**The Responsibility to Protect: Lessons from Libya and Syria**

**J. Craig Barker**

**Abstract**

The concept of responsibility to protect is the latest manifestation of a post-Cold War process of liberal interventionism that includes failed States discourse, the development (and demise?) of humanitarian intervention and the introduction of the ‘new’ paradigm of responsibility to protect. Responsibility to protect has apparently reached the stage of implementation, but its use in Libya and Syria in 2011 and 2012 have left many questions unanswered. This chapter seeks to examine the genealogy of the concept and its failings in relation to both Libya and Syria with a view to encouraging its further development going forward.

**I.) Introduction**

The United Nations Security Council authorised intervention by the North Atlantic Treaty Organisation in Libya, which began on 19 March 2011 and ended on 31 October 2011.[[1]](#footnote-1) The International Coalition for the Responsibility to Protect hailed Operation Unified Protector as ‘a turning point in the response to mass atrocities’ that marked the solidification of responsibility to protect as an actionable norm in international law (International Coalition for the Responsibility to Protect).[[2]](#footnote-2) However, at the time of writing, the Security Council has repeatedly failed to authorise intervention in Syria in the face of ongoing bombardment of civilian targets across that State.[[3]](#footnote-3) If Libya (arguably) represents the zenith of responsibility to protect, then the international community’s failure to protect civilian targets in Syria surely represents its nadir.

The purpose of this chapter is not to condemn responsibility to protect as a concept. There are many facets of it that should be developed and built upon. Rather, this chapter seeks to explore its limitations in light of the Libyan and Syrian conflicts. In particular, consideration is given to the genealogy of responsibility to protect as the latest manifestation of a post-Cold War process of liberal interventionism. The situations in Libya and Syria provide the backdrop for a critical analysis of the concept and a prognosis for its implementation in future conflicts.

**II.) Responsibility to Protect: The Genealogy of an Idea**

Responsibility to protect is one of the most controversial ideas to emerge in international legal and political discourse in the twenty-first century. Simply stated, it seeks to allocate responsibility for the protection of civilians between the territorial State, with whom primary responsibility for protection resides, and the international community, whose residual responsibility applies should the territorial State fail in its primary responsibility. The concept of responsibility to protect is most commonly dated back to the Report of the International Commission on Intervention and State Sovereignty (Commission) in 2001. However, the genealogy of the idea can be traced back at least as far as the policy initiatives and writings of Dag Hammarskjöld, the second United Nations Secretary-General. Although not using the word ‘responsibility,’ Hammarskjöld, in 1957, identified the protection of basic human rights as being a matter of shared concern:

[T]he work for peace is basically a work for the most elementary of human rights: the right of everyone to security and to freedom from fear. We therefore recognise it as one of the first duties of a government to take measures in order to safeguard for its citizens this very right. But we also recognise it as an obligation for the emerging world community to assist governments in safeguarding this elementary human right without having to lock themselves behind the wall of arms (Wilder Foote 1962: 127).

Hammarskjöld primarily focused upon the United Nations’s emerging role in questions of international peace and security, particularly in the colonised world. He is credited with developing the United Nations’s peacekeeping capabilities and expanding the Secretariat’s role from a mere administrator to an important political actor within the United Nations system, thereby creating an international executive authority capable of responding to the needs of both individuals and States (see Orford 2011: 3-7). Hammarskjöld was no idealist, and he abundantly recognised the limits of international law, particularly given the importance of State sovereignty. His terminology, particularly in relation to the responsibility of the international community, focused upon the provision of assistance as opposed to intervention. Indeed, it is interesting that Hammarskjöld spoke rarely, if ever, of the concept of sovereignty. Yet it is sovereignty that has, at least since the end of the Cold War, provided the greatest obstacle to the international community’s ability to enforce human rights and humanitarian norms. It is not surprising, therefore, that the liberal discourse around the development and enforcement of human rights has focused, since the end of the Cold War, upon the notion of State sovereignty.

*A.) The Failed States Discourse*

One significant discourse has focused upon the concept of failed States. According to Helman and Ratner, ‘civil strife, government breakdown and economic privation’ led in the early-1990s to a ‘disturbing new phenomenon: the failed nation-state, utterly incapable of sustaining itself as a member of the international community’ (Helman and Ratner 1992-93: 3). Helman’s and Ratner’s analysis recognises the importance of Hammarskjöld’s ‘assistance-based’ approach, as well as subsequent developments both in relation to the responsibility of the United Nations as well as other international organisations, including the World Bank, the International Monetary Fund, the United Nations High Commissioner for Refugees and the Organisation for Economic Co-operation and Development (see Helman and Ratner 1992-93: 7). In particular, they highlight the work of United Nations Secretary-General Boutros Boutros-Ghali’s *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping*, which ‘set forth the concept of post-conflict peace-building’ that envisaged the United Nations’s direct involvement in the internal affairs of failed or failing States (see Helman and Ratner 1992-93: 7). Nevertheless, ‘deeply rooted political obstacles have tended to prevent extensive U.N. direction of a country’s internal matters and even stifled debate about the appropriateness of such involvement. Those barriers stem from the talisman of “sovereignty”’ (Helman and Ratner 1992-93: 9). In addition, they point to the legal obstacle of article 2(7) of the United Nations Charter (Charter), which limits the power of the United Nations to interfere ‘in matters which are essentially within the domestic jurisdiction of any state’ to actions authorised by the Security Council under Chapter VII of the Charter (see Helman and Ratner 1992-93: 9).

The solution, according to Helman and Ratner, is the development of United Nations conservatorship, akin to domestic law notions of trusteeship or guardianship, that would operate at three levels: for *failing* States, which ‘still maintain[] some type of minimal governmental structure,’ the United Nations could provide what they refer to as ‘governance assistance’ (Helman and Ratner 1992-93: 13); for *failed* States, a second level would involve the delegation of certain governmental functions to the United Nations (see Helman and Ratner 1992-93: 14); the third level, the ‘most radical option,’ is direct United Nations trusteeship. This final level of assistance would require amendment of the existing, though now inoperative, United Nations international trusteeship system provided for by articles 77 and 78 of the Charter (see Helman and Ratner 1992-93: 16). Although they acknowledge that their proposals would have practical limitations and not overcome the political and legal objections to United Nations assistance outlined above, Helman and Ratner argue that the idea of conservatorship is consistent with sovereignty insofar as its purpose would be ‘to enable the state to resume responsibility for itself’ (Helman and Ratner 1992-93: 16).

A number of points can be made about Helman’s and Ratner’s analysis. Firstly, inherent within this discourse are the two fundamental notions that form the foundation of responsibility to protect, that is, the primary responsibility of the territorial State and the residual responsibility of the international community (in the form of the United Nations). Secondly, the discourse is explicitly linked to the ‘central Charter values: human rights for all and stability in international relations’ (Helman and Ratner 1992-93: 12). Finally, Helman and Ratner emphasise that their failed States discourse is not about removing sovereignty but, rather, about understanding the limits of sovereignty as a concept, especially when faced with widespread violations of human rights. It is worth highlighting the conclusion that ‘the irreducible minimum of sovereignty requires some form of consent from the host state’ (Helman and Ratner 1992-93: 13).

