The Responsibility to Protect in the Anarchical Society: Power, Interest, and the Protection of Civilians in Libya and Syria

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The North Atlantic Treaty Organization's ("NATO") 2011 intervention in Libya is widely regarded as a successful example of the international community fulfilling its responsibility to protect civilians against abuses perpetrated by their own state. The responsibility to protect addresses certain shortcomings in the concept of humanitarian intervention—the use of military force to address humanitarian crises. The use of force to address grave violations of human rights may often be too little, too late. By contrast, the responsibility to protect is a continuum of actions (including, but not limited to, the use of force), which is intended to address crises earlier and through a variety of different tools. The NATO intervention, authorized by the United Nations ("U.N.") Security Council, responded to the Libyan government's attacks against civilian rebels inspired to revolt by the events of the Arab Spring. Yet in other instances in which governments responded brutally to pro-democracy protestors—notably Syria—the role of the international community has been significantly less visible than in Libya. While governments in both Libya and Syria responded with force to unarmed civilian protestors, and are suspected of crimes against humanity, only the former was the target of intervention by the international community, an action that ultimately led to the demise of the regime.

The contrast between these two cases bears out the fact that the responsibility to protect is subject to many of the same pitfalls as humanitarian intervention. Critics of humanitarian intervention correctly pointed to selectivity in its application as problematic. States intervened in instances where they had an interest—humanitarian or otherwise—in intervening and the power to do so. The selectivity that seems to plague action under the frameworks of both humanitarian intervention and the responsibility to protect stems from the nature of the international system, and the lack of a realistic alternative to state action in support of either principle. While the responsibility to protect has advanced the debate about support for human rights in some key respects, it is nevertheless subject to some of the same pitfalls as humanitarian intervention with respect to implementation.

This article begins with a brief overview of the two cases under consideration, Libya and Syria. It then surveys the evolution of the debate about the international community's role in responding to human rights violations, with an emphasis on the emergence of the responsibility to protect. Finally, it takes up the dynamics of the international system that frustrate a consistent application of the responsibility to protect, perpetuating the inconsistency that subjected the right of humanitarian intervention to criticism.

I.   THE ARAB SPRING

On December 17, 2010, Tunisian fruit vendor Mohamed Bouazizi set himself on fire after the government confiscated his goods. Bouazizi's death brought to the forefront rage against the Tunisian government, which was widely viewed as oppressive and corrupt.[1] A coalition of intellectuals, human rights activists, and labor movements successfully toppled the government within a month of Bouazizi's self-immolation. The anti-government sentiment was not limited to Tunisia, and soon spread elsewhere throughout the Middle East and North Africa, including Libya and Syria.

A. The Libyan Uprising

The Libyan regime of Muammar Khadafy did not escape the groundswell of rebellion. On February 17, 2011, Libyans who were discontent with Khadafy's rule held a "day of rage" protest in response to the government's human rights abuses, which Amnesty International describes as having been a "hallmark" of the regime.[2] Protests continued in the city of Benghazi and quickly spread elsewhere throughout Libya, and they were met with brutal repression. In Benghazi, security forces killed at least 109 protestors, some of whom had been protesting peacefully.[3] Protests, and the ensuing brutal government crackdowns, spread throughout Libya, eventually reaching Tripoli. On February 22, after nearly a week of protests, Khadafy criticized the protests for threatening Libya's interests and pledged to "purge Libya inch by inch, room by room, household by household, alley by alley, and individual by individual until the country is purified."[4] In support of that pledge, government forces resorted to brutally repressive tactics against the opposition.

By late February, anti-government rebels controlled much of Libya, though government forces would eventually retake much of the territory that the rebels had gained. The brutality of the Libyan government's response, particularly its strategy of targeting civilians, led the international community to intervene on behalf of the rebel movement. In Resolution 1970, the U.N. Security Council

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1. Kareem Fahim, *Slap to a Man's Pride Set Off Tumult in Tunisia*, N.Y. TIMES, Jan. 22, 2011, at A1, *available at* http://www.nytimes.com/2011/01/22/world/africa/22sidi.html?pagewanted=all.

