

2015

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Malissa M. Tucker

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### Recommended Citation

Tucker, Malissa M. "Lines in the Sand: Drawing Meaningful Contours for the Responsibility to Protect Doctrine (In a World at War)." National Security Law Brief 5, no. 2 (2015): 25-46.

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## Lines in the Sand: Drawing Meaningful Contours for the Responsibility to Protect Doctrine (In a World at War)

Malissa M. Tucker<sup>1</sup>

Genocide, war crimes, and human rights atrocities have long plagued modern human civilization.<sup>2</sup> Some of the most tragic instances have occurred recently, beginning with the Holocaust, and including other major loss of human life in Rwanda, Cambodia, Iraq, and the Balkans.<sup>3</sup> Despite this troubling history, mass – but preventable – human suffering continues today, most notably in Syria.<sup>4</sup> Although there is some consensus among international stakeholders that a “Responsibility to Protect” (R2P) exists, many, including the United States, continue to struggle with defining and implementing a workable humanitarian intervention policy.<sup>5</sup> This article argues that in order to fulfill its recognized R2P obligations, the United States must clarify its humanitarian intervention strategy and become a genuine leader in the R2P movement. In doing so the United States should build a consensus on what the R2P doctrine means and requires, as well as be willing to act in the face of humanitarian crises.

Without a well-structured R2P agenda, the United States has failed to stop troubling national security dilemmas, calling into question its commitment to protecting vulnerable populations, and adding to skepticism in the international community over whether R2P is a worthwhile policy.<sup>6</sup> This ambiguity stymies dialogue on the duty owed to vulnerable people and inhibits action in the face of grave atrocities.<sup>7</sup> Importantly, the United States has not yet established the Responsibility to Protect as a legal norm. Rather, R2P has been regarded as an important, but increasingly superficial, moral and national security obligation – one that critics have argued to overhaul, or worse, to do away

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1 J.D. Candidate, May 2016, The Catholic University of America, Columbus School of Law; B.A., 2010, American Military University. The author would like to thank her husband James and Professor Sandra Hodgkinson for their inspiration and support in crafting this article. She also gives her sincerest gratitude to the American University Washington College of Law, National Security Law Brief staff for this opportunity and their insightful feedback.

2 Ben Kiernan, *Blood and Soil: The Global history of Genocide*, OPEN DEMOCRACY (Oct. 11, 2007), [https://www.opendemocracy.net/article/blood\\_and\\_soil\\_the\\_global\\_history\\_of\\_genocide](https://www.opendemocracy.net/article/blood_and_soil_the_global_history_of_genocide).

3 UNITED HUMAN RIGHTS COUNCIL, *Genocide in Rwanda*, available at [http://www.unitedhumanrights.org/genocide/genocide\\_in\\_rwanda.htm](http://www.unitedhumanrights.org/genocide/genocide_in_rwanda.htm) (last accessed Mar. 24, 2015) (noting that in Rwanda, during April 1994, over 800,000 Tutsi men, women, and children were slaughtered by extremists from the rival ethnic Hutu faction); See also *Rwandan Genocide: 100 Days of Slaughter*, BBC NEWS, (Apr. 7, 2014), <http://www.bbc.com/news/world-africa-26875506>.

4 UNITED TO END GENOCIDE, *Syria*, <http://endgenocide.org/conflict-areas/syria/> (last accessed Oct. 21, 2014).

5 *Responsibility to Protect: An Idea Whose Time Has Come—And Gone?*, THE ECONOMIST (July 23, 2009), <http://www.economist.com/node/14087788> (discussing criticisms by U.N. member states of the manner in which the United States and other countries have wielded R2P).

6 *Id.*

7 *Id.*

with completely.<sup>8</sup> Many countries, including Russia and China, have historically been reluctant to support United Nations (U.N.) intervention, and critics contend that the United States likewise has not clearly signaled its willingness to adopt the very legal, social, or political framework necessary to make the R2P doctrine viable.<sup>9</sup>

This article examines why the United States must lead the international community in implementing a genuine and practicable R2P doctrine, and where we have failed at upholding our duty to protect. Part I of this article introduces the Responsibility to Protect and provides a historical overview of how it arose. In Part II, this article analyzes how the United States has attempted to implement humanitarian intervention using several case studies in Kosovo, Libya, and Syria. In Part III, this article explores why the issue of R2P is so critical for U.S. national security, the drivers behind the international community's failure to meaningfully implement R2P, and gives suggestions for changing those drivers. Finally, this article argues that the responsibility to protect can only become an impactful and truly sound policy if the United States leads the international community in resolving the surrounding ambiguity, indecisiveness, and inaction. A renewed U.S. commitment to R2P will help create the legal norms, political will, and partnerships necessary to prioritize national security, justice, and most importantly, the protection of human life.

## I. THE GREAT AWAKENING: DEFINING R2P AND THE “MOVEMENT TOWARD HUMAN SECURITY”

The R2P doctrine is rooted in the concept of humanitarian military intervention, which has been practiced since at least the end of the Cold War.<sup>10</sup> It was not until 2005 at the United Nations World Summit, that the international community came to a consensus on needing to institutionalize R2P as a norm.<sup>11</sup> Since 2005, proponents of R2P have struggled to make it a meaningful or effective practice among international stakeholders.<sup>12</sup> The following discussion documents this troubled evolution, and highlights the reasons why there is debate surrounding humanitarian military intervention in general.<sup>13</sup>

### *A. Defining the Responsibility to Protect*

The term “responsibility to protect” is based on a long history of international humanitarian

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8 Jayshree Bajoria & Robert McMahon, *The Dilemma of Humanitarian Intervention*, COUNCIL OF FOREIGN RELATIONS (Jun. 12, 2013), available at <http://www.cfr.org/humanitarian-intervention/dilemma-humanitarian-intervention/p16524>.

9 *Id.*

10 The Responsibility To Protect, *Report of The International Commission on Intervention And State Sovereignty*, available at <http://www.idrc.ca/EN/Resources/Publications/openbooks/960-7/index.html> (last accessed Mar. 23, 2015).

11 Report of the Secretary-General, *Responsibility To Protect: Timely And Decisive Response*, U.N. GAOR, 66<sup>th</sup> Sess., U.N. Doc. No. A/66/874-S/2012/578 (July, 25, 2012).

12 *Id.*

13 Chaim Kaufmann, *See No Evil: Why America Doesn't Stop Genocide*, FOREIGN AFFAIRS (July/Aug. 2002), available at <http://www.foreignaffairs.com/articles/58061/chaim-kaufmann/see-no-evil-why-america-doesn-t-stop-genocide> (asserting that America has failed to stop genocide due to a lack of knowledge, will, and action); *See also* Bajoria, *supra* note 7 (noting that the U.S. has tempered its use of R2P due to past bad precedent and the ambiguity of a workable legal framework for compelling action).

crises, but it was not until the Rwandan genocide of the 1990s that the term became widely adopted.<sup>14</sup> At its heart the doctrine stands for the precept that the international community cannot passively watch people become the subjects of genocide, war crimes, or human rights atrocities.<sup>15</sup> Instead, international actors will use necessary means – including military action – to prevent, identify, and end such crimes. Since its inception, the U.N. and U.S. policy communities have reiterated that R2P stands on three pillars.<sup>16</sup> First, individual states have a duty to protect their populations from atrocities.<sup>17</sup> Second, international community members have an obligation to help states fulfill this duty, including by “assisting those which are under stress, before crises and conflicts break out.”<sup>18</sup> Third, in accordance with the U.N. Charter, including Chapter VII, the international community should take coordinated and “collective action” in cases where states fail to protect their populations.<sup>19</sup>

Despite a common understanding about the need to stop atrocities, the R2P doctrine has not come full-circle to enact the protections that it promises. No single actor has undertaken the task of resolving the ambiguities and failures responsible for R2P shortfalls, though many, including the United States, have tried to apply the still-nascent policy to evolving global crises.<sup>20</sup> This haphazard application of R2P reveals the need to develop and strengthen the doctrine, and has also presented unintended impediments to practicing humanitarian intervention in the future by setting some arguably bad precedent.<sup>21</sup>

Despite this inconsistent application of the R2P doctrine, the United States has taken pains to reiterate its commitment to, in the words of President Obama, “never again” allow genocide and other atrocities to take place without a coordinated international response.<sup>22</sup> In April 2012, President Obama drew applause from an audience gathered at the Holocaust Museum in Washington, D.C. when he asserted that the prevention of genocide and human rights atrocities were “a core national security interest and a core moral responsibility of the United States.”<sup>23</sup> He added that “awareness

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14 R2P: *A Short History*, UNITED NATIONS REGIONAL INFORMATION CENTRE FOR WESTERN EUROPE, <http://www.unric.org/en/responsibility-to-protect/26981-r2p-a-short-history> (last visited Mar. 28, 2015).

15 White House Press Release, *Remarks by the President at the United States Holocaust Memorial Museum* (Apr. 23, 2012, 10:00 AM), available at <http://www.whitehouse.gov/photos-and-video/video/2012/04/23/president-obama-speaks-preventing-mass-atrocities#transcript>.