The failed States discourse has been criticised for being too simplistic and overstating the ‘sovereignty problem.’ Richardson notes that the involvement of international financial institutions in setting conditions for financial assistance diminishes sovereignty, as does the delivery of humanitarian assistance (see Richardson 1996: 2). Thürer has criticised the term ‘failed State’ for being too broad, and its French equivalent, ‘Etats sans gouvernement,’ or ‘States without government,’ for being too narrow (see Thürer 1999: 731-32). Wilde’s is the most interesting critique of the discourse and, in focusing upon the question of responsibility, pre-empts some of the later debates about responsibility to protect. For him, the responsibilities discourse in relation to ‘failed States’ is misplaced. He argues that the label ‘suggests that when governmental infrastructure collapses, the state, its people, and its leaders are solely responsible’ (Wilde 2003: 426). While he accepts that indigenous factors such as ‘civil conflict or corrupt leadership’ often contribute, to a significant degree, to State collapse, other factors, such as ‘the involvement of foreign states, international financial institutions such as the International Monetary Fund and the World Bank, multinational corporations, and the like often plays a major role in mediating the state of local conditions, thereby affecting the viability of the economy and governmental infrastructure’ (Wilde 2003: 426). As will be shown below, the responsibilities discourse is much narrower than its equivalent in relation to ‘failed States,’ focusing as it does exclusively upon the protection of civilians from massive human rights abuses. Wilde’s primary assertion that responsibility cannot be seen as a simple question of singular fault is important to bear in mind, however, when considering the prospects of responsibility to protect. Responsibility turns out to be a considerably more complex notion than the ‘failed States’ discourse would suggest.

The ‘failed States’ discourse achieved some purchase in the academic literature and policy prescriptions during the immediate post-Cold War era. The Fund for Peace, a United States-based non-governmental organisation, continues to publish an annual ‘Failed States Index,’ which it uses to analyse and support weak and ‘failing’ States. It provides policy advice to governments in relation to conflict, early warning and assessment, which is an important element in the potential success and development of the responsibility to protect process. However, the ‘failed States’ idea has not provided the basis for development of institutional and normative change in the way suggested by Helman and Ratner. In particular, the establishment of conservatorship and the reinvigoration of the United Nations’s international trusteeship system have not happened.

*B.) Humanitarian Intervention*

A second major discourse of liberal interventionism focuses upon humanitarian intervention. The academic literature on this is vast, reflecting its contemporary and historical significance. The importance of the discourse and practice of humanitarian intervention to the present discussion focuses upon the impact that it has had upon the development of responsibility to protect. To some extent, responsibility to protect can be seen as a direct response to the critiques of humanitarian intervention, particularly as applied to the North Atlantic Treaty Organisation’s 1999 intervention in Kosovo (see Commission Report 2001: ¶ 1.2).

The ethnic cleansing of Kosovar Albanians from Kosovo by Serb forces in 1998-99 resulted, ultimately, in a sustained bombing attack on Belgrade by North Atlantic Treaty Organisation forces over a seventy-eight day period during the spring and early-summer of 1999. In light of the significant breaches of international law attributable to Serbia in relation to the plight of Kosovar Albanians, Bruno Simma has argued that the international community had an obligation to intervene to stop massive human rights violations and possible genocide, not least because ‘the obligation on states to respect and protect the basic rights of all human persons is the concern of all states, that is, they are owed *erga omnes*. Consequently, in the event of material breaches of such obligations, every other state may lawfully consider itself legally “injured” and is thus entitled to resort to countermeasures’ (Simma 1999: 2). However, where such countermeasures involve the use of force, the only mechanism to ensure the legality of such an intervention would be through Security Council authorisation under article 42 of the Charter. As Simma notes, in such circumstances, ‘a “humanitarian intervention” by military means is permissible’ (Simma 1999: 5).

In the context of Kosovo, there is general agreement that the North Atlantic Treaty Organisation intervention constituted a *prima facie* violation of international law. Nevertheless, it has been consistently asserted that, in spite of this, it was a legitimate response to the horrors that were unfolding in Kosovo. Thus, for example, the Independent International Commission on Kosovo concluded that the intervention was illegal yet legitimate (see Independent International Commission on Kosovo 2000: 186). For Simma, political and moral considerations left the North Atlantic Treaty Organisation with ‘no choice but to act outside the law’ (Simma 1999: 22). However, he was wary of the potential ‘boomerang effect’ of such instances and ‘their potential to erode the precepts of international law’ (Simma 1999: 22). Others went further and asserted the development of a new right of humanitarian intervention outside the parameters of the Charter. In direct response to Simma’s analysis, for example, Antonio Cassese, while warning of the possibility of opening a Pandora’s box, nevertheless challenged international lawyers to address two fundamental questions:

First, was the NATO armed intervention at least rooted in and partially justified by contemporary trends of the international community? Second, were some parameters set in this particular instance of the use of force that might lead to a gradual legitimation of forcible humanitarian countermeasures by a group of states outside any authorization by the Security Council (Cassese 1999: 25)?

More than ten years after Kosovo, Cassese’s calls have been the subject of considerable discussion but little concrete action. As Brunée and Toope recently put it, ‘humanitarian intervention never achieved the solidity that its promoters sought’ (Brunée and Toope 2010: 324). This might be partly due to the shift of focus away from humanitarian intervention to intervention in response to global terrorism in the aftermath of 11 September 2001. It has been argued by some that the United States-led invasions of Afghanistan and Iraq were undertaken, at least in part, on humanitarian grounds. However, in neither case did humanitarian concerns provide the primary justification for intervention. In fact, to a greater or lesser extent, both interventions have solidified public opinion against military intervention, whatever the justification. Consequently, the failure to develop a more systematic legal basis for unauthorised humanitarian intervention is also due to the strength of the shared understanding that buttresses the collective security regime of the Charter (see Brunée and Toope 2010: 323). More importantly, the failure to develop the discourse of humanitarian intervention into an actionable international legal process can be put down to the development of the concept of responsibility to protect, which, as will be shown in the following section, rapidly emerged from a simple idea put forward in an unofficial report into a ‘candidate norm’ aimed at regulating international intervention in the face of massive human rights violations (Brunée and Toope 2010: 324).

**III.) Responsibility to Protect: The Crystallisation of an Idea**

As noted previously, Kosovo provided the impetus for a fundamental reassessment of the relationship between State sovereignty and the possibility of intervention in the face of massive human rights violations. Inspired by the call of the then United Nations Secretary-General Kofi Annan to find a new consensus on humanitarian intervention,[[4]](#footnote-4) Canada, supported by a number of major funders, created the Commission. The Commission, which consisted of twelve independent commissioners under the co-chairmanship of Gareth Evans and Muhammad Sahnoun, was asked to consider legal, moral, operational and political questions relevant to the relationship between humanitarian intervention and State sovereignty and, in particular, to respond to Secretary-General Annan’s call. The Commission Report devised a concept of responsibility to protect that was built upon two basic principles: firstly, that ‘[s]tate sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself’; and secondly, ‘[w]here a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect’ (Commission Report 2001: XI). The Commission recognised State sovereignty but also, crucially, the obligations that sovereignty implies. The Commission Report placed significant emphasis on the Security Council’s responsibility and explicitly sought to enhance specific legal obligations under international human rights law and international humanitarian law (see Commission Report 2001: XI).