2. Amnesty Int'l, *The Battle for Libya: Killings, Disappearances and Torture*, AI Index MDE 19/025/2011 (Sept. 13, 2011).

3. *Id.*

4. *Id.*

referred the Libyan situation to the International Criminal Court for prosecution.[5] In addition, the Security Council imposed a weapons embargo and implemented a travel ban and asset freeze for key individuals affiliated with the Khadafy regime and suspected of violence against the protestors.[6]

The following month, the Security Council adopted a second resolution on Libya, Resolution 1973.[7] This resolution authorized U.N. Member States to use "all necessary measures," including the use of force, to ensure protection of civilians in Libya.[8] The forcible intervention authorized by Resolution 1973 would be carried out by NATO, which began striking Libya's air defenses two days later.[9] NATO's intervention neutralized the government's advantage and paved the way for a military triumph by the rebel movement in August, when they seized control of Tripoli.

B. Rebellion in Syria

The Syrian government has also been beset by protests, and, like Libya, has responded with brutal and repressive acts against civilians. Anti-government protests began in Syria in March 2011, when a group of approximately 200 protestors called for the ouster of Syrian President Bashir al-Assad.[10] As in Libya, the government has responded harshly to the anti-government protests, not hesitating to open fire on civilian protestors. Estimates of the number killed vary widely, but even conservative estimates place the number of dead in the thousands.[11] In the words of Human Rights Watch, "the notorious security services, referred to generically as *mukhabarat*, and pro-government armed groups, whom Syrians refer to as *shabeeha*, regularly used force, often lethal force, against largely peaceful demonstrators, and often prevented injured protesters from receiving medical assistance."[12] According to witnesses, the security forces utilize lethal force against protestors even when they are not threatened by the protestors.[13]

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5. S.C. Res. 1970, ¶ 4, U.N. Doc. S/RES/1970 (Feb. 26, 2011).

6. *Id.* ¶¶ 9-21.

7. S.C. Res. 1973, U.N. Doc. S/RES/1973 (March 17, 2011).

8. *Id.* ¶ 4.

9. David D. Kirkpatrick, Steven Erlanger, & Elisabeth Bumiller, *Allies Open Air Assault on Qaddafi's Forces in Libya*, N.Y. TIMES, March 20, 2011, at A1, *available at* http://www.nytimes.com /2011/03/20/world/africa/ 20libya.html?pagewanted=all.

10. Elizabeth Flock, *Syrian Revolution: A Revolt Brews Against Bashar al-Assad's Regime*, WASH. POST BLOG (March 15, 2011, 11:35 AM), http://www.washingtonpost.com/blogs/blogpost/post/ syria-revolution-revolt-against-bashar-al--assads-regime/2011/03/15/ABrwNEX_blog.html.

11. *Syria Uprising: UN Says Protest Death Toll Hits 3,000*, BBC NEWS (Oct. 14, 2011, 01:44 PM), http://www.bbc.co.uk/news/world-middle-east-15304741.

12. HUMAN RIGHTS WATCH, WE LIVE AS IN WAR: CRACKDOWN ON PROTESTORS IN THE GOVERNORATE OF HOMS 10 (2011).

13. *Id.* at 18.

Unlike Libya, the U.N. Security Council did not adopt a resolution on Syria because proposed action was blocked by Russia and China.[14] The failure of the U.N. to respond has, apparently, only emboldened the al-Assad regime in its brutal crackdown on protestors.[15] Although the Security Council has not adopted a resolution addressing the uprising in Syria, it did issue a presidential statement expressing concern about the deteriorating situation in Syria and urging the government to negotiate a ceasefire.[16] The statement also had the support of Russia and Syria, the two states that had vetoed previous Security Council efforts to act on the Syrian crisis. To secure that support, the presidential statement was devoid of threats or demands.[17] Undeniably, the response of the international community to the violence in Syria has been tepid when compared with the response to similar crimes in Libya.