16 Report of the Secretary-General, *supra* note 10; See also *Responsibility to Protect Working Group*, UNITED STATES INSTITUTE OF PEACE, available at <http://www.usip.org/programs/projects/responsibility-protect-working-group> (last accessed Mar. 24, 2015).

17 Report of the Secretary-General, *supra* note 10.

18 *Id.*

19 *Id.*

20 See, e.g., Jayshree Bajoria, *Libya and the Responsibility to Protect*, The Council on Foreign Relations (Mar. 24, 2011), <http://www.cfr.org/libya/libya-responsibility-protect/p24480> (describing one such application in Libya by the United States and the international community).

21 See THE ECONOMIST, *supra* note 4.

22 White House Press Release, *supra* note 14.

23 *Id.*; See Thomas Omestad, *USIP, Partners Release Report on Realizing ‘Responsibility to Protect’*, U.S. INST. OF PEACE, Jul. 23, 2013, <http://www.usip.org/publications/usip-partners-release-report-realizing-responsibility-protect>; See also Jonas Claes, *Obama Announces Formation of the Atrocities Prevention Board*, U.S. INST. OF PEACE, Apr. 23, 2012, <http://www.usip.org/publications/obama-announces-formation-the-atrocities-prevention-board>.

without action changes nothing” and that the promise of “never again” was a “challenge to us all – to pause and to look within.”<sup>24</sup> With this apt invitation to evaluate what the responsibility to protect mandates, we first must survey of how the R2P doctrine came into being.

### *B. History of the Responsibility to Protect*

Before the R2P doctrine was formalized, it was practiced as humanitarian military intervention in a limited number of cases in the 1990s.<sup>25</sup> In many of those instances, intervention was unsuccessful at stopping the massive loss of life and atrocities that came to characterize the post-Cold War era – and no single mission wholly prevented atrocities from starting in the first place.<sup>26</sup> This early chapter of humanitarian intervention revealed deep-seated division over whether it was an appropriate practice, and how and when it should be invoked.<sup>27</sup> This period also tested international community members’ willingness to prioritize the protection of innocent people.<sup>28</sup> To a large extent, these issues were not resolved but exacerbated by the introduction of R2P as an emerging yet nebulous intervention model.<sup>29</sup> To understand why, it is useful to look at how genocide became commonplace and how international actors responded or failed to respond.

#### *i. One by One: How Genocide Became Commonplace and Why We Struggled to Stop It*

Humanitarian military intervention emerged relatively recently, following the end of the Cold War.<sup>30</sup> Western nations, bolstered by the “defeat” of Communism, began to survey a world full of potential, but with unfortunate disparity and volatility, especially in post-Communist and persistently underdeveloped states.<sup>31</sup> As Jon Western and Joshua Goldstein observe, after the end of the Cold War “A new and unsettled world order took shape, one seemingly distinguished by the frequency and brutality of wars and the deliberate targeting of civilians,” all of which took center stage in a globalizing and quickly technologically advancing world.<sup>32</sup> This “new world order” called into question the inviolability of state sovereignty, and the role of the international community in preventing and stopping human atrocities.<sup>33</sup>

Leading up to and during the post-Cold War period, several events in particular shocked

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24 White House Press Release, *supra* note 14.

25 *Article 28: Right to Social and International Order Permitting These Freedoms To Be Released*, BBC NEWS, [http://www.bbc.co.uk/worldservice/people/features/ihavearightto/four\\_b/casestudy\\_art28.shtml](http://www.bbc.co.uk/worldservice/people/features/ihavearightto/four_b/casestudy_art28.shtml) (last accessed Mar. 23, 2015).

26 *See generally* Bajoria, *supra* note 7.

27 *Id.*

28 *Id.*

29 *Id.*

30 Jon Western & Joshua S. Goldstein, *Humanitarian Intervention Comes of Age: Lessons From Somalia to Libya*, FOREIGN AFFAIRS (Nov./Dec. 2011), available at <http://www.foreignaffairs.com/articles/136502/jon-western-and-joshua-s-goldstein/humanitarian-intervention-comes-of-age>.

31 *Id.*

32 *Id.*

33 Walden Bello, *The Checkered History of Humanitarian Intervention*, TRANSNATIONAL INSTITUTE (Sep. 6, 2013), available at <HTTP://WWW.TNI.ORG/PRINT/ARTICLE/CHECKERED-HISTORY-HUMANITARIAN-INTERVENTION>.

the global conscience. These instances provided the basis for the humanitarian intervention we know today. In 1987 and again in 1988, the world witnessed an outright failure to protect Iraq's Kurdish minority. The Iraqi government, led by then-president Saddam Hussein, gassed Iraqi Kurds with lethal mixtures of sarin, tabun, mustard, and VX gas, and killed thousands of others, often discarding their bodies in mass graves.<sup>34</sup> According to media reports, an estimated 3,200-5,000 people died in a single gas attack in the village of Halabja, and many survivors continue to suffer long-term adverse health effects, such as congenital birth defects and high cancer rates.<sup>35</sup>

Although, as U.S. Ambassador Samantha Power points out, the United States did not deem the actions against the Kurds as "genocide" until 1995, and no Iraqi was ever prosecuted internationally for their involvement in the attacks, the intervening years provided a brief glimpse of humanitarian military intervention in practice.<sup>36</sup> In 1991, Hussein's invasion of Kuwait sparked the 100-hour First Gulf War.<sup>37</sup> At the start of the conflict, the United States encouraged those under Hussein's rule, including the Kurds who had been slaughtered several years earlier, to rebel against the Iraqi government.<sup>38</sup> Notably, the United States did nothing to support the rebellion militarily, but along with their NATO partners, eventually provided "safehaven" under Operation Provide Comfort to Kurds fleeing Iraqi retaliation.<sup>39</sup> This protection was necessary, but only occurred after an estimated tens of thousands of people had already been killed and countless thousands more had gone missing.<sup>40</sup>

The U.N. Security Council had not explicitly authorized collective military action in Iraq, choosing instead to issue U.N. Resolution 688, which sought to end the "repression of the Iraqi civilian population," including the Kurds, and left the door open for invoking Chapter VII of the U.N. Charter if Iraq did not comply.<sup>41</sup> Citing the Resolution as authority, NATO partners instituted a no-fly zone in northern Iraq.<sup>42</sup> The Resolution did not explicitly provide for such a measure, prompting the U.N. Secretary General Boutros Boutros-Ghali to later condemn the imposition of the no-fly zones as "illegal."<sup>43</sup> Despite the disagreement over what collective action *was* legal and

34 *Saddam's Iraq: Key Events*, BBC NEWS, [http://news.bbc.co.uk/2/shared/spl/hi/middle\\_east/02/iraq\\_events/html/chemical\\_warfare.stm](http://news.bbc.co.uk/2/shared/spl/hi/middle_east/02/iraq_events/html/chemical_warfare.stm) (last accessed Dec. 1, 2014); *See also* Samantha Power, A PROBLEM FROM HELL: AMERICA AND THE AGE OF GENOCIDE 197, 241 (2013).

35 SADDAM'S IRAQ, *supra* note 33; *See also* Power, *supra* note 33, at 188-90.

36 Power, *supra* note 33, at 245.

37 *The First Gulf War*, U.S. DEP'T OF STATE, <https://history.state.gov/departmenthistory/short-history/firstgulf> (last accessed Dec. 15, 2014).

38 Power, *supra* note 33, at 237.

39 *Id.* at 241; *See also* SADDAM'S IRAQ, *supra* note 33.

40 POWER, *supra* note 33, at 240-41; *See also* BBC NEWS, *supra* note 33.

41 S.C. Res. 688, U.N. SCOR S/22442 (Apr. 5, 1991), available at <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/596/24/IMG/NR059624.pdf?OpenElement>.

42 *See UN Security Council Resolution 688, Iraq*, COUNCIL ON FOREIGN RELATIONS (Apr. 5, 1991), <http://www.cfr.org/international-organizations-and-alliances/un-security-council-resolution-688-iraq/p11206> (noting that the no-fly zone "was not explicit in the resolution" but that NATO partners believed it was implied "in order to protect both ground troops entering the area and airdrops of aid to the Kurdish population."); *See also* CTR. FOR THE STUDY OF INTERVENTIONISM, *UN Security Council Resolution 688 on Iraq (5 Apr. 1991)*, <http://www.interventionism.info/en/UNSC-Res-688> (last accessed Dec. 14, 2014) (submitting that Boutros-Ghali labeled the no-fly zones as "illegal" in a 2003 interview).