Responsibility to protect, according to the Commission, comprises three specific responsibilities: the responsibility to prevent, the responsibility to react and the responsibility to rebuild (see Commission Report 2001: XI). The ‘single most important’ of these, according to the Commission, is prevention, and ‘less intrusive and coercive measures [. . . should be] considered before more coercive and intrusive ones are applied’ (Commission Report 2001: XI). Nevertheless, the Commission Report laid down a number of principles for military intervention including a ‘just cause threshold’ requiring large-scale loss of life or large scale ethnic cleansing, as well as four ‘precautionary principles’: right intention (to halt or avert human suffering); last resort (according to which every non-military option has been explored); proportional means (‘the minimum necessary to secure the defined human protection objectives’); and reasonable prospects (including a reasonable chance of success that is ‘not likely to be worse than the consequences of inaction’) (Commission Report 2001: XII). Finally, and importantly in light of the *prima facie* illegality of the Kosovo intervention, the Commission identified right authority as an essential element for military intervention. That authority should come from the Security Council, whose permanent members should agree not to apply their veto powers but whose inaction within a reasonable time could allow a use of force to be authorised by ‘the General Assembly in Emergency Special Session acting under the Uniting for Peace procedure’ and ‘action within area of jurisdiction by regional or sub-regional organisations under Chapter VIII of the Charter, subject to their seeking subsequent authorisation from the Security Council’ (Commission Report 2001: XII-XIII).

The notion of shared responsibility between territorial States and the international community was taken up in the 2004 report of the United Nations Secretary-General’s High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility,* which endorsed the idea of responsibility to protect and identified it as an emerging norm to be embraced and acted upon (see ¶¶ 201-02). Further endorsement of the principle was provided by Secretary-General Annan in his 2005 report, *In Larger Freedom: Towards Development, Security and Human Rights for All* (see ¶¶ 16-22)*.* The 2005 World Summit Outcome’s adoption of the idea of responsibility to protect represented a major breakthrough, though there were two significant restrictions. Firstly, its application was restricted to four situations: genocide, war crimes, ethnic cleansing and crimes against humanity (see UNGA Res 60/1 2005: ¶¶ 138-39). United Nations Secretary-General Ban Ki-moon explained this restriction on the basis that the four ‘situations’ were those upon which consensus was achievable at the World Summit (see Verdirame 2011: 152). Secondly, and perhaps more problematically, the World Summit Outcome did not refer to a potential role for the United Nations General Assembly or regional organisations providing appropriate authority for military intervention. With regard to regional organisations, paragraph 139 of the World Summit Outcome mentions Chapter VII of the Charter but only does so in relation to ‘diplomatic, humanitarian and other *peaceful* purposes.’ Paragraph 13 endorses the willingness of the General Assembly ‘to take collective action, in a timely and decisive manner, through the Security Council, in accordance with Chapter VII, on a case-by-case basis *and in cooperation with regional organisations as appropriate.’* With reference to the General Assembly, the World Summit Outcome refers only to ‘the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law’ (UNGA Res 60/1 2005: ¶ 139). It is not surprising, therefore, that this somewhat diluted version of responsibility to protect was itself unanimously endorsed by the Security Council in 2006 in Resolution 1674 on the protection of civilians in armed conflict (see ¶ 4).[[5]](#footnote-5) Further endorsement came from States across the world, both developed and developing, and from regional organisations, including the African Union and the African Commission on Human and Peoples’ Rights (see Orford 2011: 17-20).

With these, albeit conditional, endorsements secured, the now modified concept of responsibility to protect took on a new momentum within the United Nations under the enthusiastic leadership of Secretary-General Ban (see Orford 2011: 17). In 2007, he created the position of United Nations Special Adviser on the Prevention of Genocide, and a further new role of Special Adviser on the Responsibility to Protect was introduced in 2008. Both positions were created within the newly-established Office on Genocide Prevention and Responsibility to Protect. Building upon this, the Secretary-General published a detailed report in January 2009 entitled *Implementing the Responsibility to Protect (Implementing Responsibility)*. This thirty page document advances a three-pillar strategy focused upon the responsibilities of the State, the responsibilities of the international community in providing assistance and capacity-building and the need for a timely and decisive response.

What is clearly apparent from *Implementing Responsibility* is that responsibility to protect is not a short-term process. The report recognises that responsibility to protect is, ‘first and foremost, a matter of state responsibility’ (Ban 2009: ¶ 14) and identifies ‘respect for human rights’ as ‘an essential element of responsible sovereignty’ (Ban 2009: ¶ 16). It identifies a number of ways in which States can review and enhance what they can do in relation to human right protection and cooperation with the United Nations, including by assisting the United Nations Human Rights Council, especially through the universal periodic review mechanism and by becoming parties ‘to the relevant international instruments on human rights, international humanitarian law and refugee law as well as to the Rome Statute of the International Criminal Court,’ by embodying these in national law and, where necessary, by criminalising international human rights law and international humanitarian law abuses within domestic law (Ban 2009: ¶ 17). *Implementing Responsibility* further calls upon States to undertake a process of self-reflection to ensure that gross violations do not occur, and to engage in State-to-State cooperation, favourably citing the African Peer Review Mechanism and the New Partnership for Africa’s Development in this regard (see Ban 2009: ¶ 22). The report also encourages new training and education processes, particularly of ‘critical actors in society, such as the police, soldiers, the judiciary and legislators’ (Ban 2009: ¶ 25).

The second pillar in *Implementing Responsibility* aims at a lengthy process of building State capacity to avoid genocide, war crimes, ethnic cleansing and crimes against humanity based upon ‘active partnership between the international community and the state’ and working through ‘persuasive measures and positive incentives’ (Ban 2009: ¶¶ 28, 29). Suggested measures to facilitate such partnership include ‘dialogue, education and training on human rights and humanitarian standards and norms,’ the provision of direct country-based human rights assistance through the United Nations and its partners, increased support from regional and sub-regional bodies, the creation of rapid-response civilian and police capacity and military assistance with the consent of the host government within the context of preventive deployment (Ban 2009: ¶¶ 33-42).[[6]](#footnote-6) However, the report explicitly admits that such measures should not be undertaken without the consent of the target State. Where such consent is not forthcoming, then timely and decisive action would be required:

If the political leadership of the state is determined to commit crimes and violations relating to the responsibility to protect, then assistance measures under pillar two would be of little use and the international community would be better advised to begin assembling the capacity and will for a ‘timely and decisive’ response, as stipulated under paragraph 139 of the Summit Outcome (Ban 2009: ¶ 29).