II.   FROM HUMANITARIAN INTERVENTION TO THE RESPONSIBILITY TO PROTECT

The responsibility to protect grows out of a longstanding right of humanitarian intervention. While state sovereignty has long included the right of states to exercise broad discretion with respect to the treatment of their nationals, this discretion has never been unlimited. Instead, international law has also recognized the right of states to intervene when a state's treatment of its nationals shocks the conscience of mankind. Originally, states exercised this right with respect to certain minority populations who were the targets of abuse by their governments. Over time, the nature of intervention changed as the concepts of humanity and human rights altered. Certainly, the instances of human rights violations have overwhelmed the occasions on which some state or group of states has intervened in response to those violations. The selective nature of outside intervention in response to humanitarian crises encouraged critics of the right to humanitarian intervention, including Thomas Franck and Nigel Rodley, who suggested that the existence of such a right would "come as a surprise to Biafrans, Rhodesians, and South Africans."[18] Particularly during the Cold War, those cases in which outside powers did intervene, such as India's intervention in East Pakistan, which resulted in the creation of Bangladesh, occurred without the authorization of the U.N. Security Council, raising issues regarding the legality of

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14. Neil MacFarquhar & Anthony Shadid, *Russia and China Block U.N. Action on Crisis in Syria*, N.Y. TIMES, Feb. 5, 2012, at A1, *available at* http://www.nytimes.com/2012/02/05/world/middleeast/syria-homs-death-toll-said-to-rise.html.

15. Anthony Shadid, *Syrian Unrest After a Failure of Diplomacy*, N.Y. TIMES, Feb. 6, 2012, at A1, *available at* http://www.nytimes.com/2012/02/06/world/middleeast/syria-steps-up-crackdown-after-failed-un-motion.html? pagewanted=all.

16. Rick Gladstone, *U.N. Council Backs Plan for Ending Syria Conflict*, N.Y. TIMES, Mar. 22, 2012, at A12, *available at* http://www.nytimes.com/2012/03/22/world/middleeast/in-moment-of-unity-security-council-endorses-plan-to-halt-syria-conflict.html.

17. *Id.*

18. Thomas M. Franck & Nigel S. Rodley, *After Bangladesh: The Law of Humanitarian Intervention by Military Force*, 67 AM. J. INT'L L. 275, 296 (1973).

such operations under the U.N. Charter.[19] NATO's intervention in Kosovo, which was not sanctioned by the U.N. Security Council, also raised similar questions with respect to the legality of humanitarian intervention under the U.N. Charter.

A. Humanitarian Intervention during the post-Charter Era

The role of interest in motivating intervention emanates from the nature of the international system itself. In the absence of a central authority to implement norms such as human rights standards, the enforcement of these norms falls to states. A state's action is motivated by its interests. While these interests will certainly include an interest in human rights, humanitarian interests alone are rarely sufficient to motivate a state to intervene abroad. Forcible intervention in support of human rights requires that a state expend its resources and place at risk the lives of its military personnel, something a state will not likely do in the absence of self-interest. As Franck and Rodley note, "in a surprising number of instances where the humanitarian factor was great but no threat existed to the political or economic concerns of foreign powers, states have evinced little interest in forceful surgical intervention."[20] For Franck, the potential for abuse was a serious objection to the right of humanitarian intervention.[21] This absence of self-interest is one reason why states did not always intervene in instances of grave human rights violations, leading to uneven enforcement of human rights norms. Subsequent practice diminished this objection, but has not entirely overcome it.[22] The problem of selectivity remains.

