁶² Second, if citizens of a population are suffering grave harm due to “internal war, insurgency, repression or state failure,” and the state in question cannot or will not stop the harm, then the Responsibility to Protect trumps the norm of non-intervention.⁶³ In other words, “State sovereignty implies responsibility, not a license to kill.”⁶⁴ As stated in the ICISS Report, the concept of the Responsibility to Protect is supported in many different sources of international law including but not limited to: the Security Council’s responsibility to maintain international peace and security according to Article 24 of the U.N. Charter, human rights law, international humanitarian law, and customary international law, such as the inherent obligations imposed by sovereignty and the emerging practices of states and the Security Council.⁶⁵

The ICISS Report justifies the Responsibility to Protect, despite its infringement on the sovereignty guaranteed by the U.N. Charter, by espousing that the issues the international community faces in the twenty-first century are fundamentally different from those the world was dealing with when the U.N. ratified the Charter in 1945.⁶⁶ The ICISS Report explains that in today’s global society, in which “security depends on a framework of stable sovereign entities, the existence of fragile states, failing states, states who through weakness or ill-will harbour those dangerous to others, or states that can only maintain internal order by means of gross human rights violations, can constitute a risk to people everywhere.”⁶⁷ The ICISS Report also reasons that the instability of one state threatens every other state due to the economic interdependence between states in today’s global economy.⁶⁸ Additionally, the ICISS Report states that international law has evolved since 1945, limiting state sovereignty in areas such as human rights.⁶⁹

D. Ramifications of the New Definition of Sovereignty

The Responsibility to Protect seeks to fundamentally alter certain basic principles of international law. Declaring that states have the right to intervene is,

62. ICISS Report, *supra* note 6, at XI.

63. *Id.*

64. *Responsibility to Protect: A Primer*, *supra* note 59.

65. ICISS Report, *supra* note 6, at XI.

66. *Id.* at 3.

67. *Id.* at 5.

68. *Id.* at 7.

69. *Id.*

on its own, a controversial claim threatening the doctrine of state sovereignty.⁷⁰ The Responsibility to Protect takes this a step further, creating an actual responsibility or obligation to intervene.⁷¹ It redefines the concept of sovereignty as a responsibility to protect people who are at risk, as opposed to an absolute right of control within a state's borders.⁷²

There is a danger that some states will incorrectly employ the Responsibility to Protect to justify a wrongful invasion of another state.⁷³ Additionally, some states fear that the United Nations will invoke the Responsibility to Protect to impose its concept of morality on them. The Responsibility to Protect "has been challenged as opening a loophole of indefinite dimensions that can be used to carry out a post-colonial imperialist agenda."⁷⁴

Furthermore, there is a danger that, acting according to the Responsibility to Protect doctrine, states with the best of intentions will worsen the conflicts instead of assuaging them, as involvement of outsiders in internal matters can sometimes aggravate a state's existing conditions. The ICISS Report recognizes this danger, admitting that it can be detrimental to intervene in a state's internal affairs, as it can threaten the order and stability of the state.⁷⁵ Thus, involvement of outsiders in internal matters can sometimes aggravate the existing conditions in the state.

III. APPLYING THE RESPONSIBILITY TO PROTECT

A. Determining When States Can Intervene Pursuant to the Responsibility to Protect

1. Standards suggested by the ICISS Report

The ICISS Report includes several requirements to justify a humanitarian intervention. First, there must be "just cause."⁷⁶ For an intervention to be authorized, "there must be serious and irreparable harm occurring to human beings, or imminently likely to occur," consisting of either "large-scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate State action, or State neglect or inability to act, or a failed State situation" or "large scale 'ethnic cleansing,' actual or apprehended, whether carried

70. Hilpold, *supra* note 4, at 35, 50.

71. *Id.* at 50.

72. *Id.* at 50–51.

73. *See generally*, INTERNATIONAL BAR ASSOCIATION, *supra* note 9, at 7 (stating that, following the international community's intervention in the crisis in Burma, the responsibility to protect should remain narrowly applied to remain generally accepted as an option and to avoid the type of backlash that occurred after the invasion in Iraq and other unauthorized interventions).

74. Richard Falk, *Preliminary Libyan Scorecard: Acting Beyond the U.N. Mandate*, FOREIGN POLICY JOURNAL (Sept. 8, 2011), <http://www.foreignpolicyjournal.com/2011/09/08/preliminary-libyan-scorecard-acting-beyond-the-u-n-mandate/>.

75. ICISS Report, *supra* note 6, at 31.

76. *Id.* at XII.

out by killing, forced expulsion, acts of terror or rape.”⁷⁷

Additionally, four “precautionary principles” must be considered before intervening: right intention, last resort, proportional means, and reasonable prospects.⁷⁸ “Right intention” means that, although the intervening states may have other motives, the main goal of the intervention must be to prevent or stop human suffering.⁷⁹ This principle is more likely to be met when multiple states are intervening, instead of just one, and the victims and region favor intervention.⁸⁰ “Last resort” requires that states only intervene militarily after every potential method to prevent or peacefully resolve the crisis has been considered, and there is a reasonable basis to believe that the considered measures would have failed to resolve the crisis.⁸¹ “Proportional means” requires that “[t]he scale, duration and intensity of the planned military intervention [is] the minimum necessary to secure the defined human protection objective.”⁸² It further prescribes that “the effect on the political system of the country targeted should be limited . . . to what is strictly necessary to accomplish the purpose of the intervention.”⁸³ Finally, “reasonable prospects” necessitates that there is “a reasonable chance of success in halting or averting the suffering which has justified the intervention, with the consequences of action not likely to be worse than the consequences of inaction.”⁸⁴