*Implementing Responsibility* makes clear that measures under the third pillar need not depend upon measures having been taken under pillar two (see Ban 2009: ¶ 50). The primary objective of the report remains the peaceful settlement of disputes under Chapters VI and VIII of the Charter, through the work of the Secretary-General, the General Assembly and the Security Council and, where appropriate, other intergovernmental bodies, including the International Criminal Court (see Ban 2009: ¶¶ 51-55). Nevertheless, *Implementing Responsibility* recognises that ‘there should be no hesitation to seek authorization for more robust measures,’ including articles 41 and 42 of the Charter (see Ban 2009: ¶ 56). Furthermore, despite their omission from paragraphs 138 and 139 of the 2005 World Summit Outcome, *Implementing Responsibility* does specifically mention the possibility of enforcement measures authorised by the General Assembly and regional organisations acting under article 53 of the Charter (see Ban 2009: ¶¶ 56, 63). Nevertheless, the primary responsibility for a ‘timely and decisive’ response lies with the five permanent members of the Security Council ‘because of the privileges of tenure and the veto power they have been granted under the Charter’ (Ban 2009: ¶ 61). In the view of the Secretary-General:

I would urge them to refrain from employing or threatening to employ the veto in situations of manifest failure to meet the obligations relating to the responsibility to protect, as defined in paragraph 139 of the Summit Outcome, and to reach a mutual understanding to that effect (Ban 2009: ¶ 61).

What is apparent from this brief survey of the crystallisation of responsibility to protect is that, though arguably providing a more holistic approach to United Nations intervention, the concept does little to change the existing provision of international law related not only to military intervention but also more generally to the capacity-building, preventive diplomacy role of the United Nations. Indeed, *Implementing Responsibility* is replete with examples of how the United Nations has successfully acted under pillars two and three in the past. For many, responsibility to protect constitutes, accordingly, little more than ‘old wine in new bottles’ (Stahn 2007: 111).

On the other hand, the concept of responsibility to protect was presented in the original Commission Report as ‘a new approach’ (Commission Report 2001: 11-19). According to one of the report’s primary authors, Gareth Evans, ‘[w]hat we have seen over the last five years is the emergence, almost in real time, of a new international norm, one that may ultimately become a new rule of customary international law with really quite fundamental ethical importance and novelty in the international system’ (Evans 2006-07: 704). In a similar vein, Thomas Weiss has asserted that by conceptualising the ‘new approach’ to massive human rights violations as responsibility to protect, ‘the ICISS sought to drive a stake through the heart of “humanitarian intervention”’ (Weiss 2007: 102). Weiss argues that the new terminology avoids the assertion of ‘the moral high ground’ that is inherent in the concept of ‘humanitarianism’ and contends that ‘it overlooks the self-interested dynamics of the strong to impose their will on the weak in the name of the so-called universal principles of the day [. . .] An honest debate about motivations and likely costs and benefits is required, not visceral accolades because of a qualifying adjective’ (Weiss 2007: 102-03).

In spite of this powerful rhetoric, it will be argued in the forthcoming section that the discourse of responsibility to protect has failed, particularly in the cases of Libya and Syria, to provide a new ethical or practical framework for dealing with mass atrocities. In particular, the concepts of ‘responsibility’ and ‘protection’ are both flawed as foundational principles for a ‘new approach’ to intervention to prevent massive human rights abuses in the face of State sovereignty.

**IV.) Responsibility to Protect as a Normative Discourse**

Evans and Weiss both accept that responsibility to protect has yet to emerge as a legally-binding norm. It is merely a ‘moral injunction’ that provides the basis for moral responsibility. However, both consider that it is only a matter of time before the concept achieves customary international law status. The question remains how this normative development is to be achieved. According to Peter Cane, ‘moral *responsibility* is often distinguished from legal *liability*’ insofar as ‘liability refers primarily to formal institutionalised imposts, sanctions and penalties, which are characteristic of law and legal systems but not of morality’ (Cane 2002: 1). However, he identifies an important role for law in the ‘reinforcement of morality.’ Thus, according to Cane, ‘[p]roductive and fulfilling social interaction is possible only within an agreed framework of agreed norms and behaviours. When people disagree [. . .] about the norms according to which social life ought to be conducted, law provides a mechanism for making and enforcing choices amongst competing views’ (Cane 2002: 15).

Within legal discourse, responsibility is perceived of, most commonly, as an historic notion of answerability for past events, deriving as it does from the Latin *respondeo,* meaning ‘I answer’ (Lucas 1993: 5). This is particularly the case within the context of international law. Thus, a leading commentator on the law of State responsibility, Alain Pellet, though describing responsibility as a multi-faceted notion, considers responsibility to be an exclusively historic process (Pellet 2010: 6). Having described the move away from ‘the traditional definition of international responsibility,’ he concludes, nevertheless, that responsibility in international law ‘is now also, and perhaps principally, a mechanism having as its function the condemnation of *breaches* by subjects of international law of their legal obligations and the restoration of international legality, respect for international law being a matter in which the international community as a whole has an interest’ (Pellet 2010: 15). In terms of obligations of prevention, it should be noted that article 14(3) of the International Law Commission’s 2001 Articles on the Responsibility of States for Internationally Wrongful Acts only provides for responsibility ‘when the event occurs’ (see Haffner and Buffard 2010).

Cane argues that the focus on ‘historic responsibility’ in accounts of legal responsibility operates at the expense of ‘prospective responsibility’ (Cane 2002: 31). He notes that ‘the prime aim of “the legal system of responsibility” is maximisation of the incidence of responsible (law-compliant) behaviour, not the imposition of liability for irresponsible (law-breaking) behaviour’ (Cane 2002: 60). He notes that:

Legal responsibility practices and concepts are concerned not only with imposing penalties and obligations of repair in relation to the past, but also, and primarily, with establishing norms of behaviour – ‘responsibilities’ – for the future. It is the failure to fulfil such responsibilities that ground historic responsibility. Legal rules and principles distribute responsibilities within society (Cane 2002: 187-88).

Furthermore, according to Cane, ‘historic responsibility finds its role and meaning only in responding to non-fulfilment of prospective responsibilities; and in this sense, it is subsidiary and parasitic’ (Cane 2002: 35). Turning this analysis on its head, historic responsibility or legal liability cannot exist without the prior existence of prospective responsibility in the form of legal rules and principles.

As indicated above, the first principle upon which responsibility to protect is based is the notion of sovereignty as responsibility. The development of this notion is most commonly attributed to the work of Francis Deng and his co-investigators at the Brookings Institution. In their book *Sovereignty as Responsibility: Conflict Management in Africa (Sovereignty as Responsibility),* Deng et al. assert that ‘sovereignty carries with it certain responsibilities for which governments must be held accountable’ (Deng et al. 1996: 1). This assertion is based upon a detailed analysis of the concept of State sovereignty, particularly during the ‘fourth phase’ of the development of sovereignty, which consists of ‘the contemporary pragmatic attempt at reconciling state sovereignty with responsibility’ (Deng et al. 1996: 2).

Deng et al. conclude that ‘responsible sovereignty’ is based upon four principles. Firstly, it asserts that the legitimacy of a government derives from acceptance of the responsibility of a State towards its population. Secondly, ‘in many countries in which armed conflict and communal violence cause massive internal displacement[, . . .] the validity of sovereignty must be judged by reasonable standards of how much of the population is represented, marginalized or excluded’ (Deng et al. 1996: 32) Thirdly, responsibility implies the existence of a higher authority capable of holding the supposed sovereign accountable. Fourthly, ‘the dominant authority or power must assume responsibility that transcends parochialism or exclusive national interests’ (Deng et al.1996: 32-33). Ultimately, responsible sovereignty depends upon good governance (see Deng et al. 1996: 34-36), ‘the management of identities based on race, ethnicity, culture, language and religion’ (Deng et al. 1996: 61-92) and ‘economic well-being or welfare of demand-bearing groups in a society’ (Deng et al. 1996: 93-130).