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19. A number of legal scholars argued that the creation of the U.N. Charter, which does not explicitly address the question of humanitarian intervention, had extinguished any right to use force in response to human rights violations in the absence of Security Council approval. See IAN BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES (1963); Ian Brownlie, *Humanitarian Intervention, in* LAW AND CIVIL WAR IN THE MODERN WORLD 217 (John N. Moore ed., 1974); Franck & Rodley, *supra* note 18; Oscar Schachter, *International Law: The Right of States to Use Armed Force*, 82 MICH. L. REV. 1620 (1984). This argument leads to the absurd result of diminishing the capacity of states to act in support of one of the U.N. Charter's major purposes, which is promoting respect for human rights. As such, a number of other scholars, including this author, supported a continuing right to humanitarian intervention even in the absence of Security Council authorization. Richard B. Lillich, *Humanitarian Intervention: A Reply to Ian Brownlie and a Plea for Constructive Alternatives, in* LAW AND CIVIL WAR IN THE MODERN WORLD 238 (John N. Moore ed., 1974); Richard B. Lillich, *Forcible Self-Help by States to Protect Human Rights*, 53 IOWA L. REV. 325 (1967); Ved P. Nanda, Thomas F. Muther, Jr., & Amy E. Eckert, *Tragedies In Somalia, Yugoslavia, Haiti, Rwanda and Liberia - Revisiting the Validity of Humanitarian Intervention Under International Law- Part II*, 26 DENV. J. INT'L L. & POL'Y 827 (1998); W. Michael Reisman, *Comment: Coercion and Self-Determination: Construing Charter Article 2(4)*, 78 AM. J. INT'L L. 642 (1984).

20. Franck & Rodley, *supra* note 18, at 279.

21. See THOMAS M. FRANCK, RECOURSE TO FORCE: STATE ACTION AGAINST THREATS AND ARMED ATTACKS 172, 185-86 (2002); Thomas Franck, *Comments on Chapters 7 and 8, in* UNITED STATES HEGEMONY AND THE FOUNDATIONS OF INTERNATIONAL LAW 264, 265, 267 (Michael Byers & Georg Nolte eds., 2003); Thomas M . Franck, *Interpretation and Change in the Law of Humanitarian Intervention, in* HUMANITARIAN INTERVENTION: ETHICAL, LEGAL AND POLITICAL DILEMMAS 204, 229-31 (J. L. Holzgrefe & Robert O. Keohane eds., 2003).

22. Gareth Evans & Mohamed Sahnoun, *The Responsibility to Protect*, FOREIGN AFF., Nov./Dec. 2002 at 99, 100.

B. Responsibility to Protect

The stagnant nature of these debates prompted the emergence of the concept of a "responsibility to protect." The shift in terms of the debate was an attempt to transcend some of the ongoing disputes about the legality and the desirability of the right to humanitarian intervention.

1. ICISS Report

First articulated by the International Commission on Intervention and State Sovereignty ("ICISS"), the concept of responsibility to protect emphasizes that responsibility for individual welfare is shared.[23] The ICISS sought to shift the emphasis from sovereignty as control to sovereignty as responsibility for the lives and well-being of the state's citizens.[24] The primary responsibility for any particular individual lies with that person's own state. Where a state abdicates that responsibility, then the international community has a responsibility to act. The responsibility to protect encompasses three separate obligations. The first of these is the responsibility to prevent. The ICISS emphasized that this obligation also has an international dimension including development assistance, other forms of support, and efforts at conflict resolution like mediation or good offices.[25]

The second responsibility, which comes into play when the preventive measures fail, is the responsibility to react, which includes a range of different coercive measures. The ICISS includes political, economic, judicial or military measures, but it emphasizes that the latter should be deployed only in extreme circumstances.[26] With a view to defining these extreme circumstances, the ICISS proposed several criteria for the utilization of military coercion:

- Military intervention should be undertaken for a just cause, meaning to stop or prevent large scale loss of life or ethnic cleansing.[27]

- Intervention should occur pursuant to right authority.[28]

- Those employing military coercion should do so with the right intention, the existence of which is supported where intervention is multilateral rather than unilateral, and where interference with territorial integrity and political independence is minimized.[29]

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23. INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY, THE RESPONSIBILITY TO PROTECT 17 (2001) [hereinafter ICISS REPORT].