2. Standards adopted by the General Assembly

When the U.N. General Assembly adopted the Responsibility to Protect, it did not approve the requirements listed in the ICISS Report.⁸⁵ Instead, it adopted a more flexible test for intervention. The international community can engage in a broad range of responses, including forceful or peaceful means, when the state is “manifestly failing” to protect its people from genocide, war crimes, ethnic cleansing, or crimes against humanity, and peaceful tactics are insufficient.⁸⁶ The General Assembly formulated this flexible test because of its belief that, in a crisis, “decision makers must remain focused on saving lives through ‘timely and decisive action,’ not on following arbitrary, sequential or graduated policy ladders that prize procedure over substance and process over results.”⁸⁷ According to the General Assembly, the Responsibility to Protect “emphasizes *preventive action* above all. That includes assistance for states struggling to contain potential crises

77. *Id.*

78. *Id.*

79. *Id.*

80. ICISS Report, *supra* note 6, at XII.

81. *Id.*

82. *Id.*

83. *Id.* at 37.

84. *Id.* at XII.

85. See *Implementing the Responsibility to Protect*, *supra* note 10, ¶ 49 (stating that a timely and decisive response is integral to fulfilling the state’s responsibility to protect).

86. *Id.*

87. *Id.* ¶ 50 (internal citations omitted).

and for effective rebuilding after a crisis or conflict to tackle its underlying causes. [Responsibility to Protect]'s primary tools are persuasion and support, not military or other coercion.”⁸⁸

According to U.N. Secretary-General Ban Ki-moon, the “ultimate purpose of the responsibility to protect [is to] save lives by preventing the most egregious mass violations of human rights, while reinforcing the letter and spirit of the Charter and the abiding principles of responsible sovereignty.”⁸⁹ The U.N. Secretary-General's Report, *Implementing the Responsibility to Protect*, maintains that actions taken pursuant to the Responsibility to Protect must conform to the U.N. Charter.⁹⁰ Furthermore, the Report states that the Responsibility to Protect does not alter the existing responsibility of U.N. Member States to abstain from using force, unless the use of force is legal under the U.N. Charter.⁹¹

B. Conflict and Intervention in Libya

In 2011, the Responsibility to Protect was invoked for the first time to legitimize a use of force.⁹² The motivation for intervention was allegedly to protect Libyan civilians whose lives and liberty were in danger due to the actions of the Libyan government.⁹³ This NATO-led intervention was controversial because it was unclear whether the interveners' true motive was to protect the Libyan people or to remove a regime that was antagonistic to the states that comprise NATO.⁹⁴

In the middle of February 2011, protests opposing the autocratic government of Colonel Muammar Gadhafi, who had seized power in a coup in 1969, began in Benghazi.⁹⁵ The protesters desired the release of political prisoners and the abdication of Gadhafi.⁹⁶

Gadhafi employed military force to try to stop the protests.⁹⁷ Many protesters were injured when Libyan security forces opened fire and shot them with water

88. *Responsibility to Protect: A Primer*, *supra* note 59.

89. *Implementing the Responsibility to Protect*, *supra* note 10, ¶ 67.

90. *Id.*

91. *Id.*

92. *International Responsibility After Libya*, BROOKINGS, http://www.brookings.edu/~media/events/2012/1/09%20international%20responsibility/20120109_international_libya (last visited Apr. 1, 2012).

93. See Editorial, *The Libya Intervention*, THE NATION, <http://www.thenation.com/article/159454/libya-intervention#> (Mar. 24, 2011) (stating that the United States would follow the Security Council resolution, which provided that intervention must be carried out solely to protect Libyan citizens, and not to assist in regime change).

94. See, e.g., Seumas Milne, *There's Nothing Moral About NATO's Intervention in Libya*, THE GUARDIAN, <http://www.guardian.co.uk/commentisfree/2011/mar/23/nothing-moral-nato-intervention-libya> (Mar. 23, 2011, 6:00 PM) (suggesting that while interveners assert that the protection of Libyan civilians is their primary motivation, their actual motivation to facilitate a regime change overrode their asserted mission).

95. *Authority To Use Military Force in Libya*, 35 Op. O.L.C. 1 (2011).

96. *Libya*, ENCYCLOPAEDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/339574/Libya> (last visited Nov. 1, 2011).

97. *Authority To Use Military Force in Libya*, *supra* note 95, at 1.

cannons.⁹⁸ When the protesters seized control of Benghazi and the movement spread to Tripoli, the government ordered its men to use deadly force against the demonstrators.⁹⁹ Gadhafi's forces attacked the protesters with live ammunition, using artillery, tanks, planes, and helicopter gunships.¹⁰⁰

Gadhafi's regime interfered with communications by obstructing the use of telephones and the Internet throughout Libya.¹⁰¹ The regime also prevented independent monitoring of its conduct by prohibiting journalists and human rights researchers from entering areas of fighting and detention.¹⁰² Additionally, the Libyan government perpetrated intimidating and violent acts against journalists.¹⁰³ There were also arbitrary arrests, forced disappearances, summary executions, and torture.¹⁰⁴ Many Libyans fled the country, seeking refuge in Egypt and other neighboring countries, which resulted in a severe crisis in the region.¹⁰⁵