The idea of sovereignty being conditional and, as a result, removable reflects some of the ideas put forward in the ‘failed States’ discourse referred to above and can be subjected to some of the same criticisms. However, the primary criticism concerns accountability, which Deng et al. identify as being central to the success of the idea of sovereignty as responsibility. However, it appears that accountability here is more a moral and political accountability than a legal accountability. *Sovereignty as Responsibility* ultimately accepts that sovereignty as responsibility is a moral endeavour in that ‘international concern and involvement become moral imperatives essentially to fill the vacuum of moral responsibility’ (Deng et al. 1996: 223). The question of legal responsibility is not addressed.

International law seeks to distribute responsibility within international society primarily through the recognised sources of international law: treaties, customary international law and general principles of law. The body of positive obligations for States (prospective responsibilities) in relation to international human rights law and international humanitarian law is considerable. However, although highlighting the considerable progress that has taken place in relation to the enforcement of international human rights law and international humanitarian law in the past several decades, Deng et al. admit that ‘mechanisms and procedures of implementation of the wide array of human rights and humanitarian standards remain underdeveloped and grossly inadequate’ (Deng et al. 1996: 10). Without further developing mechanisms, such as treaty monitoring and reporting bodies, the international community is severely limited in what it can do to ensure that States comply with their legal obligations. Indeed, as will be argued below, even those mechanisms that do function to ensure compliance with international human rights law and international humanitarian law have singularly failed, over decades, to hold Libya and Syria to account even before armed conflict broke out in those two States, thereby raising further questions about the relevance of both the responsibility to protect and the sovereignty as responsibility concepts.

It is worth considering Anne Orford’s assertion that ‘the responsibility to protect concept has been carefully couched so as not to impose legal duties upon states or international organisations to take particular actions in specific circumstances’ (Orford 2011: 24). Nonetheless, Orford argues that responsibility to protect ‘raises fundamentally important legal questions’ not by imposing new duties but rather by conferring powers ‘“of a public or official nature” and that allocates jurisdiction’ (Orford 2011: 25). Thus, ‘the [responsibility to protect] concept is not primarily concerned with the distribution of jurisdiction and authority between sovereign states, but rather with the distribution of jurisdiction and authority between states and international actors’ (Orford 2011: 27). She ultimately concludes that:

The significant feature of the responsibility to protect concept [. . .] lies not only in its relation to humanitarian intervention, but also in its relation to the practices of international executive action that have been developed to displace humanitarian intervention. The responsibility to protect concept makes those practices intelligible in new ways and seeks to strengthen and consolidate them to ends defined by the international community. It is the resulting form of international executive rule that should be the focus of critical engagement with the responsibility to protect concept (Orford 2011: 34).

This conclusion is innovative and persuasive. It certainly chimes with the overarching theme in *Implementing Responsibility.* Nevertheless, with respect to Libya and Syria, the international community’s level of engagement with these two States prior to and during the atrocities committed against civilian populations was minimal. In the case of Libya, the Security Council did eventually authorise an intervention under Chapter VII of the Charter. Therefore, the overall legality of this intervention cannot be doubted, though some questions remain as to the legality of certain aspects of the intervention. To this extent, the intervention in Libya differs significantly from the *prima facie* illegal humanitarian intervention in Kosovo, which was also undertaken by the North Atlantic Treaty Organisation. However, the Security Council’s inability to agree to a resolution even for a non-military intervention in Syria calls into question significant elements of the responsibility to protect concept. It is to a consideration of these two conflicts that this chapter now turns.

**V.) The Responsibility to Protect in Libya and Syria**

Contrary to the International Coalition for the Responsibility to Protect’s assertion that the intervention in Libya crystallised responsibility to protect as an actionable norm in international law, both Libya and Syria actually represent the failure of responsibility to protect, both as a moral concept and in terms of independent legal authority for international executive action. This conclusion does not immediately call into question the importance and value of the concept itself. Rather, it provides a framework for lessons learned in relation to future crises and for reappraising responsibility to protect in light of two closely-linked conflicts that represent the precise type of conflicts that responsibility to protect was explicitly meant to resolve.

*A.) Lesson 1: The Limitations of Prevention and the Concept of Sovereignty as Responsibility*

In an address to the Stanley Foundation on the Responsibility to Protect on 18 January 2012 marking the first decade in the life of responsibility to protect, Secretary-General Ban called for 2012 to be made the ‘Year of Prevention.’ It is clear from the above analysis that prevention lies at the heart of responsibility to protect. Yet in neither Libya nor Syria was the international community able to prevent widespread attacks on civilian populations. While it is certainly true that at least in the case of Libya the result of Security Council Resolution 1973 was to prevent an overwhelming attack on the city of Benghazi, in the period leading up to the Libyan civil war and, indeed, for many decades before, Libya’s engagement with the international community was problematic to say the least. Indeed, it is fair to say that Libya’s record of engagement in international relations is replete with examples of illegality and non-conformity with international standards.

Libya’s sponsorship of international terrorism is well-documented. This includes the direct funding of such terrorist organisations as the Irish Republican Army and directly engaging in acts of terrorism itself, such as the bombing of a discotheque in Berlin in 1986, which ultimately resulted in a reprisal attack by the United States on targets in Tripoli and Benghazi later that year. Libya was also held responsible for the bombing of Pan Am flight 103 over Lockerbie in 1988. Furthermore, Libya regularly breached key foundational rules of international law, including the Vienna Conventions on Diplomatic Relations 1961. Thus, the bullet that killed WPC Yvonne Fletcher in London in April 1984 was fired from inside the self-styled Libyan People’s Bureau, which served as the Libyan diplomatic embassy.

Similar problems exist in relation to Syria’s historic engagement with international relations. Syria has regularly engaged in armed conflicts with a number of its neighbours, including Israel and Lebanon. It has been directly implicated in a number of terrorist attacks (see Dobson and Payne 1987) and has been accused of sponsoring Hezbollah-led attacks, for example, on United States Marines stationed in Beirut in 1983 and at the United States Embassy there the next year.

In terms of their engagement with international human rights law, Libya and Syria are both parties to all of the key international human rights treaties. In relation to international humanitarian law, Libya and Syria are both parties to the 1949 Four Geneva Conventions and their two Additional Protocols from 1977, but they are not parties to the treaties dealing with conventional weapons. Neither State is party to the main refugee treaties. In terms of the enforcement of its international human rights law obligations, particularly in relation to civil and political rights, it should be noted that Libya has submitted four periodic reports to the United Nations Human Rights Committee (Committee).[[7]](#footnote-7) In response to Libya’s most recent report (of 10 May 2007), the Committee noted a number of concerns, particularly in relation to Libya’s failure to implement previous recommendations of the Committee. Syria presented its third periodic report to the Committee in 2004, and similarly, the Committee highlighted a number of concerns. Both States have been the subject of repeated condemnatory reports from such human rights non-governmental organisations as Human Rights Watch and Amnesty International.