24. *Id.* at 13.

25. *Id.* at 19.

26. *Id.* at 29.

27. *Id.* at 32.

28. *Id.* at 53-54. The question of right authority is a complex question in light of the political obstacles that may preclude working through the U.N. Security Council. In the present cases under consideration, the Security Council supported intervention in Libya, but not in the equally grave situation in Syria. Where the Security Council fails to fulfill its own responsibilities, the ICISS allows for intervention under the authority of the General Assembly or regional organizations and, in exceptional cases, by *ad hoc* coalitions.

29. *Id.* at 35-36.

- Military force should be a last resort after prevention and peaceful means have failed.[30]
- The military intervention should be proportional to the humanitarian objective.[31]
- There should be a reasonable chance of success, meaning that actual protection should be achieved as a result of the military action.[32]

Finally, the responsibility to protect also includes a responsibility to rebuild following intervention.[33]

The ICISS points to three key advantages of this new conceptual framework. The first advantage over humanitarian intervention is that the responsibility to protect shifts the focus of action from the state that holds the right to those in need of protection.[34] Second, the responsibility to protect underscores the fact that primary responsibility remains with the state whose nationals are in need of protection.[35] Finally, the responsibility to protect is a much broader concept than humanitarian intervention.[36] The responsibility to protect seeks to broaden the scope of action taken in response to humanitarian crises, encompassing a range of various responses to a continuum of disasters. While it includes a duty to react to humanitarian crises, the responsibility to protect also includes obligations to prevent and to rebuild, which have been lacking in the discourse surrounding humanitarian intervention. The incorporation of measures other than the use of force diminishes the "all or nothing" nature of the choice between forcible intervention and inaction in response to humanitarian crises. Instead, states have a broader range of options from which to choose, many of which would apply at an earlier point in a crisis.

The key contribution of the ICISS report was to reframe sovereignty in such a way as to resolve the seemingly intractable opposition of sovereignty and human rights.[37] Subsequent interpretations of the responsibility to protect accepted this interpretation of sovereignty, but would differ from the ICISS report in important respects.

2. U.N. High-Level Panel

The norm of the responsibility to protect was subsequently affirmed by the U.N.'s High-Level Panel on Threats, Challenges, and Change, whose report echoed the ICISS treatment of sovereignty as a source of obligation, advocating collective responsibility where a state was unable or unwilling to fulfill its

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30. *Id.* at 36.
31. *Id.* at 37.
32. *Id.*
33. *Id.* at 39.
34. Evans & Sahnoun, *supra* note 22, at 101.
35. *Id.*
36. *Id.*
37. Alex J. Bellamy, *The Responsibility to Protect and the Problem of Military Intervention*, 84 INT'L AFF. 615, 620 (2008).

responsibilities.[38]   The panel recognized a growing consensus in favor of the responsibility to protect, as well as inconsistency on the part of the Security Council.[39]   It outlined a set of criteria similar to the ICISS's for military intervention in support of the responsibility to protect, with one important exception. Where the ICISS was willing to confer legitimacy on actors other than the Security Council, the panel rejected this move. Instead, the panel recognized that "there is a collective international responsibility to protect, *exercisable by the Security Council* authorizing military intervention as a last resort, in the event of genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign Governments have proved powerless or unwilling to prevent."[40]

This statement constitutes a more restrictive view of right authority than that employed by the ICISS, but in other respects, most significantly with respect to just cause, the high-level panel echoed the proposals of the ICISS report. Both documents support the international community's responsibility to act in the face of large-scale humanitarian disasters that states are unwilling or unable to prevent.[41]