Due to the violence against the protesters, many high-level Libyan officials resigned, and members of the military defected instead of obeying their orders to bomb Benghazi.¹⁰⁶ The protesters created a makeshift transitional government and army, marketing themselves to other Libyans and the western states as a favorable substitute for Gadhafi's "corrupt and repressive rule."¹⁰⁷ On February 21, one of Gadhafi's sons, Sayf al-Islam, spoke on state television, warning that a civil war might begin if the protests continued, and declaring that the regime would fight "to the last bullet."¹⁰⁸ On February 22, Gadhafi made a speech on state television, denouncing the demonstrators as "traitors" and rallying his supporters to fight them.¹⁰⁹ He vowed to stay in Libya, defying those who called for his abdication of power.¹¹⁰ Despite his denial of having used force against the demonstrators in the past, he repeatedly vowed to employ violent tactics to stay in power.¹¹¹

On February 26, the U.N. Security Council adopted Resolution 1970, which: first, pronounced "grave concern" at the state of affairs in Libya; second, denounced the violence, use of force against civilians, and "gross and systematic" human rights violations; third, reminded the Libyan government of its responsibility to protect its people; fourth, highlighted the duty to respect the

98. *Libya*, *supra* note 96.

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. S/Res/1973, *supra* note 12.

104. *Id.*

105. *Authority To Use Military Force in Libya*, *supra* note 95, at 1.

106. *Id.*; *see also Libya*, *supra* note 96 (discussing the resignations of many high-level Libyan officials, including the minister of justice and a number of senior Libyan diplomats).

107. *Libya: Revolution and Aftermath*, N.Y. TIMES (Feb. 9, 2012), <http://topics.nytimes.com/top/news/international/countriesandterritories/libya/index.html>.

108. *Libya*, *supra* note 96.

109. *Id.*

110. *Id.*

111. *Id.*

freedoms of expression and peaceful assembly of the Libyan people; fifth, underlined the necessity of holding accountable those who are culpable for the attacks on civilians; sixth, “reaffirm[ed] its strong commitment to the sovereignty, independence, territorial integrity and national unity of the Libyan Arab Jamahiriya”; seventh, ordered the Libyan government to stop the violence immediately; eighth, demanded that it begin to respond to the legitimate demands of the Libyan people; ninth, referred the situation in Libya to the International Criminal Court; and tenth, asked Member States to impose an arms embargo on Libya and enforce a travel ban on and freeze the assets of Gadhafi and certain members of his family and regime.¹¹²

The Gadhafi regime’s violence against civilians continued and worsened, despite Resolution 1970 and condemnation from other regional and international organizations,¹¹³ including the League of Arab States and the African Union.¹¹⁴ The U.S. Senate passed Senate Resolution 85 on March 1, 2011.¹¹⁵ The Resolution deplored the “gross and systematic” human rights violations in Libya, commanded Gadhafi to end the violence, and encouraged the U.N. Security Council to take further action to protect Libyan civilians from violence, such as establishing a no-fly zone over Libya.¹¹⁶ On March 12, the Council of the League of Arab States also urged the U.N. Security Council to take immediate action to establish a no-fly zone over Libya and to create safe havens in areas exposed to shelling to protect civilians in Libya.¹¹⁷

By early March 2011, the protesters had gained control over a great deal of eastern Libya, including Benghazi.¹¹⁸ In addition, the rebels established a Transitional National Council in Benghazi with the intent to end Gadhafi’s regime and establish a democracy in Libya.¹¹⁹ By March 17, 2011, Gadhafi’s forces were being mobilized to regain control over Benghazi.¹²⁰ In a radio address, Gadhafi vowed that his men would start to attack Benghazi that night and would exhibit no sympathy toward those who refused to stop resisting.¹²¹ He vowed that his men would “come house by house, room by room. It’s over. The issue has been decided.”¹²²

Later on the day of Gadhafi’s speech, as Gadhafi’s forces came within 100 miles of Benghazi,¹²³ the U.N. Security Council adopted Resolution 1973, with a

112. S.C. Res. 1970, U.N. Doc. S/Res/1970 (Feb. 26, 2011).

113. *Authority To Use Military Force in Libya*, *supra* note 95, at 2.

114. S/Res/1973, *supra* note 12.

115. *Authority To Use Military Force in Libya*, *supra* note 95, at 2.

116. *Id.*

117. *Id.*

118. *Id.* at 1.

119. *The World Factbook: Libya*, CENTRAL INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/ly.html> (last visited Feb. 8, 2012).

120. *Authority To Use Military Force in Libya*, *supra* note 95, at 2.

121. *Id.*

122. *Id.*

123. *Libya: Revolution and Aftermath*, *supra* note 107.

ten-zero vote (five members abstained).¹²⁴ The Resolution: first, created a no-fly zone in Libya; second, approved the use of military force to protect civilians; third, denounced the Gadhafi regime's failure to abide by the provisions of Resolution 1970; fourth, voiced concern at the worsening situation, the increase in violence, and the myriad civilian casualties; fifth, stated that the "widespread and systematic" attacks against civilians currently occurring in Libya might constitute crimes against humanity; sixth, expressed "determination to ensure the protection of civilians and civilian populated areas and the rapid and unimpeded passage of humanitarian assistance and the safety of humanitarian personnel"; seventh, asserted that the situation in Libya constituted a threat to international peace and security; eighth, ordered an immediate cease-fire and an end to all violence against and abuse of civilians; and ninth, "[a]uthorize[d] 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 on any part of Libyan territory."¹²⁵ At the time Resolution 1973 was adopted, fewer than 300 civilians had been killed in Libya.¹²⁶