43 *See id.*

necessary in Iraq, Ambassador Power notes that the Operation “marked unprecedented intervention in the internal affairs of a state for humanitarian reasons.”<sup>44</sup>

Then, in September 1992, U.S. Marines landed in Somalia to restore humanitarian assistance amid a raging civil war in that country.<sup>45</sup> Despite the earlier operation in Iraq, this brand of U.S. humanitarian military intervention was still not an established practice, and the mission quickly expanded to restoring Somalia’s government, including by using Special Operations Forces (“SOF”) to remove local warlords.<sup>46</sup> In October 1993, during one such SOF mission, America’s humanitarian intervention in Somalia took a catastrophic turn when local insurgents killed 18 U.S. service members in the famed “Black Hawk Down” incident.<sup>47</sup> Understandably, this tragedy added to an already skittish intervention policy – one that Mark Bowden, journalist and observer of the Somali campaign, said caused “an excessive concern [to] avoid risking American forces on the ground” in the 1990s, and that “continues to play a role in foreign policy decisions” today.<sup>48</sup>

While the United States recalculated its role as intervener after Somalia, intra-state and regional conflict continued to proliferate and produce atrocities across the globe for well over the next decade.<sup>49</sup> Between 1992 and 1995, the breakup of former Yugoslavia hurled the defunct state’s six provinces of Bosnia and Herzegovina, Slovenia, Croatia, Serbia, Montenegro, and Macedonia into an inter-ethnic civil war.<sup>50</sup> Under the authoritarian rule of staunch Serbian nationalist Slobodan Milosevic, Serb forces began “cleansing” their territory of ethnic Muslims and Croats in Bosnia after the region declared independence in 1992.<sup>51</sup>

Despite ample warning regarding the hostilities in former Yugoslavia and credible notice of the mass killings that were taking place in Bosnia, the United States responded by supporting a fruitless European-led peace process.<sup>52</sup> With peace nowhere in sight, and the borrowed time and leeway emboldening Serb aggression, American policymakers largely chose to stay out of the fray because, as Ambassador Power points out, the cause was seen as purely humanitarian – i.e., not one that directly threatened America’s interests.<sup>53</sup>

Turmoil in the Balkans would not soon end. In 1995, Milosevic’s forces overran the U.N.

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44 Power, *supra* note 33, at 241.

45 *The United States Army in Somalia: 1992-1994*, U.S. ARMY CENTER OF MILITARY HISTORY (last visited Mar. 24, 2015), available at <http://www.washingtonpost.com/wp-dyn/articles/A8364-2004Sep9.html>.

46 *Id.*

47 *Id.*

48 *What a Downed Black Hawk in Somalia Taught America*, NPR (Oct. 5, 2013, 4:45 PM), <http://www.npr.org/2013/10/05/229561805/what-a-downed-black-hawk-in-somalia-taught-america>.

49 *Id.*

50 *Milestones: 1989-1992 - The Breakup of Yugoslavia, 1990-1992*, U.S. DEP’T OF STATE (LAST ACCESSED MAR. 24), <https://history.state.gov/milestones/1989-1992/breakup-yugoslavia>.

51 *Id.*

52 *Id.*; See also Power, *supra* note 33, at 259.

53 Power, *supra* note 33, at 260-62 (stating that, in evaluating U.S. policy toward Bosnia, Joint Chiefs of Staff Colin Powell, invoked former defense secretary Caspar Weinberger’s five-part criteria for armed intervention, which required that military force only be used to (1) protect the “vital interests of the United States or its allies,” (2) with the ultimate intent to win, (3) in “pursuit of clearly defined political and military objectives,” (4) accompanied by “widespread public and congressional support,” and (5) used only as a last resort – none of which were present or feasible in Bosnia).

safe-zone in the city of Srebrenica and began ethnically cleansing the city's Muslim inhabitants, murdering an estimated 40,000 before a three-week NATO bombing campaign finally drove Milosevic to agree to stop attacking civilians.<sup>54</sup> In 1999, as tensions once again flared, this time in the Bosnian province of Kosovo, NATO, backed largely by U.S. military power, conducted the first substantial humanitarian military intervention campaign to prevent Serbs from committing yet another genocide.<sup>55</sup> Given its pivotal nature, the Kosovo campaign will be discussed in depth in Part II, where this article evaluates U.S. intervention strategies.

Amid the conflict in former Yugoslavia yet another tragedy unfolded, this time in Rwanda. In April 1994, "extremists" from the rival ethnic Hutu faction slaughtered over 800,000 Tutsi men, women, and children.<sup>56</sup> In one infamous and chilling account, seven Tutsi pastors who had taken refuge among hundreds in a local church, asked the Hutu bishop there to intercede in their slaughter.<sup>57</sup> The Hutu bishop never did and was later indicted at The Hague for allegedly organizing the massacre.<sup>58</sup> Despite these troubling reflections, the world was still slow to react.<sup>59</sup> For its part, the United States did virtually nothing to stop the conflict.<sup>60</sup> In fact, U.S. officials did not publicly recognize the killings as genocide until long after they had occurred.<sup>61</sup>

In total, the end of the twentieth century left the international community with a gruesome prospect – refuse to intervene in the name of state sovereignty and continue to watch helpless civilians die, or rethink the way we viewed, and held ourselves accountable for, using all means necessary to stop bona fide human suffering.<sup>62</sup> Though the Treaty of Westphalia in 1648 had loosely

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54 See *id.* at 391-95, 439-40 (detailing the horrific ethnic cleansing campaign undertaken by Milosevic in July 1995 against Muslim inhabitants of Srebrenica and the tragically late efforts of the U.S. to spur NATO involvement, which did not commence to stop the genocide until Aug. 30, 1995).

55 See *id.* at 443, 446-47 (noting that after Serb forces began attacking ethnic Albanians in Kosovo, the negotiated peace settlement fell through and the U.S. more readily responded by urging and executing a NATO bombing campaign than they had in any previous Balkans conflict).

56 *Genocide in Rwanda*, UNITED HUMAN RIGHTS COUNCIL, [http://www.unitedhumanrights.org/genocide/genocide\\_in\\_rwanda.htm](http://www.unitedhumanrights.org/genocide/genocide_in_rwanda.htm) (last accessed Mar. 23, 2015) (noting that in Rwanda, during April 1994, over 800,000 Tutsi men, women, and children were slaughtered by extremists from the rival ethnic Hutu faction); See also *Rwandan Genocide: 100 Days of Slaughter*, BBC NEWS (Apr. 6, 2014, 8:25 PM), <http://www.bbc.com/news/world-africa-26875506>.

57 C-SPAN Interview with Philip Gourevitch, Author of *We Wish to Inform You That Tomorrow We Will Be Killed With Our Families* (Nov. 22, 1998), available at <http://www.booknotes.org/Watch/115511-1/Philip+Gourevitch.aspx> (last accessed Mar. 23, 2015).

58 *Id.*

59 *Genocide in Rwanda*, *supra* note 55 (noting that "Policymakers in France, Belgium, and the United States and at the United Nations were aware of the preparations for massive slaughter and failed to take the steps needed to prevent it. Aware from the start that Tutsi were being targeted for elimination, the leading foreign actors refused to acknowledge the genocide."); See also *100 Days of Slaughter*, *supra* note 55.

60 KAUFMANN, *supra* note 12 (asserting that there were only cursory recommendations to resurrect defunct peace accords and no "high-level meeting of foreign policy principals was ever held, with the result that no one demanded any serious analyses of the crisis. This fact alone virtually assured that no rescue plans could be developed, and mid-level officials who attempted to raise this issue were branded naive or alarmist. The U.S. response to Rwanda, in short, constituted a classic case of non-evaluation").

61 Glen Kessler and Colum Lynch, *U.S. Calls Killings in Sudan Genocide*, WASHINGTON POST (Sep. 10, 2004), <http://www.washingtonpost.com/wp-dyn/articles/A8364-2004Sep9.html>; See also Kaufmann, *supra* note 12.

62 OUTREACH PROGRAM ON THE RWANDA GENOCIDE & THE U.N., *Background Note: The Responsibility to Protect* (Mar. 2014),

established the concept of state sovereignty, much had changed in the 352 years since.<sup>63</sup> Now, with global relations more interconnected and internal state matters more ascertainable than ever, our understanding of sovereignty had to shift to fit a new paradigm.<sup>64</sup>

This shift allowed international stakeholders to begin critically analyzing what duties an autonomous state owed their people for having the ‘privilege’ of independence.<sup>65</sup> The shift also served to illuminate the international duty to intervene when a state failed to uphold those duties.<sup>66</sup> In 2000, U.N. Secretary General Kofi Annan remarked “If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica, to gross and systematic violation of human rights that offend every precept of our common humanity?”<sup>67</sup> Annan’s point was clear: If sovereignty was not an infallible shield under which rulers were allowed to slaughter their own people, the world needed to find a legal and legitimate way to challenge it and to protect human life in the process.<sup>68</sup>

*ii. A New World Order, New World Solutions: International Responses to an Age Old Controversy*

By 2001, surveying the tumult of the 1990s and responding to Secretary General Annan’s challenge, some governments decided it was time to establish a norm on intervention.<sup>69</sup> Canada’s International Commission on Intervention and State Sovereignty was the first to offer a newly named framework for intervention – “The Responsibility to Protect” – and to undertake an explanation of what that responsibility required.<sup>70</sup> In their seminal report on R2P, the Commission noted that, “the issue of intervention for human protection purposes has been seen as one of the most controversial and difficult of all international relations questions.”<sup>71</sup> The report, published just three months after the 9/11 attacks, struggled to contemplate how these brazen acts of international terrorism would impact the R2P landscape, but nonetheless made the case for never again allowing genocide and atrocities to transpire while the international community remained haplessly entangled in the debate over what to do.<sup>72</sup>

The report raised several significant points. First, it argued that the Responsibility to Protect

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available at <http://www.un.org/en/preventgenocide/rwanda/pdf/Backgrounder%20R2P%202014.pdf>.