3. The Secretaries-General on the Responsibility to Protect

Secretary-General Annan subsequently endorsed the responsibility to protect as well, though he emphasized the non-military components of this obligation by placing his discussion of the responsibility to protect primarily within the context of freedom and dignity rather than the section on the use of force.[42] The Secretary-General endorsed the responsibility to protect as well as the concept of shared responsibility set forth by the ICISS and the high-level panel.[43] Later that year, the General Assembly also endorsed the responsibility to protect in two key paragraphs of its World Summit Outcome document, affirming that "[e]ach individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity."[44] The document goes on to recognize the shared responsibility of the international community to act, but rejected a systematic approach to implementing this responsibility, favoring instead a "case-by-case" approach.[45]   The Security Council subsequently reaffirmed the relevant provisions of paragraphs 138 and 139 of the World Summit

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38. HIGH-LEVEL PANEL ON THREATS, CHALLENGES, AND CHANGE, A MORE SECURE WORLD: OUR SHARED RESPONSIBILITY 17 (2004), *available at* www.un.org/secureworld/report2.pdf.

39. *Id.* at 65-66.

40. *Id.* at 66 (emphasis added).

41. *Id.*; ICISS REPORT, *supra* note 23, at 69.

42. Carsten Stahn, *Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?*, 101 AM. J. INT'L L. 99, 107 (2007).

43. U.N. Secretary-General, *In Larger Freedom: Towards Development, Security, and Human Rights for All: Rep. of the Secretary-General*, ¶ 135, U.N. Doc. A/59/2005 (March 21, 2005).

44. 2005 World Summit Outcome, G.A. Res. 60/1, ¶ 138, U.N. Doc. A/RES/60/1 (Oct. 24, 2005).

45. *Id.* ¶ 139.

Outcome document in Resolution 1674,[46] which it recalled in its subsequent Resolution 1706 on the situation in Darfur.[47]

The current U.N. Secretary-General has also addressed the responsibility to protect, particularly the issues of developing early warning mechanisms and implementing the responsibility to protect.[48]   With respect to the question of implementation, Ban Ki-Moon noted that institutions had failed in the past, particularly in the tragic case of Rwanda.[49] The Secretary-General attributed these failures partly to the conceptual framework of humanitarian intervention, which created what he called a "false choice" between using coercive force or standing by and observing unfolding human tragedies.[50] Drawing on paragraphs 138 and 139 of the Summit Outcome document, Moon suggests three pillars to the responsibility to protect:

- The first emphasizes the state's responsibility to protect its own population from genocide, war crimes, crimes against humanity, and ethnic cleansing, as well as the incitement of any of these offenses.[51]

- The second underscores the responsibility of the international community to assist states in meeting their obligations under the first pillar.[52]

- The third and final pillar requires U.N. Member States to respond in a "timely and decisive manner" when a state has manifestly failed to provide protection to its population, using the broad array of tools at their disposal.[53]

It is this third pillar that is implicated in the Libyan and Syrian crises. Within this pillar, Moon emphasizes the potential utility of referring situations to the International Criminal Court, in addition to other non-forcible measures. Moon attributes special responsibility to the permanent members of the U.N. Security Council, arguing that both their permanent representation on the Security Council and the privilege of the veto confer special responsibility on them. Because of this special responsibility, he urges these members to "refrain from employing or threatening to employ the veto in situations of manifest failure to meet obligations relating to the responsibility to protect."[54] Certainly, the refusal to support a response to situations where states have failed to protect their populations is at odds with a consistent and meaningful approach to the responsibility to protect, but it underscores the problem that I take up here.

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46. S.C. Res. 1674, ¶ 4, U.N. Doc. S/RES/1674 (Apr. 28, 2006).
47. S.C. Res. 1706, U.N. Doc. S/RES/1706 (Aug. 31, 2006).
48. U.N. Secretary-General, *Early Warning, Assessment and the Responsibility to Protect: Rep. of the Secretary-General*, ¶ 19, U.N. Doc. A/64/864 (July 14, 2010).
49. U.N. Secretary-General, *Implementing the Responsibility to Protect: Rep. of the Secretary-General*, ¶ 6, U.N. Doc. A/63/677 (Jan. 12, 2009).
50. *Id.* ¶ 7.
51. *Id.* ¶ 11.
52. *Id.*
53. *Id.*
54. *Id.* ¶ 61.