Given this level of condemnation, one can question the degree of responsibility that both Libya and Syria have shown in terms of the concept of sovereignty as responsibility. While their membership of various treaty regimes and engagement with relevant treaty-monitoring bodies is to be welcomed, their overt breaching of the obligations contained within these regimes and failure to comply with the recommendations of treaty monitoring bodies is problematic. Yet the level of United Nations engagement in both Libya and Syria was singularly lacking prior to the outbreak of violence in the two States. Within the context of the ‘Arab Spring,’ it might, of course, be argued that the level of popular uprising in these States was unpredictable given the context of the rapid spread of revolution across North Africa and the Middle East.[[8]](#footnote-8) However, the lack of United Nations engagement with Libya and Syria before these uprisings can, to a considerable degree, be put down to a common belief that both States were gradually developing human rights and were not considered to be ‘irresponsible’ sovereigns. The concept of responsibility to protect, particularly as envisaged in *Implementing Responsibility,* should have provided an opportunity for the United Nations to become more directly involved in both States, but the opportunity was not taken. If this failure was the result of concerns about being seen to overly-criticise the two regimes as such, then the concept of responsibility to protect would have shown itself to be nothing more than a rhetorical and deeply unconvincing statement of purpose. If lessons can be learned about the importance of identifying and acting upon emerging threats to civilian populations, even in the face of strong central governments, then there is hope that the concept can emerge into an ‘age of prevention.’

*B.) Lesson 2: The Use and Abuse of the Concept of Protection*

The apparent strength of the central governments in Libya and Syria raises another concern and points to a second potential lesson to emerge from the international community’s engagement with these two States. In her analysis of responsibility to protect, Orford has welcomed the so-called ‘turn to protection,’ which, she argues, can be used in the name of peace (Orford 2011: 109). On the other hand, she is acutely aware of the origins of the appeal to protection, which ‘has often emerged in times of civil war or revolution’ (Orford 2011: 109). Referencing Thomas Hobbes’s *Leviathan*, Orford notes that, ‘[a]ccording to Hobbes, the lawful authority is recognisable as the one who achieved protection in the broad sense of bringing into being a condition in which the safety of the people can be achieved’ (Orford 2011: 36).[[9]](#footnote-9) This argument was revived, according to Orford, by Carl Schmitt in the twentieth century, though Schmitt used the idea of protection to justify authoritarian government. Thus, ‘Schmitt was concerned with conjuring up the figure of an all-powerful sovereign who could restore order and issue commands that would be obeyed’ (Orford 2011: 132). Such a figure would function on the basis of its ‘capacity to represent the will of an “indivisibly similar, entire, unified people”’ (Orford 2011: 37) against ‘enemies both within and beyond the state’ (Orford 2011: 130). In the words of Schmitt, ‘[d]emocracy requires [. . .] first homogeneity and second – if the need arises – elimination or eradication of heterogeneity [. . .] A democracy demonstrates its political power by knowing how to refuse or keep at bay something foreign and an equal that threatens its homogeneity’ (Schmitt 1988: 9). This defence of totalitarianism ‘was realised in the fascist states of 20th-century Europe’ (Orford 2011: 37).[[10]](#footnote-10)

Therefore, Orford is clearly well-aware of the paradox of the ‘turn to protection’ within the context of the responsibility to protect, which challenges the tyranny of States and insurgents by providing an authority to protect to someone or something. In the case of the responsibility to protect, that something is the rather ephemeral and unidentified ‘international community.’[[11]](#footnote-11) The power of the international community is, therefore, to secure protection, ultimately through the potentially tyrannical power to distinguish between friend and enemy. It is at this point that Orford makes clear her primary concern with the concept of responsibility to protect: ‘[t]he history of attempts to ground authority upon protection shows that much will depend upon who interprets what protection or [what] the safety of the people means in a particular time and place, and who decides whether and how it will be achieved’ (Orford 2011: 137). Thus, according to Orford, ‘[i]t is to that question of limits that those who are institutionalising the responsibility to protect must turn if the authoritarian tendencies inherent in the appeal to de facto protective authority are to be avoided’ (Orford 2011: 137).

Orford is undoubtedly correct in her analysis, and she certainly presents an optimistic assessment of the potential for responsibility to protect. The irony, of course, is that in seeking to identify and give a normative framework to the concept the way has been opened for States such as Libya and Syria to utilise the turn to protection to justify attacks on civilians. The words of the Syrian representative to the United Nations after the Security Council had failed to pass a resolution condemning Syria on 4 October 2011 are telling:

the unprecedented, aggressive language used against the leaders of his country underscored what he had previously said — that the country was targeted, not because of any humanitarian concerns, but because of its independent political positions.  Syria did need reform, he acknowledged, but the needs of the masses were being misused by the external opposition that was paving the way for external intervention. He said that terrorist groups were responsible for the violence, and maintained that the country was in the process of enacting reforms (Press Release SC/10403 2011).

The Syrian representative expressed similar sentiments after the failure to adopt a second draft resolution on 4 February 2012 (see Press Release SC/10536 2012).

*C.) Lesson 3: The ‘Irresponsibility’ of the United Nations Security Council?*

The most critical problem with applying responsibility to protect within the context of Libya and Syria remains, as it always has, the Security Council. Responsibility to protect ultimately depends upon the ability of the Security Council to live up to its stated responsibilities. The Commission Report, as well as the other developmental documents referred to above and, indeed, also the World Summit Outcome, all mention the Security Council’s responsibility to act in cases of genocide, war crimes, ethnic cleansing and crimes against humanity in order to protect civilian populations. Indeed, the Commission Report calls upon the five permanent members to agree not to apply their veto power in cases involving such atrocities (see Commission Report 2001: XIII). As noted above, *Implementing Responsibility* makes clear that ‘the five permanent members bear particular responsibility because of the privileges of tenure and the veto power they have been granted under the Charter’ and urges them to refrain from employing or even from threatening to employ the veto ‘in situations of manifest failure to meet obligations relating to the responsibility to protect, as defined in paragraph 139 of the Summit Outcome, and to reach a mutual understanding to that effect’ (Ban 2009: ¶ 61).

Of course, the Security Council did not shirk its responsibilities in relation to Libya. In Resolution 1970, it referred the situation to the International Criminal Court and imposed an arms embargo, travel ban and assets freeze. In Resolution 1973, it ultimately authorised the use of force against Libya specifically for the protection of the civilian population. The language of both resolutions is couched squarely in the language of responsibility to protect and does seem to clearly endorse the concept. For some, the invocation of responsibility to protect in Libya built upon earlier precedents in Côte D’Ivoire, the Democratic Republic of the Congo, and Darfur (see Powell 2012: 305), though it is difficult to see how any of these situations could be argued to be great successes for the concept of responsibility to protect.

It is important, therefore, to point out the specifics of the Libyan situation that may limit its usefulness as a precedent for responsibility to protect. Firstly, Libya’s position did not garner widespread international support. Secondly, Libya was not able to call upon the support of any of the permanent members of the Security Council. Finally, its actions had met with widespread condemnation not only from the West but also from the League of Arab States, the African Union and the Organization of the Islamic Conference (as it was then known) (see UNSCR Res 1973 2011: pmbl.). Ultimately, the straw that broke the camel’s back as far as the possibility of military intervention was concerned was Muammar Gaddafi’s promise to hunt down like dogs and kill everyone in Benghazi. It is unlikely that this level of condemnation of a State will be repeated anytime soon. This is particularly so given the subsequent condemnation by Russia, as well as the Arab League, of the North Atlantic Treaty Organisation’s role in the intervention, which, coming after its unlawful intervention in Kosovo and continued operations in Afghanistan, arguably has the potential to provide an excuse for States to turn against responsibility to protect. It would certainly appear that the North Atlantic Treaty Organisation’s role in Libya is one of the reasons that the opinions of, at least, Russia and China have galvanised against the military intervention element of responsibility to protect. Taking all of this on board, it is asserted that the authorisation of military intervention in Libya might come to be seen as the exception that proved the rule.