On March 18, 2011, President Obama stated that, unless Gadhafi executed an immediate cease-fire, ceased attacking civilians, stopped the progress of his troops to Benghazi, removed his troops' presence from three other cities, and facilitated the supply of electricity, gas, and water all over Libya, a military intervention would enforce the provisions of Resolution 1973.¹²⁷ Although Libya's Foreign Minister made a statement promising that Gadhafi's forces would honor the requested ceasefire, their offensive operations, including civilian attacks, continued.¹²⁸ As a result, the United States, supported by many of its coalition partners, commenced airstrikes against Libyan targets to enforce Resolution 1973 on March 19, 2011.¹²⁹ The U.S. military repeatedly struck Libyan military airfields and air defense systems to establish a no-fly zone.¹³⁰ "American and European forces . . . unleashed[ed] warplanes and missiles in a military intervention on a scale not seen in the Arab world since the Iraq war."¹³¹

By the end of the week, the air strikes had foreclosed the possibility of a massacre of civilians in Benghazi and implemented a no-fly zone over Libya.¹³² After the no-fly zone was established, NATO forces continued their involvement with the conflict in Libya, using Predator drones to track and sometimes fire at

124. *Authority To Use Military Force in Libya*, *supra* note 95, at 2.

125. S/Res/1973, *supra* note 12.

126. Judith Miller, *Op-Ed: How Many Have to Die?*, THE DAILY (Jan. 12, 2012), <http://www.thedaily.com/page/2012/01/12/011212-opinions-column-syria-miller-1-3/>.

127. *Authority To Use Military Force in Libya*, *supra* note 95, at 2.

128. *Id.* at 3.

129. *Id.* at 3–4.

130. *Id.* at 4.

131. *Libya: Revolution and Aftermath*, *supra* note 107.

132. *Id.*

Gadhafi's forces.¹³³ Additionally, the special forces of some of the intervening states trained and armed the rebel fighters on the ground in Libya.¹³⁴ “[W]hat was initially justified as a NATO ‘humanitarian’ mission to prevent civilian slaughter quickly morphed into close-air support for the Libyan rebels and the bombing of no less than forty static targets throughout the country.”¹³⁵

The United Kingdom, France, and the United States were the most instrumental states in the intervention, but they were aided by Italy, Spain, Canada, Belgium, the Netherlands, Denmark, Norway, Qatar, Greece,¹³⁶ Sweden, Switzerland, Austria, and Ireland.¹³⁷ In August of 2011, after six months of strife, Gadhafi was ousted from power when the rebels invaded Tripoli, Libya's capital.¹³⁸ The fighting continued until Gadhafi was killed on October 20, 2011.¹³⁹

C. Was the Intervention in Libya Authorized Under the Standards Adopted by the United Nations and the Standards Suggested by the ICISS Report?

1. Standards adopted by the United Nations

According to the test adopted by the General Assembly, for a humanitarian intervention to have been authorized, peaceful tactics must have been insufficient and the state must have been “manifestly failing” to protect its people “from genocide, war crimes, ethnic cleansing, and crimes against humanity.”¹⁴⁰ The first prong of the test, that peaceful tactics must have been insufficient, was likely satisfied by the Security Council's unsuccessful attempt to resolve the crisis peacefully in its implementation of Resolution 1970.¹⁴¹

The second prong was likely satisfied since the Libyan people were likely being subjected to crimes against humanity. Resolution 1973 states that the “widespread and systematic” attacks against civilians in Libya might constitute crimes against humanity.¹⁴² According to the Rome Statute of the International Criminal Court:

“[C]rimes against humanity” means any of the following acts when

133. Eric Schmitt & Steven Lee Myers, *Surveillance and Coordination with NATO Aided Rebels*, N.Y. TIMES (Aug. 21, 2011), http://www.nytimes.com/2011/08/22/world/africa/22nato.html?_r=0.

134. *Id.*

135. Miller, *supra* note 126.

136. *Qatar, Several EU States Up for Libya Action: Diplomat*, EUBUSINESS (Mar. 19, 2011), <http://www.eubusiness.com/news-eu/libya-unrest-summit.95v/>.

137. Steve James, *Scandinavian and Other “Neutral” States Support Assault on Libya*, WORLD SOCIALIST WEB SITE (Apr. 12, 2011), <http://www.wsws.org/articles/2011/apr2011/scan-a12.shtml>.

138. *Libya: Revolution and Aftermath*, *supra* note 107.

139. *Id.*

140. *Implementing the Responsibility to Protect*, *supra* note 10.

141. *See Authority To Use Military Force in Libya*, *supra* note 95 (stating that the violence against civilians perpetrated by Gadhafi's regime continued and even worsened despite Resolution 1970).

142. S/Res/1973, *supra* note 12.

committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) murder; (b) extermination; . . . (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) torture; . . . (h) persecution against any identifiable group or collectivity on political . . . grounds, in connection with any act referred to in this paragraph; (i) enforced disappearance of persons.¹⁴³

Gadhafi's regime perpetrated many of the listed acts, such as: murder; imprisonment in violation of international law; torture; persecution on political grounds; and enforced disappearance of persons.¹⁴⁴

The requirement that the conduct be widespread *or* systematic indicates that only one of these conditions must be met for the acts to qualify as crimes against humanity.¹⁴⁵ The widespread condition encompasses the amount of victims and the scale of the acts.¹⁴⁶ The acts must be perpetrated against multiple victims to qualify as widespread.¹⁴⁷ A crime can be considered widespread due to "the cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude."¹⁴⁸ The acts perpetrated by Gadhafi's regime likely qualify as widespread since approximately 300 people had been killed at the time that Resolution 1973 was passed,¹⁴⁹ and others had been abducted and tortured.¹⁵⁰

Although it is not necessary, because the acts were widespread, they were also systematic. The systematic condition encompasses four elements.¹⁵¹ The first is "the existence of a political objective, a plan pursuant to which the attack is perpetrated or an ideology, in the broad sense of the word, that is, to destroy, persecute or weaken a community."¹⁵² The second is the "perpetration of a criminal act on a very large scale against a group of civilians or the repeated and continuous commission of inhumane acts linked to one another."¹⁵³ The third is "the preparation and use of significant public or private resources, whether military or other."¹⁵⁴ The fourth is "the implication of high-level political and/or military authorities in the definition and establishment of the methodical plan."¹⁵⁵

The acts perpetrated against the protesters qualify as systematic because all

143. Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 3, art. 7.