Moon's remarks on implementing the responsibility to protect suggest a divide between past state practice regarding humanitarian intervention and present and future practice regarding the responsibility to protect. Moon attributes inconsistency in the case of the former to conceptual problems with humanitarian intervention. I would suggest that the problem lies not with the concept, but is instead a feature of both humanitarian intervention and the responsibility to protect being carried out with a decentralized international system by states that are driven by interests and power.

III. THE ROLE OF THE INTERNATIONAL SYSTEM

The responsibility to protect has pushed the debate about humanitarian intervention forward in a number of respects. Particularly important is this shift of emphasis from a state holding a right to engage in humanitarian intervention to a state bearing responsibility for the well-being of individuals, both at home and abroad. These conceptual shifts have advanced the debate, but this does not always translate into an improved response from the international community. One point where the shift from humanitarian intervention to responsibility to protect has had little impact is on the question of consistency, particularly with respect to military intervention. Uneven application of the right to humanitarian intervention was a serious problem even for its supporters, but the responsibility to protect seems to fare little better in this regard. An interesting split within the documents discussed in the previous section hints at the reasons behind this. The ICISS report emphasizes the selection of certain criteria under which military intervention should take place.[55] As outlined above, the cornerstone of these criteria is the existence of just cause. In addition, the ICISS report takes into consideration the issue of authority and several precautionary principles.[56] By contrast, the World Summit Outcome document, which most closely represents the views of state leaders, rejects the imposition of systematic criteria, preferring instead to evaluate each case individually.[57] This speaks to the wish of heads of state, and by extension states, to maintain discretion over when forcible intervention will occur in response to human rights crises.

A more systematic approach would be consistent with the cosmopolitan morality implicit in the responsibility to protect. The difficulty lies in the fact that implementing this cosmopolitan morality falls to members of the international system, namely states—both in their individual capacity and as members of key institutions such as the Security Council. In the absence of a central authority in the international system, the implementation of rules falls to states.[58] It is states that would vote, as members of the Security Council, to authorize intervention, and it is states, individually or in concert with others, who would execute that decision.

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55. ICISS REPORT, *supra* note 23, at XII.
56. *Id.*
57. 2005 World Summit Outcome, *supra* note 44, ¶ 139.
58. HEDLEY BULL, THE ANARCHICAL SOCIETY: A STUDY OF ORDER IN WORLD POLITICS 72 (1977).

One of the key insights of the realist tradition of international relations is that states are driven by the pursuit of their interests. State interests certainly include humanitarian interests, but they also include other, more material and self-oriented interests, including the need to maintain their own security above all else. Intervening in humanitarian crises like those in Libya and Syria may further humanitarian interests, but, because such interventions require the expenditure of troops and other resources, they do so at a cost to the states' own security interests. This reality subjects the principle of the responsibility to protect to these dynamics of the international system, particularly states' pursuit of their own interests.

The differing treatment of Libya and Syria bears out the inconsistencies that are created by these features of the international system. In both states, the governments have committed crimes against humanity against their own populations by targeting civilians. In the parlance of the responsibility to protect, both of these states are unwilling to fulfill their responsibilities toward their citizens. Despite the fact that just cause exists in both cases, the Security Council engaged in judicial intervention and authorized military intervention against Libya, while declining to exercise the international community's responsibilities with respect to Syria. The differing outcomes stem not from differences in terms of the respective governments' treatment of their citizens, but from differences in the international community's willingness to intervene. This willingness stems from considerations like power and interest and, as these two cases suggest, they can vary even in circumstances that are quite comparable. Entrusting the responsibility to protect to self-interested states operating within a self-help environment, in which their security interests trump other pursuits, means that the responsibility to protect will not be applied any more consistently or systematically than was the right of humanitarian intervention.