63 See Derek Croxton, *The Peace of Westphalia of 1648 & The Origins of Sovereignty*, XXI, No. 3 THE INT’L HISTORY REV. 569, 579-82 (1999) (discussing how the Treaty of Westphalia did not explicitly establish the concept of sovereignty, rather the concept was implied by the framers’ intent & the customary practices that developed in response to its implementation).

64 See, e.g., Western, *supra* note 29.

65 See, e.g., International Development Research Center, *The Responsibility to Protect*, INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY vii (Dec. 2001).

66 *Id.*

67 U.N. MILLENNIUM ASSEMBLY REPORT OF THE SECRETARY-GENERAL, WE THE PEOPLES, THE ROLE OF THE UNITED NATIONS IN THE 21-ST CENTURY, U.N. GAOR, 54<sup>th</sup> Sess., U.N. Doc. A/54/2000 (Mar. 27, 2000); See also Outreach Program, *supra* note 61 at 1.

68 See *id.*

69 See, e.g., Int’l Dev. Research Ctr., *supra* note 64 at vii.

70 *Id.*

71 *Id.*

72 *Id.*

had three parts: to prevent, to react, and to rebuild, with prevention being the most important cornerstone of the doctrine.<sup>73</sup> The report also judged that military action was at the extreme end of the responsibility spectrum, just and appropriate only where there was objectively perceived or real “large scale loss of life” or “large scale ethnic cleansing” taking place.<sup>74</sup> To invoke collective military action, the report suggested that four precautionary principles needed to be met: (1) the primary intention had to be to end human suffering; (2) military action had to be used only as a “last resort”; (3) applied only through proportional means; and (4) with reasonable prospects of success.<sup>75</sup> Finally, the report stressed that to be legal, any action needed to comply with the U.N. Charter and be approved by the U.N. Security Council.<sup>76</sup>

Finally, at the 2005 U.N. World Summit, world leaders agreed to adopt the Responsibility to Protect as a guiding principle, setting a new custom for intervention.<sup>77</sup> U.N. Special Adviser Edward Luck explained that the impetus for international community members adopting R2P grew out of the idea that a policy shift from “non-interference to non-indifference” was necessary.<sup>78</sup> Invoking the memories of past genocide and other atrocities in the Balkans, Rwanda, and Cambodia, Luck noted that R2P was a “movement toward human security.”<sup>79</sup> Luck added that the framework for R2P was still being developed, but he echoed the requirement that any action under the doctrine must comply with the U.N. Charter and have Security Council approval.<sup>80</sup>

The United States worked to give special significance to R2P, building on its earlier, but what some have called half-hearted, commitment to end genocide.<sup>81</sup> This prior commitment arose between 1946-1948 when the United States spearheaded the drafting of the Convention on Genocide.<sup>82</sup> As critics have noted, however, the United States did not ratify the Convention until 40 years later in 1987, with the passage of the Proxmire Act, also known as the Genocide Convention Implementation Act of 1987.<sup>83</sup> This created America’s first – and only – legal obligation to prevent and end genocide, though critics such as Chaim Kaufmann have also noted that attached to the obligation are “reservations so crippling that [the United States] is effectively barred from ever invoking the treaty against anyone.”<sup>84</sup>

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73 *Id.* at xi.

74 *Id.* at xii.

75 *Id.*

76 *Id.* at xii-xiii.

77 Edward Luck, *The Responsibility to Protect*, OFFICE OF THE U.N. SPECIAL ADVISOR ON THE PREVENTION OF GENOCIDE, [http://www.un.org/en/preventgenocide/adviser/videos/video\\_5.shtml](http://www.un.org/en/preventgenocide/adviser/videos/video_5.shtml) (last visited Mar. 24, 2015).

78 *Id.*

79 *Id.*

80 *Id.*

81 See Jonas Claes, *Responsibility to Protect Weighed Down by Misconceptions*, U.S. INST. OF PEACE (Aug. 16, 2013), available at <http://www.usip.org/olivebranch/responsibility-protect-weighed-down-misconceptions>. (asserting that policymakers in Washington are familiar with R2P only to a “limited extent”, and that they generally view it as a foreign concept).

82 Kaufmann, *supra* note 12.

83 Emily Backes, *On This Day: U.S. Fully Adopts Genocide Convention*, ENOUGH PROJECT (Nov. 4, 2010), <http://www.enoughproject.org/blogs/day-us-ratifies-genocide-convention> (stating that the Convention has had little impact on ending genocide and the U.S. more concerned with “avoiding labeling the violence genocide – and thus triggering its obligation to respond – than actually preventing deaths”).

84 Kaufmann, *supra* note 12.

Additionally, President Obama set up an Atrocity Prevention Board (APB) to drive R2P efforts in the United States, further signaling the United States's moral commitment to prevent atrocities.<sup>85</sup> Later, as the chair of the APB, Ambassador Power explained, the United States planned to implement R2P by prioritizing, organizing, and multilateralizing efforts across the international community.<sup>86</sup> To achieve this, the United States Institute of Peace also set up a working group on R2P.<sup>87</sup> The group recommended a framework for implementing R2P, noting that “The Responsibility to Protect is not a tool, but a guiding principle requiring the consideration of available measures to address the risk of atrocities, in particular preventive diplomatic, legal, and economic measures, as well as reactive instruments short of military action.”<sup>88</sup> The working group added that “The use of coercive military force remains a last resort option” where alternatives would prove inadequate to stop atrocities.<sup>89</sup>

While these measures signaled the commitment that the international community, and the United States in particular, made to end genocide and other atrocities, large-scale loss of human life continues today. The Security Council has only invoked the language of R2P a handful of times, including against Libya.<sup>90</sup> The R2P doctrine has failed to emerge as a meaningful bulwark against global atrocities, prompting many to ask whether the strategy is worthwhile.<sup>91</sup> This article argues that it is – but advocates for a serious reevaluation of the problems with the doctrine, and more importantly, the role the United States must play in making R2P impactful, relevant, and sound.

In doing so, we turn first to analyzing three cases in which the need for humanitarian intervention has surfaced: Kosovo, where prior to the emergence of R2P, the United States engaged militarily to stop Milosevic's murder of ethnic Albanians; Libya, where R2P was used to justify the toppling of the Qaddafi regime; and Syria, where the United States has refused to take military action against the Syrian government to stop the mass killings ongoing in that country.

## II. INTERVENTION IN MOTION: HOW THE UNITED STATES HAS STRUGGLED TO APPLY THE RESPONSIBILITY TO PROTECT

Three cases best demonstrate how the United States has struggled to uphold its Responsibility to Protect: Kosovo, Libya, and Syria. Within each, there are relative successes

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85 Samantha Power, *Statement by Ambassador Samantha Power, U.S. Permanent Representative to the United Nations, At an Informal Interactive Dialogue on The Responsibility to Protect*, U.S. MISSION TO THE UNITED NATIONS (Sept. 11, 2013), <http://usun.state.gov/briefing/statements/214066.htm>

86 *Id.* (noting that the U.S. had also enacted the U.N. Arms Trade Treaty which sought to prohibit the flow of weapons to perpetrators of war crimes and other atrocities).

87 See generally *Responsibility to Protect Working Group*, U.S. INST. OF PEACE available at <http://www.usip.org/programs/projects/responsibility-protect-working-group> (last accessed Mar. 24, 2015).

88 *Id.*

89 *Id.*

90 Michael Doyle, *The Folly of Protection: Is Intervention Against Qaddafi's Regime Legal and Legitimate?*, FOREIGN AFFAIRS (Mar. 20, 2011), available at <http://www.foreignaffairs.com/articles/67666/michael-w-doyle/the-folly-of-protection> (noting that “[t]he Libyan intervention represents only the third time since 2005 that the Security Council has invoked R2P to enforce the protection of civilians”).

91 See THE ECONOMIST, *supra* note 4.

and failures that must be explored to better ascertain how R2P can be successful and what role the United States bears in building consensus on the doctrine. We begin first with the NATO-led operation in Kosovo, the first U.S.-backed attempt to prevent genocide and atrocities from occurring.

*A. Attempting Prevention: Operation Allied Force in Kosovo, 1999*

In March 1999, by the time the United States urged its NATO allies to begin bombing Serb forces in Kosovo, the Balkan conflict had already taken hundreds of thousands of lives.<sup>92</sup> Milosevic, not one to be deterred by seemingly empty threats of intervention, had reigned with brutality since 1991 and was responsible for many of these deaths.<sup>93</sup> In light of these atrocities, the United States determined that Milosevic could no longer operate with impunity or make a mockery out of the U.S. promise to act.<sup>94</sup> Thus, when Milosevic continued his killings and rejected a peace settlement, NATO began bombing Serb forces in March of 1999.<sup>95</sup> After the brief NATO bombing campaign in Srebrenica in 1995, many expected a quick and relatively clean end to the hostilities in Kosovo.<sup>96</sup>

The Kosovo campaign, however, proved far more complicated and far less decisive than people expected. The seventy-eight-day bombing campaign failed to prevent thousands of further casualties, and highlighted ample criticism against intervention.<sup>97</sup> As Ambassador Power argues, the outcome of Kosovo was “mixed at best.”<sup>98</sup> In total, the United States very likely saved many more lives than if they had not acted and eventually helped bring countless war criminals to justice.<sup>99</sup> Nonetheless, critics pounced on the mistakes made during the mission to support the case against humanitarian intervention.<sup>100</sup>

Applying Albert Hirschman’s theories of perversity, futility, and jeopardy, Ambassador Power sought to categorize criticisms of Operations Allied Force and R2P in general.<sup>101</sup> She notes that detractors of Operation Allied Force believed the intervention perverted NATO’s credibility, and brought to bear a half-hearted humanitarian intervention model that was based on over exaggerated human suffering.<sup>102</sup> On the futility front, critics also levied that there were no bloodless hands in the intractable “civil war” – an ‘internal issue’ in which the United States had manipulatively chosen to

92 Milestones, *supra* note 49; See also *Interview with Richard Holbrooke*, PBS FRONTLINE, <http://www.pbs.org/wgbh/pages/frontline/shows/kosovo/interviews/holbrooke.html> (last accessed Mar. 24, 2015).