144. *Libya*, *supra* note 96; S/Res/1973, *supra* note 12.

145. Prosecutor v. Blaskic, Case No. TI-95-14-T, Judgment, ¶¶ 206–07 (Int'l Crim. Trib. for the Former Yugoslavia Mar. 3, 2000).

146. *Id.* ¶ 206.

147. *Id.*

148. *Id.*

149. Miller, *supra* note 126.

150. *Libya*, *supra* note 96; S/Res/1973, *supra* note 12.

151. Prosecutor v. Blaskic, Case No. TI-95-14-T, Judgment, ¶ 203.

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

four elements are satisfied. The fourth element is met because Gadhafi, the leader of the country, ordered members of his military to fire on the protesters. Since this was clearly a plan to weaken the community of political dissenters, the first element is satisfied. Even if firing on the protesters does not qualify as a large scale criminal act, then the totality of the human rights violations qualify as the “repeated and continuous commission of inhumane acts linked to one another.”¹⁵⁶ Therefore, the second element is met. Due to the use of military weapons, there was likely use of significant resources, fulfilling the third requirement.

Furthermore, the acts perpetrated by Gadhafi’s regime were “directed against [a] civilian population.”¹⁵⁷ For the purposes of determining if acts are directed toward a civilian population, the term “civilian” should be defined broadly.¹⁵⁸ A person can be considered a civilian even though he bore arms at one time.¹⁵⁹ Therefore, even though the protesters took up arms, they were still civilians for the purpose of determining whether Gadhafi’s regime perpetrated crimes against humanity. The inhumane acts committed by Gadhafi’s regime constitute crimes against humanity because several of the listed acts were committed as part of a “widespread or systematic” attack “directed against [a] civilian population.”¹⁶⁰ Since peaceful tactics were insufficient and the state was “manifestly failing” to protect its people from crimes against humanity, the intervention in Libya was authorized under the criteria adopted by the U.N. General Assembly.

2. Standards suggested by the ICISS Report

For the intervention in Libya to have been authorized according to the ICISS Report, the principles of “right authority, just cause, right intention, last resort, proportional means, and reasonable prospects” must have been met.¹⁶¹ Although the other requirements were likely complied with, the proportional means requirement was not met.

The just cause principle was likely met. Since there was no ethnic cleansing, to satisfy this requirement, there must have been “large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation.”¹⁶² There was likely large scale loss of life. At the time U.N. Resolution 1973 was ratified, Gadhafi’s regime had ordered its forces to shoot peaceful protesters and had caused the disappearances of many people.¹⁶³ Approximately 300 people had died in Libya prior to the NATO intervention.¹⁶⁴ This on its own might constitute large

156. *Id.*

157. Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 3.

158. Prosecutor v. Kupreskic, Case No. IT-95-16-T, Judgment, ¶ 547 (Int’l Crim. Trib. for the Former Yugoslavia Jan. 14, 2000).

159. *Id.* ¶ 548.

160. S/Res/1973, *supra* note 12.

161. ICISS Report, *supra* note 6, at 32.

162. *Id.*

163. *Libya*, *supra* note 96; S/Res/1973, *supra* note 12.

164. Miller, *supra* note 126.

scale loss of life.

Additionally, at the time Resolution 1973 was ratified, Gadhafi had threatened to commit a massacre of the Libyan people in Benghazi.¹⁶⁵ The Security Council had a legitimate reason to believe Gadhafi's threat—given the horrendous human rights violations Gadhafi's regime had perpetrated during the forty-one years Gadhafi was in control of Libya.¹⁶⁶ Gadhafi's threat also gained legitimacy due to the fact that his troops had advanced to within 100 miles of Benghazi at the time the Security Council ratified Resolution 1973.¹⁶⁷ The ICISS Report makes it clear that if there is decent evidence that killing on a large scale will likely occur, then the use of force is legitimate.¹⁶⁸ It would be inconceivable to require the international community to wait until imminent grave crimes occur before it can act to stop them.¹⁶⁹ The large scale loss of life was clearly the product of deliberate state action on the part of Gadhafi's regime. Therefore, the just cause principle was likely met.

Similarly, the right intention principle was likely satisfied because although NATO likely had other motives in intervening, which are discussed in Part IV, NATO's primary purpose could arguably have been to halt or avert human suffering. Additionally, the ICISS Report lists methods to ensure that the right intention principle is met, which were complied with in this case. These methods include having the intervention be a collaborative action instead of the action of one country, ensuring that the people whom the intervention is intended to help champion the intervention, and determining that the other countries in the region support the intervention.¹⁷⁰ The intervention was a collaborative action since many states were involved.¹⁷¹ The rebels certainly welcomed the assistance of the intervening states. Other countries in the region supported the intervention. Prior to the ratification of Resolution 1973, the Council of the League of Arab States had urged the U.N. Security Council to take immediate action to establish a no-fly zone over Libya and to create safe havens in areas exposed to shelling in order to protect civilians in Libya.¹⁷²

Similarly, the last resort requirement was likely satisfied since the Security

165. *Authority To Use Military Force in Libya*, *supra* note 95, at 2.