In these particular cases, there are differences in the strategic situation that would render intervention in Syria more difficult, making the cost to states' security interests higher. Intervention would not be so difficult as to raise problems with the probability of success, one of the precautionary principles in the ICISS report,[59] but it would render military intervention more difficult. NATO was able to intervene in Libya through the use of air power, without putting troops on the ground. This would not be the case in Syria, where effective intervention would require the deployment of ground forces. If the members of the Security Council are unwilling to authorize military intervention, one might think that they would authorize judicial measures, in the form of a referral to the International Criminal Court, as they did with the Libyan situation. This refusal points to another set of factors that undermines the willingness of the Security Council to act, namely the political interests of Security Council members. In the Syrian case, the interests of Russia and China, both permanent members of the Security Council with veto power, precluded the Security Council from taking even this step. Russia and Syria enjoy a longstanding alliance, as evidenced by Syria's use of

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59. ICISS REPORT, *supra* note 23, at 37.

Soviet weapons against rebels.[60] If intervention were to occur, it would likely be without the approval of the Security Council, and it would put those states carrying out the intervention at odds with Russia. Beyond these ties between Syria and Russia, even other states acknowledge that military action in Syria would be more difficult and costly than it was in Libya.[61] U.S. defense officials propose that even an operation to protect civilians would require a sizable contingent of ground troops. This stands in contrast to Libya, where NATO was able to intervene without putting forces on the ground by relying on air power and weapons launched from offshore.

The dynamics of the international system mean that state interests permitted intervention in Libya, where intervention could be carried out at a relatively low cost through air power, but they are so far obstructing intervention in Syria, despite the existence of comparable crimes. Intervention in Syria would require a more significant compromise of the security interests of Security Council members, which has impeded the international community's ability to respond to the atrocities being carried out by Syria. To date, the international community has yet to respond to the Syrian government's systematic attacks on its own population even with significant and effective non-forcible measures.

IV. CONCLUSION

Despite key conceptual differences between humanitarian intervention and the responsibility to protect, implementation of the latter has not escaped the unevenness and inconsistency of the former. The unevenness of states' assumption of the responsibility to protect stems not from conceptual problems about humanitarian intervention, but instead from features inherent in the international system. As long as implementation of the responsibility to protect falls to states, states will be guided by their interests, even in the performance of their responsibilities vis-à-vis civilian populations abroad. In this sense, the problems with humanitarian intervention were more than merely conceptual, and they continue to plague the responsibility to protect.

While states are always guided by interests, it is important to note that those interests are not always the same.[62] State interests can change over time, and future developments within the international system may prompt a formulation of state interests that is more consistent with a more even-handed approach to the responsibility to protect. As Finnemore argues, the nature of intervention and the rationale behind intervention abroad has changed over time, in part as the interests

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60. David M. Herszenhorn, *For Syria, Reliant on Russia for Weapons and Food, Old Bonds Run Deep*, N.Y. TIMES, Feb. 18, 2012, at A13, *available at* http://www.nytimes.com/2012/02/19/world/middleeast/for-russia-and-syria-bonds-are-old-and-deep.html?pagewanted=all&_moc.semityn.www.

61. Elisabeth Bumiller, *Military Points to Risks of a Syrian Intervention*, N.Y. TIMES, March 11, 2012, at A10, *available at* http://www.nytimes.com/2012/03/12/world/middleeast/us-syria-intervention-would-be-risky-pentagon-officials-say.html?pagewanted=all&_moc.semityn.www.

62. *See* MARTHA FINNEMORE, THE PURPOSE OF INTERVENTION: CHANGING BELIEFS ABOUT THE USE OF FORCE 5 (2003).

of states evolved. The reasons for state intervention will continue to evolve, as will states' conception of their interests. Without such evolution, the conceptual advances embodied in the concept of the responsibility to protect will not likely lead to a more consistent state practice.