93 *Interview with Richard Holbrooke*, *supra* note 91.

94 See Power, *supra* note 33, at 445-47 (noting that Clinton administration officials were still reeling from Srebrenica and that the “duplicious antics of Milosevic” were making them once again look bad).

95 *A Kosovo Chronology*, PBS FRONTLINE, <http://www.pbs.org/wgbh/pages/frontline/shows/kosovo/etc/cron.html> (last visited Mar. 25, 2015).

96 See Power, *supra* note 33, at 451 (noting that the NATO bombing was “initially executed casually”).

97 *Id.* at 458.

98 *Id.* at 460.

99 *Id.* at 472; See also James Kitfield, *Not-So-Sacred Borders*, PBS FRONTLINE, available at <http://www.pbs.org/wgbh/pages/frontline/shows/kosovo/procon/kitfield.html> (last accessed Mar. 23, 2015).

100 Power, *supra* note 33, at 461.

101 *Id.*

102 *Id.*; See also Doug Bandow, *The U.S. Role in Kosovo*, CATO INSTITUTE (March 10, 1999).

cast as genocide.<sup>103</sup> Finally, Ambassador Power notes critics' contentions that Albanian retribution and the hastening of Milosevic's slaughter of Albanians were key examples of how intervention not only accomplished nothing, but actually jeopardized the goals of interveners by exacerbating the problem.<sup>104</sup>

Despite these criticisms, Kosovo marked the first time in history that the United States had mobilized at least a portion of the international community to prevent genocide.<sup>105</sup> The importance of this act cannot be taken for granted, especially as it relates to the emergence of R2P as an international doctrine a few short years later.<sup>106</sup> For all the things the United States had failed to do, Milosevic was no longer being passively observed as he thumbed his murderous tendencies at the international community.<sup>107</sup> Operation Allied Force accomplished something else as well: it gave the United States a leading role in pushing the world to act in the face of human atrocity.<sup>108</sup> This outcome, however, has been sullied in the wake of subsequent humanitarian campaigns.<sup>109</sup>

### *B. Libya: Real Perversion of Humanitarian Intervention Doctrine?*

Whatever lessons should have been gleaned from Kosovo and applied to the precautions that had since emerged under R2P, the U.S.-supported action in Libya probably served to undermine.<sup>110</sup> In 2011, acting under UN Security Council Resolution 1973, a multinational coalition began airstrikes in Libya under the auspices of humanitarian intervention.<sup>111</sup> Initially, the mission was heralded as a success, showing that NATO could act decisively and collectively.<sup>112</sup> Some observers even claimed that intervention in Libya had "vindicated" the R2P strategy, and served as the model for intervention.<sup>113</sup>

However, the aftermath of the operation in Libya soon came under scrutiny and, as the facts started to emerge, revealed that R2P had not been used appropriately.<sup>114</sup> Instead, according to scholars such as Alan Kuperman, Libya served as the example of "how not to intervene."<sup>115</sup>

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103 Power, *supra* note 33, at 463.

104 *Id.* at 466.

105 David L. Phillips, *Intervention Lessons From Kosovo for Syria*, HUFFINGTON POST (Nov. 3, 2013), [http://www.huffingtonpost.com/david-l-phillips/intervention-lessons-from\\_b\\_3858228.html](http://www.huffingtonpost.com/david-l-phillips/intervention-lessons-from_b_3858228.html).

106 Outreach Program on the Rwanda Genocide & the U.N., *supra* note 61.

107 Interview with Richard Holbrooke, *supra* note 91.

108 Kitfield, *supra* note 98.

109 Martha H. Findlay, *Can R2P Survive Libya and Syria*, CANADIAN INT'L COUNCIL 5 (Nov. 2011).

110 Findlay, *supra* note 108, at 6 (noting that it took only weeks for the Libya mission to shift to ousting al-Qaddafi through the imposition of the no-fly zone and to supporting rebels).

111 *Id.*

112 Ivo H. Daalder & James Stavridis, *NATO's Victory in Libya: The Right Way to Run and Intervention*, FOREIGN AFFAIRS (Mar./Apr. 2012), <http://www.foreignaffairs.com/articles/137073/ivo-h-daalder-and-james-g-stavridis/natos-victory-in-libya>.

113 *See id.*; *See also* Stewart Patrick, *Libya and the Future of Humanitarian Intervention: How Qaddafi's Fall Vindicated Obama and RtoP*, FOREIGN AFFAIRS (Aug. 26, 2011), available at <http://www.foreignaffairs.com/articles/68233/stewart-patrick/libya-and-the-future-of-humanitarian-intervention> (claiming that the operation was perfectly timed and executed, showing it was possible to carry out a successful military intervention in the name of R2P).

114 Findlay, *supra* note 108, at 6-7.

115 Alan J. Kuperman, *Lessons from Libya: How Not to Intervene*, HARVARD KENNEDY SCHOOL (Sept. 2013) (stating that

Kuperman argued that the goal in Libya was never really humanitarian intervention at its core.<sup>116</sup> Rather, the goal was to overthrow Libyan leader Muammar al-Qaddafi based on the trumped-up and poorly vetted accounts of a small group of rebels that asserted that the Libyan government was indiscriminately targeting civilians.<sup>117</sup> In Kuperman's calculation, NATO's support to rebel forces worsened the humanitarian situation and created an environment where instability and extremism still thrive.<sup>118</sup>

With such a skewed outcome to the Libyan intervention, the United States did R2P a disservice. First, it opened R2P back up to long-standing vulnerabilities and concerns over its misuse.<sup>119</sup> The aftermath of U.S. intervention in Libya gave rise to claims that the United States was prone to manipulating the numbers and extent of atrocities for their own political ends.<sup>120</sup> Second, it revealed the possibility that the United States used humanitarian intervention as a ruse to defeat its weaker enemies, while unwittingly (or wittingly) supporting extremists who would ultimately prove more dangerous than any unsavory dictator.<sup>121</sup> Finally, it added to the myriad bad precedents set by U.S. intervention aboard, and degraded the will necessary to confront future and *real* atrocities.<sup>122</sup> Indeed, critics have often turned back to Libya as an example of why the United States should not intervene in Syria, where genocide is being documented.<sup>123</sup>

### *C. Syria: By No Means Necessary and The Death Toll Rising*

In March 2011, Syrian President Bashar al-Assad's forces began targeting pro-democracy demonstrators.<sup>124</sup> The government's arrest, torture, and indiscriminate killing of civilian demonstrators led to calls for al-Assad's resignation.<sup>125</sup> As tensions and killings escalated, the demonstrators took up arms against the Syrian government, and by 2012, the conflict had escalated into a full-scale civil war.<sup>126</sup> This war continues to produce casualties today.<sup>127</sup>

An ongoing U.N. inquiry found that all of the major players in the civil war have committed atrocities since the onset of the conflict, but drew special attention to the Syrian government's

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“contrary to Western media reports, Qaddafi did not initiate Libya's violence by targeting peaceful protesters. The United Nations and Amnesty International have documented that in all four Libyan cities initially consumed by civil conflict in mid-February 2011—Benghazi, Al Bayda, Tripoli, and Misurata—violence was actually initiated by the protesters” and there was no evidence that Libyan forces never targeted civilians indiscriminately).

116 *Id.*

117 *Id.*

118 *Id.*

119 Findlay, *supra* note 108, at 6-7.

120 *Id.* at 5.

121 *Id.*

122 *Id.*

123 *Id.*

124 *Syria: The Story of the Conflict*, BBC NEWS, <http://www.bbc.com/news/world-middle-east-26116868> (last visited Dec. 1, 2014).