166. *Libya: Benghazi Civilians Face Grave Risk*, HUMAN RIGHTS WATCH (Mar. 17, 2011), <http://www.hrw.org/news/2011/03/17/libya-benghazi-civilians-face-grave-risk> (stating that “[s]ince he assumed power in 1969, Gaddafi has repeatedly used arbitrary arrests, torture, enforced disappearances, and political killings to maintain control . . . [t]he most notorious incident occurred in 1996 after a failed prisoners’ revolt at Tripoli’s Abu Salim prison . . . [s]ecurity forces later killed an estimated 1,200 prisoners”).

167. *Authority To Use Military Force in Libya*, *supra* note 95.

168. ICISS Report, *supra* note 6, at 33.

169. *Id.*

170. *Id.* at 36.

171. See James, *supra* note 137 (stating that Italy, Spain, Canada, Belgium, the Netherlands, Denmark, Norway, Qatar, and Greece assisted in the intervention); see also EUBUSINESS, *supra* note 136 (stating that Sweden, Switzerland, Austria, and Ireland assisted).

172. See *Authority To Use Military Force in Libya*, *supra* note 95, at 2.

Council had attempted to resolve the crisis peacefully in its implementation of Resolution 1970, although it was unsuccessful.¹⁷³ To fulfill this requirement, the Security Council must have considered every non-military means to resolve the crisis.¹⁷⁴ This does not mean the Security Council must have attempted and failed to use each option successfully.¹⁷⁵ It just means that there must have been a reasonable belief that, in viewing the totality of the circumstances, the considered measures would not have succeeded had they been attempted.¹⁷⁶

Likewise, the reasonable prospects principle was likely satisfied since there was a “reasonable chance of success in halting or averting the suffering which had justified the intervention, with the consequences of action not likely to be worse than the consequences of inaction.”¹⁷⁷ The states that intervened in Libya had sufficient resources to stop the human rights violations that were occurring. Intervening in Libya did create the possibility that the harm from action could be worse than from inaction, since there would be casualties on both sides. However, this possibility was not likely.

Although the other conditions were satisfied, the “proportional means” principle was not met. “The scale, duration and intensity of the planned military intervention”¹⁷⁸ were not the “minimum necessary to secure the defined human protection objective.”¹⁷⁹ In order to meet this requirement, the “effect on the political system of the country targeted should be limited . . . to what is strictly necessary to accomplish the purpose of the intervention.”¹⁸⁰ Forcefully overthrowing Gadhafi’s regime was certainly not “strictly necessary” to protect the civilians. Resolution 1973 did not include anything about helping the rebels win what had become a civil war. Resolution 1973 simply authorized states to “take all necessary measures . . . to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya.”¹⁸¹ Once a no-fly zone had been created in Libya and air strikes had prevented Gadhafi’s forces from invading Benghazi and massacring the civilians,¹⁸² the authorized goal of protecting civilians under attack had been fulfilled. However, five months later, NATO forces were still involved in Libya, training and arming the rebels, and using Predator drones to track and sometimes fire at Gadhafi’s forces.¹⁸³

173. *Id.* (stating that the violence against civilians perpetrated by Gadhafi’s regime continued and even worsened despite Resolution 1970).

174. ICISS Report, *supra* note 6, at 36.

175. *Id.*

176. *Id.*

177. *Id.* at XII.

178. *Id.*

179. *Id.*

180. ICISS Report, *supra* note 6, at 37.

181. S/Res/1973, *supra* note 12.

182. *US: No Fly Zone Over Libya Established; Gadhafi Threatens ‘Long War’*, VOICE OF AMERICA (Mar. 19, 2011, 8:00 PM), <http://www.voanews.com/content/us-allies-stage-airstrikes-near-tripoli-gadhafi-threatens-long-war-118325634/157713.html>.

183. Schmitt & Myers, *supra* note 133.

IV. WHY LIBYA?

Because of the myriad of humanitarian crises occurring when the Security Council decided to intervene in Libya, such as in Syria, Bahrain, Yemen, and Sudan, it is necessary to analyze why the Security Council chose Libya. One legitimate reason is that intervening in Libya was easier. Libya is small in size and is home to only 6.4 million people,¹⁸⁴ who mostly live on a narrow strip of land along the Mediterranean.¹⁸⁵ Therefore, operating a military intervention in Libya was much simpler than it would be in Sudan, which has almost seven times as many people, is approximately 50% bigger, and has hundreds of thousands of armed soldiers.¹⁸⁶ Libya also already had a legitimate opposition movement that contributed the foot soldiers that western governments were unwilling to provide.¹⁸⁷ Moreover, Libya's proximity to Europe provided an incentive for the European Union and NATO to support the intervention, since regional instability and refugees would have directly affected them if the unrest had continued.¹⁸⁸

Additionally, Gadhafi had few supporters in the international community.¹⁸⁹ He was estranged from almost all of the U.N. Member States, including the African and Arab States with which he had previously been allied.¹⁹⁰ The permanent Security Council members who are generally the most apt to veto the authorization of military intervention using the Security Council's Chapter VII powers, Russia and China, did not have any special interests in Libya.¹⁹¹ Interestingly, less than a year after the Security Council authorized the intervention in Libya, both Russia and China voted against a resolution supporting an Arab League peace plan for Syria because they viewed it as a violation of Syria's sovereignty.¹⁹² Russia likely vetoed this so that it can continue to use Syria's Mediterranean ports and sell arms to Syria.¹⁹³

Another likely reason that the Security Council authorized an intervention in

184. *Background Notes: Libya (07/11/11)*, U.S. DEPARTMENT OF STATE, <http://www.state.gov/outofdate/bgn/libya/185547.htm> (last visited Oct. 8, 2012).