The Security Council’s response to Syria would certainly seem to support this assertion. In many ways, the Syrian situation is worse than it was in Libya, given the international community’s failure to prevent the attacks on Homs in the same way that the attacks on Benghazi were averted. The situation in the two beleaguered cities was not very different. Yet the repeated failure of the Security Council to secure a resolution on Syria, not least on 4 February 2012, immediately after the bloody siege of Homs in January 2012, represents a return to the geopolitical deadlock that has for so long blighted the Security Council. Even draft resolutions that fell short of authorising military action and, instead, called for the resignation of the Head of State have been vetoed by Russia and China, and as indicated above, it is likely that the conduct of the intervention in Libya had something to do with this, as has the consequence of military intervention in Libya, that is, regime change. Even calls for Syrian President Bashar Assad to step down in favour of his deputy have been classified as regime change by Russia. But regime change is, almost by definition, an inevitable consequence of responsibility to protect in cases where there is a manifest failure by the government of a State to protect its citizens. In spite of Secretary-General Ban’s condemnation of the Security Council’s failure to adopt the draft resolution of 4 February 2012, it is hard to avoid the conclusion that responsibility to protect has failed at every level in Syria.

For many (see Powell 2012: 309), the Syrian situation can be distinguished from Libya on the basis that one of the precautionary principles of responsibility to protect was not met in relation to the former State, that is, that ‘there must be a reasonable chance of success in halting or averting the suffering which has justified the intervention, with the consequences of action not likely to be worse than the consequences of inaction’ (Commission Report 2001: XXII). In many ways, this provides the ultimate ‘get-out’ clause for the permanent members of the Security Council. However, the question remains whether these States need a get-out clause at all. Attempts to modify the composition of the Security Council and, in particular, the permanent membership have led nowhere, and initiatives to impose some form of legal limitation on the use of the veto have, similarly, floundered. In one of the most interesting and compelling discussions of sovereignty and responsibility to protect, Anne Peters argues that the use of the veto might be illegal in certain circumstances. She propounds a teleological interpretation of article 27(3) of the Charter, but still, she has to admit that exactly this ‘blocking option’ was ‘part of the deliberate institutional design of the organization’ (Peters 2009: 539). No broad interpretations of the Charter can, it seems, overcome the clear and legitimate actions of Russia and China in blocking the relevant resolutions. No matter one’s moral indignation, the legal outcome is that this has had the effect of blocking any authorised intervention in Syria. Notably, within the context of the broader context of liberal interventionism, the unforeseen consequence of seeking to persuade and cajole the Security Council to act responsibly has the effect of firmly establishing, in all cases where a Security Council resolution authorising military intervention is not obtained, the illegality of any military intervention in the target State. Thus, any assertion that a military intervention in Syria might have been ‘unlawful but legitimate’ must surely be squashed. To this extent, responsibility to protect may very well represent the final nail in the coffin of ‘unauthorised’ humanitarian intervention.

**VI.) Conclusion**

In spite of many reservations about the conceptual and practical basis for responsibility to protect, particularly in relation to the (non-)interventions in Libya and Syria, the concept should not be abandoned. Orford’s designation of responsibility to protect as a normative grounding for the practices of international executive action is accurate and should give rise to further endeavours by the United Nations to intervene in crisis-torn States. In light of the first lesson highlighted above, such interventions should be early and avoid the use of force. This is perhaps the strongest aspect of responsibility to protect, and the failings of the concept in relation to Libya and Syria should not serve to undermine the use of international executive action as envisaged by Orford. *Implementing Responsibility* is replete with examples, and challenges, as to how this might be achieved.

In light of the second lesson, it should be stressed that greater care must be taken to more precisely conceptualise and define still further the concepts of both ‘responsibility’ and ‘protection.’ None of the official documentation emanating from the United Nations or the Commission adequately does this. It is particularly important that the United Nations, or the international community more broadly, defines ‘protection’ in a way that sets its legal limits in a way that avoids its authoritarian tendencies and clarifies the concept of ‘responsibility.’

Finally, an analysis of the genealogy of liberal interventionism through its various manifestations of failed States discourse, humanitarian intervention and, ultimately, responsibility to protect once again highlights that the current legal framework for the authorisation of military intervention to prevent widespread human rights abuses is controlled, as it always has been, by the Security Council in general and its permanent members in particular. The option still remains through a combination of article 2(7) and Chapter VII of the Chapter for collective security measures to be taken in the form of authorised interventions. However, the final lesson of Libya and Syria is that such authorised interventions will continue to be the exception rather than the rule, and they are, in themselves, no guarantee of a successful outcome.

**References**

Annan, K. 2000. Millennium Report of the Secretary-General of the United Nations, UN Doc DPI/2083/Rev.1.

Annan, K. 2005. In Larger Freedom: Towards Development, Security and Human Rights for All, UN Doc A/59/2005.

Ban, K.-M. 2009. Implementing the Responsibility to Protect, UN Doc A/63/677 (Implementing Responsibility).

Ban, K.-M. 2012. Address to the Stanley Foundation Conference on the Responsibility to Protect, 18 January. Available at: <http://www.un.org/apps/news/infocus/sgspeeches/statments_full.asp?statID=1433> [accessed: 16 November 2012].

Boutros-Ghali, B. 1992. An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping, UN Doc A/47/277.

Brunée, J. and Toope, S. 2010. *Legitimacy and Legality in International Law.* Cambridge: Cambridge University Press.

Cane, P. 2002. *Responsibility in Law and Morality*. Oxford: Hart Publishing.

Cassese, A. 1999. *Ex Injuris Ius Oritur:* Are We Moving Towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community? *European Journal of International Law,* 10(1), 23-30.

Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee: Libyan Arab Jamahiriya (2007), UN Doc CCPR/C/LBY/CO/4.

Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee: Syrian Arab Republic (2005), UN Doc CCPR/CO/84/SYR.

Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Fourth Periodic Reports of States Parties Due in 2002: Libyan Arab Jamahiriya (2007), UN Doc CCPR/C/LBY/4.

Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Third Periodic Report: Syria (2004), UN Doc CCPR/C/SYR/2004/3.

Deng, F. et al. 1996. *Sovereignty as Responsibility: Conflict Management in Africa*. Washington, DC: Brookings Institution (Sovereignty as Responsibility).

Dobson, C. and Payne, R. 1987. *The Never-Ending War on Terrorism in the 1980s.* New York: Facts on File Inc.

Evans, G. 2006-07. From Humanitarian Intervention to Responsibility to Protect. *Wisconsin International Law Journal,* 24(3), 703-22.

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950) (First Geneva Convention).

Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea (adopted 12 August 1949, entered into force 21 October 1950) (Second Geneva Convention).

Geneva Convention Relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950) (Third Geneva Convention).

Geneva Convention Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) (Fourth Geneva Convention).