125 *Id.*

126 *Id.*

127 U.N. HUMAN RIGHTS COUNCIL, *Eighth Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, 27<sup>th</sup> Spec. Sess. GAOR U.N. Doc. A/HRC/27/60 (Aug. 13, 2014).

continued targeting of civilians, which they say constitute “gross violations of human rights.”<sup>128</sup> As of August 2014, the U.N. reported that Syrian government forces continued to “perpetrate massacres and conduct widespread attacks on civilians, systematically committing murder, torture, rape and enforced disappearance amounting to crimes against humanity.”<sup>129</sup> They also listed as infractions the Syrian government’s use of chlorine gas against civilians, hostage taking, and the use of child soldiers to commit atrocities.<sup>130</sup>

While the U.N. Security Council has sought to investigate the ongoing atrocities in Syria, and passed resolutions aimed at ending them, little has been done to stop al-Assad’s slaughter of his people.<sup>131</sup> In September 2013, President Obama issued an arguable “red-line” when he said that the United States would be forced to act if Syria’s chemical weapons were further used or proliferated.<sup>132</sup> This led many to question whether the United States had a clear point of no turning back on the Syrian conflict, and if so, whether it comported with the R2P doctrine.<sup>133</sup> For its part, the United States has refused to intervene militarily to stop the al-Assad regime from committing further atrocities against civilians in Syria, even though other measures have failed and, at times, the Obama Administration has squarely invoked the language necessary to trigger the Responsibility to Protect.<sup>134</sup>

Inherent in this failure is perhaps recognition that removing al-Assad would neither stabilize the region, nor end the civil war that is also responsible for atrocities.<sup>135</sup> That said, the reasons the United States has avoided intervening against the Syrian government remain as unclear as they are likely complex.<sup>136</sup> Still, many have voiced concern that the United States and the international community are plainly neglecting their duty to intervene, thereby undermining everything that R2P stands for.<sup>137</sup> USIP expert Manal Omar, citing U.N. estimates that Syrian forces had killed more than 191,000 civilians so far in the conflict, warned, “The Syria question is one that the Obama

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128 *Id.*

129 *Id.*

130 *Id.*

131 Findlay, *supra* note 108, at 5.

132 Glenn Kessler, *President Obama and the ‘Red Line’ on Syria’s Chemical Weapons*, WASHINGTON POST (Sep. 6, 2013), <http://www.washingtonpost.com/blogs/fact-checker/wp/2013/09/06/president-obama-and-the-red-line-on-syrias-chemical-weapons/>.

133 *Id.*

134 *Id.*

135 James Holmes, “*Responsibility to Protect*” *Can’t Save Syria*, THE DIPLOMAT (Feb. 1, 2014), <http://thediplomat.com/2014/02/responsibility-to-protect-cant-save-syria/> (arguing that the Security Council will not garner enough votes to intervene in Syria, and this is the only way an intervention can be legal).

136 *See, e.g., id.* (arguing that no legal framework can accommodate intervention due to the divergent views of international partners on intervention); *But see* Eamon Aloyo, *The Responsibility to Protect and The Use of Force in Syria*, THE HAGUE INST. FOR GLOBAL JUSTICE (Jan. 28, 2014), [http://www.thehagueinstituteforglobaljustice.org/index.php?page=Commentary-Commentary\\_Articles-Recent\\_Commentary-The\\_Responsibility\\_to\\_Protect\\_and\\_the\\_Use\\_of\\_Force\\_in\\_Syria&pid=176&id=170](http://www.thehagueinstituteforglobaljustice.org/index.php?page=Commentary-Commentary_Articles-Recent_Commentary-The_Responsibility_to_Protect_and_the_Use_of_Force_in_Syria&pid=176&id=170) (arguing that intervening in Syria is justified under R2P, but instead of asking whether that intervention empirically meets all of the *just ad bellum* and R2P precautions, we should focus on whether intervention would decrease the “severity and incidence of mass atrocities” which is still a desirable outcome).

137 *See* Aloyo, *supra* note 135 (arguing that intervening in Syria is justified under R2P, but instead of asking whether that intervention empirically meets all of the *jus ad bellum* and R2P precautions, we should focus on whether intervention would decrease the “severity and incidence of mass atrocities” which is still a desirable outcome).

administration cannot afford to ignore.”<sup>138</sup>

Complicating the situation even more is the fact that United States and certain allies have taken recent action to defend their own interests in Syria.<sup>139</sup> In September 2014, in response to the threat of expanding Islamic militancy in Syria, the United States and a handful of allies began bombing Islamic State strongholds.<sup>140</sup> From this, Omar expressed what is increasingly being seen as the double standard on intervention: “Why has President Barack Obama and much of the world rallied around the idea of stopping the Islamic State, while doing nothing about Syrian President Bashar al-Assad’s massive bloodletting of his own people?”<sup>141</sup>

In evaluating this failure, it is important to note that it is not necessarily a result of callousness, but rather of misguided and confused policy, political stalemate, overwhelming domestic issues, and apprehension over repeating past mistakes. Indeed, the “folly of prevention” lies mostly in its execution, not its intention.<sup>142</sup> Yet, it is both intention and execution that we turn our attention to next, as this article seeks to defend the R2P doctrine as a viable national security strategy.

### III. THE SECOND GREAT AWAKENING: EMERGING FROM THE “FOLLY” AND PROVIDING REAL PROTECTION

Evaluating Kosovo, Libya, and Syria provides critical insight into how the United States should and should not respond to atrocities.<sup>143</sup> To understand the urgency and depth of America’s inability to uphold our Responsibility to Protect, we must first analyze the root of the problem and establish why it poses a threat to America.<sup>144</sup> Second, we must look at the debate over R2P to inform, rather than completely reroute, U.S. policy.<sup>145</sup> Finally, this article suggests specific solutions for making the United States a leader and real contributor to R2P.

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138 Manal Omar, *Wanted: A Coalition to Defeat the Islamic State and Assad*, U.S. INST. OF PEACE (Oct. 8, 2014), [HTTP://WWW.USIP.ORG/PUBLICATIONS/WANTED-COALITION-DEFEAT-THE-ISLAMIC-STATE-AND-ASSAD](http://www.usip.org/publications/wanted-coalition-defeat-the-islamic-state-and-assad).

139 *Id.*

140 Max Fischer et al., *The US is Bombing Syria: What We Know and Don’t Know*, VOX MEDIA (Sep. 23, 2014), <http://www.vox.com/2014/9/23/6832577/the-us-is-bombing-syria-what-we-know-and-dont-know>.

141 Omar, *supra* note 137.

142 Doyle, *supra* note 89 (noting that “the Libyan intervention represents only the third time since 2005 that the Security Council has invoked R2P to enforce the protection of civilians”).

143 Kuperman, *supra* note 114 (claiming that “NATO attacked Libyan forces indiscriminately, including some in retreat and others in Qaddafi’s hometown of Sirte, where they posed no threat to civilians. Moreover, NATO continued to aid the rebels even when they repeatedly rejected government cease-fire offers that could have ended the violence and spared civilians”).

144 See, e.g., Erin Durkin, *Hillary Clinton Criticizes Obama Foreign Policy in Interview: ‘Failure’ To Help Syrian Rebels Led To Strong ISIS*, N.Y. DAILY NEWS (Aug. 11, 2014), <http://www.nydailynews.com/news/politics/hillary-clinton-criticizes-obama-foreign-policy-interview-failure-syrian-rebels-led-strong-isis-article-1.1899301> (noting that insecurity in Syrian has led to a security implosion and allowed ISIS to expand).

145 Int’l Dev. Research Ctr., *supra* note 64 at vii, 52-53 (citing that the R2P doctrine is flexible and needs to be backed by a conversation on how to implement it, including a code of conduct implemented between Security Council members which would compel invocation if the five precautionary measures were realized in any situation).

*A. The Root of the Problem: How the United States Thinks about R2P and Why We Must Change*

Before becoming head of the APB, then-journalist Samantha Power summed up her argument for why the United States has consistently failed in its responsibility to protect.<sup>146</sup> First, she said, U.S. stakeholders have a propensity for turning a blind eye, or disbelieving atrocities can or will happen on such a grand scale.<sup>147</sup> Second, domestic politics remains seemingly apathetic to the plight of genocide and other atrocities, and politicians see intervention as more costly than inaction.<sup>148</sup> Third, reticent to engage troops even once atrocities emerge, the United States also fails to take preventative measures that could have stopped them.<sup>149</sup> Fourth, falling into well-established theoretical traps, policymakers and politicians become mired in the debate over the “nature of the violence in question,” and end up viewing U.S. intervention as helpless against the inevitable crises and silencing those who advocate action.<sup>150</sup> In short, the United States generally does not see the problem, does not believe it can be changed regardless of our sacrifice, and does not do anything meaningful to impact scenarios in which the atrocities arise.

Besides the tragic and avoidable loss of human life, this dereliction of America’s duty cannot stand for several reasons. First, if Americans do not have the requisite will to fight atrocities, those atrocities will go unchecked and create more global instability.<sup>151</sup> Syria is a good example of where a localized “civil war” provided ample space for extremism to spread.<sup>152</sup> More festering global instability poses greater long-term threats to the U.S. homeland, our way of life, and that of our allies.<sup>153</sup> U.S. policymakers and R2P advocates should help the public understand these threats and introduce R2P into the everyday lexicon as a preventative tool so America becomes more willing to support intervention abroad – and only when it is necessary.<sup>154</sup> Put another way, there are countless roundtables and working groups debating R2P policy in Washington, but how many Americans know or care about the doctrine outside of the beltway?<sup>155</sup> How many understand how it is tied to their domestic future and are willing to hold their government accountable for implementing R2P?<sup>156</sup> R2P will never get the public will behind it, if it is not talked about and championed as a real national security tool.

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146 See Power, *supra* note 33, at xvii-xviii.