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

186. *Id.*

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.*

191. Patrick, *supra* note 185.

192. Neil MacFarquhar & Anthony Shadid, *Russia and China Block U.N. Action on Crisis in Syria*, N.Y. TIMES (Feb. 4, 2012), http://www.nytimes.com/2012/02/05/world/middleeast/syria-homs-death-toll-said-to-rise.html?pagewanted=all&_r=0.

193. See Efraim Halevy, *Iran's Achilles' Heel*, N.Y. TIMES (Feb. 7, 2012), http://www.nytimes.com/2012/02/08/opinion/to-weaken-iran-start-with-syria.html?_r=0 (stating that Russia wishes to continue using Syria's Mediterranean ports in Tartus, and supplying Syria's government with arms).

Libya is that the western states never had good relations with Gadhafi. After Gadhafi seized power in Libya in 1969, the relationship between the United States and Libya deteriorated due to Libya's policies, which included aiding international terrorism and undermining moderate African and Arab governments.¹⁹⁴ Gadhafi also closed British and American bases in Libya.¹⁹⁵ One of his main foreign policy goals was to end western influence in Africa and the Middle East.¹⁹⁶ He endorsed "the use of oil embargoes as a political weapon for challenging the West, hoping that an oil price rise and embargo in 1973 would persuade the West, especially the United States, to end support for Israel."¹⁹⁷ In 1972, the United States removed its ambassador to Libya because Gadhafi had backed out of agreements with the West and constantly spoke out against the United States.¹⁹⁸ In 1979, when a mob set fire to the American Embassy in Libya, the United States severed its diplomatic relationship with Libya.¹⁹⁹ Later that year, the United States designated Libya as a "state sponsor of terrorism."²⁰⁰ In May 1981, the United States closed Libya's embassy in Washington D.C.²⁰¹

Libya's relations with the West continued to deteriorate as a result of Gadhafi's antagonistic foreign policies, support of terrorism, and budding friendship with the U.S.S.R.²⁰² In 1981, Libyan jets fired on American planes engaging in a routine naval exercise over Mediterranean international waters, inciting the American planes to shoot down the Libyan jets.²⁰³ In 1982, the United States banned imports of Libyan crude oil into the country.²⁰⁴ In 1986, the United States increased its economic sanctions against Libya by, among other things, completely banning direct imports and exports and freezing Libyan government assets in the United States.²⁰⁵ In 1986, Libya was involved with a terrorist bombing in a discotheque in Berlin that killed three people, two of whom were American servicemen.²⁰⁶ The United States retaliated by bombing targets in Tripoli and Benghazi.²⁰⁷

The most notorious of Libya's actions was the bombing in 1988 of Pan Am Flight 103 over Lockerbie, Scotland, which killed 270 people.²⁰⁸ As a result of the

194. *Background Notes: Libya, supra* note 184.

195. *See id.* (stating that "British military installations at Tobruk and nearby El Adem were closed in March 1970 and U.S. facilities at Wheelus Air Force Base near Tripoli were closed in June 1970.").

196. *Id.*

197. *Id.*

198. *Libya: Revolution and Aftermath, supra* note 107.

199. *Id.*

200. *Background Notes: Libya, supra* note 184.

201. *Id.*

202. *Id.*

203. *Id.*

204. *Id.*

205. *Id.*

206. *Libya: Revolution and Aftermath, supra* note 107.

207. *Id.*

208. *Id.*

bombing, the United Nations imposed sanctions on Libya in 1992.²⁰⁹ At first, Gadhafi refused to cooperate with the sanctions, increasing the political and economic isolation of Libya throughout the 1990s.²¹⁰ However, by August 2003, Gadhafi had complied with the requirements of the sanctions by accepting responsibility for the bombing, turning over suspects, and paying the victims' families over two billion dollars in compensation.²¹¹ Starting in 2003, Libyan-U.S. relations began to improve steadily, until they deteriorated due to Gadhafi's treatment of the protesters.²¹²

Another factor that likely motivated NATO to intervene in Libya was Libya's oil. Libya exported 1.3 million barrels of oil per day before the protests began.²¹³ Although that amounts to less than 2% of the world's supply of oil, few other countries can export as much sweet crude oil as Libya.²¹⁴ Many of the contributors to the intervention relied heavily on Libya for their oil.²¹⁵ Before the rebellion began, Italy received over 20% of its oil imports from Libya, and France, Switzerland, Ireland, and Austria received over 15% of their oil imports from Libya.²¹⁶ Although the United States does not receive much of its oil imports from Libya, oil and gasoline prices had increased at the time of the intervention due to the decrease in high-quality crude in world markets.²¹⁷ Additionally, British, French, and Spanish oil companies were large producers of Libyan oil prior to the rebellion.²¹⁸ Furthermore, Gadhafi did not treat international oil companies well; he often raised taxes and fees.²¹⁹

Although the other countries that currently have humanitarian crises that the U.N. Security Council has declined to authorize interventions in produce oil, with the exception of Somalia, these countries do not produce as much oil as Libya, nor do they produce the coveted sweet crude oil that Libya produces.²²⁰ Therefore, the

209. *Background Notes: Libya, supra* note 184.

210. *Id.*

211. *Libya: Revolution and Aftermath, supra* note 107.

212. *Background Notes: Libya, supra* note 184.