Haffner, G. and Buffard, I. 2010. Obligations of Prevention and the Precautionary Principle, in *The Law of International Responsibility,* edited by J. Crawford et al. Oxford: Oxford University Press, 521-34.

Helman, G.B. and Ratner, S.R. 1992-93. Saving Failed States. *Foreign Policy,* 89, 3-20.

High-Level Panel on Threats, Challenges and Change 2004. A More Secure World: Our Shared Responsibility, UNDoc A/59/565.

Independent International Commission on Kosovo 2000. The Kosovo Report: Conflict, International Response, Lessons Learned. Oxford: Oxford University Press.

International Coalition for the Responsibility to Protect. The Crisis in Libya. Available at: <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-libya> [accessed: 14 November 2012].

International Commission on Intervention and State Sovereignty 2001. The Responsibility to Protect. Available at: <http://responsibilitytoprotect.org/ICISS%20Report.pdf> [accessed: 14 November 2012] (Commission Report).

International Law Commission 2001. Articles on Responsibility of States for Internationally Wrongful Acts. Yearbook of the International Law Commission, 2(2), UN Doc A/CN.4/SER.A/2001/Add.1 (Part 2).

Lucas, J.R. 1993. *Responsibility*. Oxford: Clarendon Press.

Orford, A. 2011. *International Authority and the Responsibility to Protect*. Cambridge: Cambridge University Press.

Pellet, A. 2010. The Definition of Responsibility in International Law, in *The Law of International Responsibility,* edited by J. Crawford et al. Oxford: Oxford University Press, 3-16.

Peters, A. 2009. Humanity as the A and Ω of Sovereignty. *European Journal of International Law,* 20(3), 513-44.

Powell, C. 2012. Libya: A Multilateral Constitutional Moment? *American Journal of International Law,* 106(2), 298-315.

# Press Release: Security Council Fails to Adopt Draft Resolution Condemning Syria’s Crackdown on Anti-Government Protestors, Owing to Veto by Russian Federation, China (4 October 2011), UN Doc SC/10403 (Press Release SC/10403).

Press Release: Security Council Fails to Adopt Draft Resolution on Syria as Russian Federation, China Veto Text Supporting Arab League’s Proposed Peace Plan (4 February 2012), UN Doc SC/10536 (Press Release SC/10536).

Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978).

Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978).

Richardson, H.J. 1996. ‘Failed States,’ Self-Determination and Preventative Diplomacy: Colonialist Nostalgia and Democratic Expectations. *Temple International and Comparative Law Journal,* 10(1), 1-78.

Schmitt, C. 1988. *The Crisis of Parliamentary Democracy,* translated by E. Kennedy). Boston: MIT Press.

Simma, B. 1999. NATO, The UN and the Use of Force: Legal Aspects. *European Journal of International Law,* 10(1), 1- 22.

Stahn, C. 2007. Responsibility to Protect: Political Rhetoric or Emerging Legal Norm? *American Journal of International Law,* 101(1), 99-120.

The Fund for Peace. Available at: <http://www.fundforpeace.org/global/> [accessed: 13 November 2012].

Thürer, D. 1999. The ‘Failed State’ in International Law. *International Review of the Red Cross,* 81(836), 731-61.

UNGA Res 60/1 (2005), UN Doc A/RES/60/1 (World Summit Outcome).

United Nations Charter (adopted 26 June 1945, entered into force 24 October 1945).

UNSC Draft Resolution [On Cessation of Violence and Implementation of the Six-Point Plan of the Joint Special Envoy of the United Nations and the League of Arab States on the Syrian Arab Republic] (2012), UN Doc S/2012/538.

UNSC Draft Resolution [On Situation of Human Rights in the Syrian Arab Republic] (2011), UN Doc S/2011/612.

UNSC Draft Resolution [On Situation of Human Rights in the Syrian Arab Republic] (2012), UN Doc S/2012/77.

UNSC Res 1674 (2006), UN Doc S/RES/1674.

UNSC Res 1970 (2011), UN Doc S/RES/1970.

UNSC Res 1973 (2011), UN Doc S/RES/1973.

Verdirame, G. 2011. *The UN and Human Rights: Who Guards the Guardians?* Cambridge: Cambridge University Press.

Vienna Convention on Diplomatic Relations (adopted 18 April 1961, entered into force 24 April 1964).

Weiss, T.G. 2007. *Humanitarian Intervention*. Cambridge: Polity Press.

Wellens, K. 2010. Revisiting Solidarity as a (Re-)Emerging Constitutional Principle: Some Further Reflections, in *Solidarity: A Structural Principle of International Law,* edited by R. Wolfrum and C. Kojima. Heidelberg: Springer, 3-14.

Wilde, R. 2003. The Skewed Responsibility Narrative of the ‘Failed States’ Concept. *ILSA Journal of International and Comparative Law*, 9(2), 425-30.

Wilder Foote, H. (ed.) 1962. *The Servant of Peace: A Selection of the Speeches and Statements of Dag Hammarskjöld.* London: The Bodley Head.

1. The intervention was authorised by Security Council Resolution 1973 on 17 March 2011. [↑](#footnote-ref-1)
2. According to Powell (2012), ‘the Security Council's invocation of RtoP in the midst of the Libyan crisis significantly deepens the broader, ongoing transformation in the international law system’s approach to sovereignty and civilian protection. This transformation away from the traditional Westphalian notion of sovereignty has been unfolding for decades, but the Libyan case represents a further normative shift from sovereignty as a right to sovereignty as a responsibility’ (298). [↑](#footnote-ref-2)
3. On 4 October 2011, the Security Council voted on draft resolution S/2011/612. This was vetoed by China and Russia, and Brazil, India, Lebanon and South Africa abstained. On 4 February 2012, the Security Council voted on draft resolution S/2012/77. The vote took place at the time of the attack on the city of Homs and was vetoed by China and Russia, with all of the other members of the Security Council voting in favour of the resolution. On 19 July 2012, the Security Council voted on draft resolution S/2012/538. This was vetoed by China and Russia, and Pakistan and South Africa abstained. [↑](#footnote-ref-3)
4. As Secretary-General Annan put it in his 2000 Millennium Report, ‘if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how *should* we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity’ (¶ 217)? [↑](#footnote-ref-4)
5. For a detailed analysis of each of these endorsements of responsibility to protect, see Stahn 2007: 99-100. [↑](#footnote-ref-5)
6. On preventive deployment, see also Boutros-Ghali 1992. [↑](#footnote-ref-6)
7. The work of the Human Rights Committee since 11 September 2001 is covered in detail by Prof. Sandy Ghandhi in his chapter in this volume. [↑](#footnote-ref-7)
8. For further on these revolutions, with particular reference to Egypt, see Dr. John Strawson’s chapter in this volume. [↑](#footnote-ref-8)
9. For a full discussion of Hobbes’s analysis of protection as the basis of authority during civil or religious war, see Orford 2011: 112-25. [↑](#footnote-ref-9)
10. For a fuller discussion of Schmitt’s analysis of ‘protection as war,’ see Orford 2011: 125-33. [↑](#footnote-ref-10)
11. On the existence of the ‘international community’ and the development of the principle of solidarity as a principle of international law, see Wellens 2010. [↑](#footnote-ref-11)