147 *Id.*

148 *Id.*

149 *Id.*

150 *Id.*

151 Findlay, *supra* note 108, at 6 (arguing that it took only weeks for the Libya mission to shift to ousting al-Qaddafi through the imposition of the no-fly zone and to supporting rebels).

152 Durkin, *supra* note 143 (claiming that the failure to support certain Syrian rebels or intervene militarily paved the way for the security situation there to implode and allow ISIS to expand).

153 See Joshua Keating, *The Mystery of ISIS’ Foreign Fighters*, SLATE (Nov. 17, 2014), [http://www.slate.com/blogs/the\\_world/2014/11/17/are\\_isis\\_western\\_fighters\\_a\\_terrifying\\_security\\_threat\\_or\\_bumblng\\_tweeting.html](http://www.slate.com/blogs/the_world/2014/11/17/are_isis_western_fighters_a_terrifying_security_threat_or_bumblng_tweeting.html) (noting how ISIS is likely to use foreign fighters trained in the crucible that has become Syria, to attack Western targets).

154 See, e.g., Richard H. Solomon & Lawrence Wocher, *Confronting the Challenge of “Political Will”*, U.S. INST. OF PEACE (Mar. 18, 2010),

<http://www.usip.org/publications/confronting-the-challenge-political-will>.

155 *Id.*

156 *Id.*

Second, an inability to lead and act on R2P makes the United States look weak, and worse, self-absorbed. Whether or not President Obama drew ‘red lines’ on Syria is immaterial when, even in the face of known atrocities, the United States still hesitates to act. The fact is, the United States and their international partners know what is going on in Syria.<sup>157</sup> Stakeholders should not have to threaten action in a tired waiting game while more civilians die over a period of years.<sup>158</sup> Instead the international community should not hesitate to act when the R2P triggers are met and the United States must take the lead, as they did in Kosovo, in convincing allies to take collective action.<sup>159</sup> To do anything less makes R2P look empty. Invoking R2P and, when necessary, the use of military force, would help avoid making our commitment to the doctrine and to genocide prevention look so hollow.

Finally, not acting – not testing our capability in legitimate situations concerning atrocities – prevents the United States from adopting lessons learned.<sup>160</sup> Similarly, replacing those legitimate instances with operations under the guise of R2P, but that are really for other political ends, degrades the capital necessary to act when people are actually in danger.<sup>161</sup> If one thing is clear from the United States’ humanitarian intervention strategy, it is that we need to learn how to do it better.<sup>162</sup> For these reasons, the United States must strive to engage when R2P is triggered and stay out of the fray when it is not. This will take more careful fact checking than in Libya, and more resourceful use of our intelligence and military capabilities, but it can be done.

These general outlines on why failing at the Responsibility to Protect is unpalatable for the United States lead us next into an evaluation of the criticism and support for humanitarian intervention. Understanding this debate is crucial to framing a solution for the United States to prioritize and act on its duty.

*B. Critical Considerations: Allowing the Debate Over Humanitarian Intervention to Shape Better Policy – Not Undermine It Entirely*

The debate surrounding intervention is very polarizing and roughly aligns with the differing schools of thought present among international relations theorists on how to best address intra-state or regional conflict.<sup>163</sup> While there are valid arguments on all sides, critics of the Responsibility to Protect have favored abandoning the doctrine altogether.<sup>164</sup> Before suggesting solutions for a better

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157 U.N. HUMAN RIGHTS COUNCIL, *supra* note 126.

158 Findlay, *supra* note 108, at 7-8 (submitting that not acting is just as bad as acting when there is no legitimate invocation of R2P – both undermine the doctrine and call into question the efficacy of the doctrine).

159 See Power, *supra* note 33, at 447 (recounting how the U.S. sought support for peace talks and rapid NATO action should the Serbians refuse to comply with Western allied demands to stop killing in Kosovo).

160 See Aloyo, *supra* note 135 (arguing that more focus must be placed on whether intervention would decrease the “severity and incidence of mass atrocities,” which is still a desirable outcome); See also Kuperman, *supra* note 114 (arguing that there are lessons that must be learned from instances where R2P has been incorrectly applied, because there are still outstanding insecurity concerns).

161 Findlay, *supra* note 108, at 5.

162 See Aloyo, *supra* note 135.

163 Omestad, *supra* note 22.

164 Holmes, *supra* note 134.

R2P strategy, it is important to analyze the arguments on either side of the R2P debate. This article adopts the view that arguments against R2P are not compelling enough to flatly reject the doctrine. Rather, they serve as an opportunity to shape a more sound R2P policy.

*i. Cost, Benefit, and The Stain of Precedent: The Case Against Humanitarian Intervention*

Critics have argued that the humanitarian intervention record over the past twenty years reveals that the costs are not worth their effects. In scholar Benjamin Valentino's estimation, this negative cost-benefit ratio requires the United States to abandon humanitarian military intervention in favor of a new development-centric U.S. policy focused on public health, disaster relief, and refugee assistance.<sup>165</sup> Analyzing conflicts on a case-by-case basis, Valentino points out that "Although humanitarian intervention has undoubtedly saved lives, Americans have seriously underappreciated the moral, political, and economic price involved."<sup>166</sup> The costs, according to Valentino, include seven distinct consequences, which this article separates into two categories: assumable and manageable risks, and lessons-based imperatives that can be used to help redefine the United States' R2P strategy.

The first three of Valentino's critiques fall into the assumable and manageable risks category. First, Valentino argues that humanitarian intervention means inevitably arming rebel factions with whom we rarely share similar values, respect for human rights, or long-term goals.<sup>167</sup> Second, he contends that because humanitarian intervention often uses military means, by default, it furthers the same loss of innocent human life that it is trying to stop.<sup>168</sup> Third, he asserts that intervention allows the enemy to galvanize and mobilize against the intervening party, often hastening their genocidal efficacy.<sup>169</sup>

However, to a certain extent, these first three consequences all may be avoided or mitigated. Take, for example, the advancement of intelligence capabilities, which have helped better predict and respond to crises, allow warfighters to reduce civilian casualties, and empower policymakers to more accurately weigh strategic risks and gains.<sup>170</sup> When weighed against the costs of not reacting, those mitigating strategies prove negligible at the least.

Valentino's remaining critiques present further reaching implications and present risks that are admittedly harder to mitigate or assume. However, classifying them as lessons learned, rather than unchangeable truths, casts light on how the United States might reconfigure its R2P policy. Using the First Gulf War as an example, Valentino maintains that intervention falsely encourages victims to rise up against brutal regimes – and often leaves them without the necessary support

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165 Benjamin Valentino, *The True Costs of Humanitarian Intervention: The Hard Truth About a Noble Notion*, FOREIGN AFFAIRS (Nov./Dec. 2011), <http://www.foreignaffairs.com/articles/136542/benjamin-a-valentino/the-true-costs-of-humanitarian-intervention>.

166 *Id.*; See also Bello, *supra* note 32.

167 Valentino, *supra* note 164.

168 *Id.*; See also Doyle, *supra* note 80.

169 Valentino, *supra* note 164.

170 Western, *supra* note 29.

to continue fighting their oppressors.<sup>171</sup> Imagine however, if no rebellion had been urged in Iraq in 1991, or if before it was, the United States was in place and ready to assist. The outcome then probably would have been different – or at least more controllable and resulting in fewer casualties.

Valentino continues, declaring that precedent for conducting NATO-led operations without U.N. Security Council approval has undermined the United Nations as the rightful leader of intervention operations.<sup>172</sup> Perhaps, though, R2P requires more flexibility than what the U.N. Security Council can provide; if that body cannot or will not act, it need not be the one that determines whether intervention is appropriate.<sup>173</sup> Certainly, the intractable positions and interests of the Security Council's members continue to make it unlikely that each will agree when and how to act, especially in Syria. This does not mean that intra-state atrocities should go unchecked.

Valentino also reasons that intervention degrades the United States' standing among other international powers, and that allies no longer trust America's handling of geopolitical crises.<sup>174</sup> However, the same could be said of America's failure to act and uphold our core values throughout the world. Here, the choice is a matter of losing some trust or losing our identity completely.

Finally, Valentino finds that intervention results in "lost opportunity costs" wherein the money used to conduct operations could have been used to advance public health initiatives and other life-saving humanitarian measures.<sup>175</sup> It is true that there are many military and humanitarian priorities in the world today, but R2P is a long-term investment that goes beyond building public health or other infrastructures in places where security is still at an overwhelming deficit. Although it appears that the R2P investment may be too high in the short term, it stands to ultimately help lessen the world's problems in the long run by improving quality of life through the provision of basic human security first – put another way, infrastructure development cannot meaningfully occur without a safe and secure environment that facilitates service delivery in the first instance.

Valentino, like many critics, leaves the door open for very limited humanitarian intervention only when *absolutely necessary*. He reasons that one such instance might be in the case of border closures where oppressive regimes prevent the flight of refugees.<sup>176</sup> However, this brand of purely reactionary intervention neglects to address the root cause, provide for those who are unable to flee, and still begs the basic question: what is "enough" brutality to know that the line has been crossed and that military intervention is necessary? Of course, for each of these critiques, there are worthwhile counterpoints to which we now turn.