213. Clifford Krauss, *The Scramble for Access to Libya's Oil Wealth Begins*, N.Y. TIMES (Aug. 22, 2001), http://www.nytimes.com/2011/08/23/business/global/the-scramble-for-access-to-libyas-oil-wealth-begins.html?pagewanted=all&_r=0.

214. *Id.*

215. *See id.* (stating that Britain, France, Spain, Austria, and the United States all relied on Libya for oil).

216. *Id.*

217. *Id.*

218. *Id.*

219. Krauss, *supra* note 213.

220. *See Background Notes: Yemen*, U.S. DEPARTMENT OF STATE, <http://www.state.gov/outofdate/bgn/yemen/185634.htm> (last visited Oct. 11, 2012) (noting that Yemen produces approximately 260,000 barrels of oil per day); *Background Notes: Bahrain*, U.S. DEPARTMENT OF STATE, <http://www.state.gov/outofdate/bgn/bahrain/195941.htm> (last visited Oct. 11, 2012) (stating that Bahrain produces 42,000 barrels per day); *Background Notes: Syria*, U.S. DEPARTMENT OF STATE, <http://www.state.gov/outofdate/bgn/syria/185632.htm> (last visited Feb. 1, 2012) (stating that Syria produces less than 379,000 barrels per day and its oil production

states that were involved with the Libyan intervention had many motivations for intervening besides simply humanitarian considerations. Although states will never have only one motivation for their actions, these other potential motivations make the intervention suspect, especially when there were many other places that were perhaps more deserving of a humanitarian intervention at the time NATO forces intervened in Libya.

V. SUGGESTED ALTERATIONS TO THE RESPONSIBILITY TO PROTECT

According to U.N. Secretary-General Ban Ki-Moon, the “ultimate purpose of the responsibility to protect [is to] save lives by preventing the most egregious mass violations of human rights, while reinforcing the letter and spirit of the Charter and the abiding principles of responsible sovereignty.”²²¹ However, the intervention in Libya did not fulfill this purpose. Even if Gadhafi’s threat to commit a massacre in Benghazi were to be believed, then this did not prevent the most egregious human rights violations, since there were many human rights violations occurring in the world at that time of much greater gravity.²²² Additionally, the intervention did not reinforce principles of sovereignty since a group of states took it upon themselves to decide the government of a sovereign state.

Although the intervention in Libya was conducted by states that were likely acting in furtherance of their own interests at a time when more legitimate interventions could have been conducted, the intervention met the standards adopted by the U.N. General Assembly. It is not possible to intervene in every humanitarian crisis occurring throughout the world, and states should not be prevented from intervening in all crises due to fear of being criticized for intervening in one country while ignoring the plight of people in another country. However, stricter standards than those the United Nations currently uses are necessary to prevent states from using a humanitarian crisis as an excuse to invade the sovereignty of a state simply because they do not favor that state’s government. The U.N. General Assembly should adopt the “proportional means” condition suggested by the ICISS Report so that states cannot forcibly remove a state’s government in the context of a humanitarian intervention.

Additionally, the United Nations should adopt the “right intention” condition suggested by the ICISS Report, which requires that the primary purpose of the intervention is to stop or prevent human suffering.²²³ Although it is difficult to

is declining.); *Background Notes: Sudan*, U.S. DEPARTMENT OF STATE, <http://www.state.gov/outofdate/bgn/sudan/194934.htm> (last visited Oct. 11, 2012) (stating that Sudan produces 466,100 barrels of oil per day); Maria Kielmas, *Oil Hopes Hinge on North Somalia*, THE SOMALILAND TIMES (Oct. 1991), <http://www.somalilandtimes.net/sl/2006/262/130.shtml> (noting that Somalia does not produce oil, but is believed to have unexploited oil reserves.).

221. *Implementing the Responsibility to Protect*, *supra* note 10.

222. See NATIONAL HUMAN RIGHTS COMMISSION, ANNUAL REPORT 2004–2005, available at <http://nhrc.nic.in/Documents/AR/AR04-05ENG.pdf> (noting that the atrocities in Libya “paled in comparison to those committed during the course of other recent violent conflicts”).

223. ICISS Report, *supra* note 6, at XII.

determine what a state's true intentions are, the fact that a state chooses to intervene in a humanitarian crisis that is of a significantly lesser gravity than other crises that are occurring should be a factor in determining that the state does not possess the right intention.²²⁴ However, there should be an exception when there is a crisis of lower gravity that is sufficiently more economically feasible than a crisis of a higher gravity since states have limited resources. The fact that a grave crisis is occurring that would require too many resources to stop should not prevent states from intervening in other crises that are more feasible to stop. In determining the gravity of a crisis, the factors that are used to determine the gravity of a crime by international courts should be considered, such as the number of victims and the geographic scope.²²⁵

VI. CONCLUSION

There is nothing wrong with engaging in a humanitarian intervention. It is honorable for a state to use its resources and manpower to help people in other states. However, states should not automatically be allowed to invade sovereign states whenever crimes against humanity, war crimes, genocide, or ethnic cleansing are occurring and peaceful means are insufficient to stop these crimes from occurring, which is the standard that was approved by the General Assembly. As shown by the intervention in Libya, when the human rights violations were not as grave as those occurring elsewhere at the time, the current standard employed by the U.N. General Assembly to determine whether a humanitarian intervention is authorized is too liberal. A more rigid standard is necessary so that states cannot use a humanitarian crisis as an excuse to remove governments that they do not support.

224. *Id.* at 36.

225. Margaret M. deGuzman, *Gravity and the Legitimacy of the International Criminal Court*, 32 *FORDHAM INT'L L.J.* 1400, 1451 (2008).