### *ii. What Humanity Requires: The Case for Humanitarian Intervention*

Others, taking a broader and more human view of the net gain yielded by humanitarian

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171 *Id.*

172 *Id.*

173 Bajoria, *supra* note 7 (noting that some experts have questioned the future of R2P as uncertain and raised the point that acting outside of the U.N. is still murky legal water).

174 Valentino, *supra* note 164.

175 *Id.*

176 *Id.*

intervention, believe there is no replacement for the Responsibility to Protect.<sup>177</sup> Supporters point out that R2P has decreased the overall prevalence of global conflict, lowered the amount of lives lost in those conflicts, and institutionalized international norms against violence – all critical advancements in their own right.<sup>178</sup> Western and Goldstein sum up this view, noting that humanitarian intervention belongs squarely in the “growing tool kit of conflict management strategies that includes today’s more robust peacekeeping operations and increasingly effective international criminal justice mechanisms.”<sup>179</sup>

Notwithstanding views on whether humanitarian intervention has had a positive or negative effect, proponents have also argued that the responsibility to intervene is a moral imperative and therefore, cannot be weighed in terms of cost-benefit ratio. Rather, humanitarian intervention, with R2P as its decisive manifesto, requires members of the international community to do what is *right* as fellow members of the human race – that is, protect those that are most vulnerable.<sup>180</sup> Ambassador Power notes, however, that the moral imperative has rarely ever been sufficient to promote action.<sup>181</sup> She submits that the morality argument has often had to be combined with one of self-interest to get people to listen.<sup>182</sup>

While the moral imperative argument may not be sufficient, it is nonetheless valid and necessary. Every day, the United States asks others to honor democracy, human rights, and freedom. The hypocrisy of the United States failing to do as they preach further weakens our political capital, creates a generation of dissidents, and leaves open, rather than secures the future of freedom for our posterity. Even if actors cannot agree that R2P is the right thing to do, certainly there must be some recognition that international stakeholders need to set a precedent for protection or risk undermining the efficacy of the U.N.<sup>183</sup> This is where self-interest factors into otherwise altruistic decision-making.

### *C. What Can the United States Do to Build Consensus, Lead on R2P, and Stop Atrocities*

Failing in our responsibility to protect is neither advisable nor sustainable. In order to respond to this failure, the United States must take measures to correct course.<sup>184</sup> As this article seeks to define how the United States might better fulfill its recognized R2P obligations, the following suggests ways America can clarify its humanitarian intervention strategy and become a global leader in the R2P movement.<sup>185</sup> Ultimately, though, no strategy is complete without a willingness to follow through.

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177 See, e.g., Power, *supra* note 18, at 512.

178 Western., *supra* note 29.

179 *Id.*

180 Citation needed. [HAS THIS BEEN RESOLVED?]

181 Power, *supra* note 33, at 512.

182 *Id.*

183 Int’l Dev. Research Ctr., *supra* note 64, at 52-53 (recognizing that there will be times when the Security Council fails to act given the veto power of the five permanent member states, and that the international community needs to force the U.N. to be accountable by putting pressure on the body to fulfill its mandate in those instances).

184 See, e.g., Bajoria, *supra* note 7 (noting that the United States has tempered its use of R2P in recent years, likely to due to the myriad challenges they encountered in Iraq and Afghanistan where they led intervention missions).

185 *Id.*

Therefore, this article concludes with a recommendation that the United States act in the face of ongoing humanitarian crises.

First, the United States should seek to reinvigorate the dialogue on the Responsibility to Protect, elevating action on R2P as a national priority and changing public discourse on the topic.<sup>186</sup> To the extent that the shortfalls of past conflicts continue to inhibit our capability to have an honest discussion about genocide and atrocities today, the two need to be separated.<sup>187</sup> This can be achieved at relatively low cost by publicly recognizing that the United States has a moral duty to protect and making a clear case for what national security interests are implicated in atrocity situations.<sup>188</sup> As a precursor to this dialogue, policymakers also need to recognize where R2P has not been used at the right times and for the right purposes, such as in Syria and Libya.

Second, the U.S. must take stock of our current laws mandating action in the face of genocide, and reevaluate where they are inadequate, ambiguous, or plainly not being followed. As mentioned in Part I of this article, the Genocide Convention is so saddled with burdensome requirements that it remains largely meaningless as a legal basis for invoking U.S. action.<sup>189</sup> This necessitates a deeper look at what purpose the Convention serves in the U.S. legal regime, as well as what form potential legislative amendments must take in order to trigger U.S. action.<sup>190</sup> Likewise, the Responsibility to Protect roundtable in Washington should undertake a comprehensive policy review to extract lessons learned and recommend a way ahead for policymakers to pursue reform. U.S. policymakers would also be well advised to revisit the document that introduced the Responsibility to Protect, and craft responses that would put into action the recommendations made in that document.<sup>191</sup>

Third, the U.S. must re-establish (or establish in the first place) credibility in identifying human rights atrocities worthy of invoking R2P. This can be accomplished by creating a special standing joint task force that uses the vast intelligence and military resources at our disposal to identify atrocities.<sup>192</sup> Policymakers should press the intelligence community to produce intelligence that helps to identify specific threats to civilians and use that intelligence to shape policy recommendations. This information should be shared with international stakeholders, and a more comprehensive analytical framework developed to keep all participants apprised of developments underlying genocide and human rights atrocities.<sup>193</sup>

Fourth, the United States must lead efforts to promote sustainable peace in post-genocide

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186 Solomon, *supra* note 133 (arguing that garnering enough political will to act is the biggest challenge to R2P, but that this requires making the case for which national interests are implicated, fleshing out what contrary interests exist, especially among members of the Security Council, and harnessing the power of the media to communicate a clear case for action so the public and stakeholders demand accountability).

187 *Id.*

188 *Id.*

189 Kaufmann, *supra* note 12; *See also* Bajoria, *supra* note 7 (noting that the United States has tempered its use of R2P due to past bad precedent and the ambiguity of a workable legal framework for compelling action).

190 *See, e.g.*, Bajoria, *supra* note 7 (noting that the United States has tempered its use of R2P due to past bad precedent and the ambiguity of a workable legal framework for compelling action).

191 *See, e.g.*, Int'l Dev. Research Ctr., *supra* note 64.

192 *See, e.g.*, Lawrence Wocher, *Conflict Assessment and Intelligence Analysis*, U.S. INST. OF PEACE (Mar. 18, 2010), <http://www.usip.org/publications/conflict-assessment-and-intelligence-analysis>.

193 *Id.*

situations, and to stabilize the situation in pre-conflict areas. This starts with the United States being a stronger advocate for R2P in general, but it ranges up to being able to circumvent U.N. inaction and invoke the power of NATO to respond to real or looming atrocities – although, not without first taking every measure to push the Security Council to act and the U.N. to fulfill its mandate.<sup>194</sup> Although conventional wisdom tells us that collective action can be legitimate, but not necessarily legal, if international community members act without the approval of the U.N. Security Council, this concept too must be reevaluated.<sup>195</sup> The U.N. Security Council is hobbled by having to entertain sometimes diametrically opposed interests, as evidenced in their inability to authorize military action by resolution in cases where genocide was patently clear.<sup>196</sup> Even when it elects not to act, that fact should not end the discussion on protection.

Finally, and underlying all of these recommendations, the United States should act with appropriate force when genocide, war crimes, and human rights atrocities occur.<sup>197</sup> It should be clear when military action will be used – not threatened and then never executed, or used solely to topple regimes.<sup>198</sup> This action starts in Syria, where many continue to die at the hands of a brutal regime.<sup>199</sup> Acting does not necessarily mean regime change, although it could if that is what the situation calls for. It also does not mean supporting rebel groups who are fighting to later harm people. Any action must comport, to every extent possible, with basic principles laid out by the International Commission on Intervention and State Sovereignty's initial manifesto.<sup>200</sup>

#### IV. CONCLUSION

Genocide, war crimes, and human rights atrocities are blights on humanity. Unfortunately, the international community has been unable to prevent the conflicts that produce these events. Impediments to prevention are only likely to increase as global instability rises. However, the past and the future should not deter action today. The United States can and should prevent the further degradation of global and human security by resetting the intervention discussion, prioritizing R2P as a key national security doctrine, and rallying fellow stakeholders in support of collective action when necessary. Though some believe the Responsibility to Protect is a thing of the past, the United States and their international partners cannot take the risk of abandoning our duties toward humanity or discarding a critical national security instrument.

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194 Int'l Dev. Research Ctr., *supra* note 64, at 52-53.

195 See Aloyo, *supra* note 135 (arguing that more focus must be placed on whether intervention would decrease the "severity and incidence of mass atrocities," which is still a desirable outcome).

196 See, e.g., Bajoria, *supra* note 7 (noting that the United States has tempered its use of R2P due to past bad precedent and the ambiguity of a workable legal framework for compelling action).

197 Kaufmann, *supra* note 12; See also Bajoria, *supra* note 7 (noting that the United States has tempered its use of R2P due to past bad precedent and the ambiguity of a workable legal framework for compelling action).

198 Omar, *supra* note 137.

199 *Id.*

200 Int'l Dev. Research Ctr., *supra* note 64, at xii-xiii (requiring that (1) the primary intention had to be to end human suffering; and (2) military action had to be used only as a "last resort"; (3) applied only through proportional means; and (4) with, reasonable prospects of success).