

THE YAZIDI AND THE RESPONSIBILITY TO PROTECT

by

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THESIS ABSTRACT

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Title: The Yazidi and the Responsibility to Protect

This thesis analyzes the international community's response to the persecution of the Yazidi people by the Islamic State of Iraq and Syria and what implications this response has for the Responsibility to Protect doctrine.

To answer this question, I chart and assess the major historical events that contributed to the emergence of the Responsibility to Protect, define the current legal status of the Responsibility to Protect, compare related sources of public international law, and investigate the relationship between the responsibility to protect doctrine and the Yazidi people through a case study of the persecution of the Yazidi people at the hands of the extremist organization known as the Islamic State of Iraq and Syria (ISIS).

I found the international community's response to the Yazidi crisis to be both inadequate and harmful to the Yazidi. Additionally, the international community's response reinforced the unfavorable precedent set during the Libyan Intervention in 2011.

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I dedicate this manuscript to my parents Christopher and Lori Roberts and my sister Anna Roberts. Thank you for your unconditional love and support.

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CHAPTER I

THE HISTORY OF THE RESPONSIBILITY TO PROTECT

A. Introduction

My interest in the Responsibility to Protect Doctrine (often referred to as R2P or RtoP) emerged from the sense of frustration that I felt at seeing the persecution of the Yazidi people unfold across social media and main stream news sources without sufficient prevention or assistance by the international community. I wanted to know how it is possible that violent persecution and systematic human rights violations and abuses are still occurring twenty years after the Rwandan Genocide. This subject ties in with my academic and professional experiences.

While working with the Portland Immigration Court, under the Department of Justice, I worked predominantly on asylum claims and convention against torture claims and it was clear that these same thresholds were being met by the Yazidi people. However, when I began this thesis there was still relatively limited information available on the Yazidi people, and knowing that documentation can play a critical role in a successful case, I wanted to contribute to the body of knowledge around this area in to potentially assist any claims under these bodies of law by Yazidi people made in the United States. While participating in a United Nations Summer Study program I was exposed to the R2P, and the role it was designed to play in preventing severe human rights abuses. Drawing from these experiences I refined my question, which this thesis answers: how has the international community responded to the persecution of the Yazidi people by ISIS and what implications does this response have for R2P?

I will begin my thesis by analyzing and charting the major historical events from the last several decades that contributed to the emergence of R2P. I will then define the current status of R2P. Next, this thesis offers an examination of related sources of international law such as the law of war and the genocide convention to show how the Responsibility to protect Doctrine has been influenced by pre-existing notions of public international law. In addition, it also looks at the relationship between the Responsibility to protect Doctrine and the Yazidi people through a case study of the persecution of the Yazidi people at the hands of the extremist organization known as the Islamic State of Iraq and Syria (ISIS). Given that the Doctrine is still developing, each utilization is still influencing the Doctrine and playing a role in establishing precedent, thus I seek to determine the impact that the persecution of the Yazidi people and the response from the international community are having on the developing Responsibility to protect Doctrine. By looking at this relationship between the Yazidi people and the Responsibility to Protect, I hope to show how the Yazidi people are influencing the Responsibility to Protect and how the Responsibility to Protect Doctrine is impacting the Yazidi people.

I conclude by offering my assessment of the current status of the Doctrine and critical analysis of its impact on the Yazidi people, as well as provide recommendations for how the Responsibility to Protect Doctrine may be improved upon and potentially benefit the Yazidi people or future groups of peoples facing persecution.

B. The Origins of the Responsibility to Protect

1. Rwandan Genocide

a. Overview

The tragic loss of life now known as the Rwandan Genocide took place between April and July 1994. During these four months over 800,000 people, mostly from the Tutsi minority group, were murdered in their houses and at checkpoints haphazardly placed on city streets. Many scholars point to the rise of extreme Hutu nationalism as the final push that tipped the country into the conditions wherein genocide was able to occur.¹ The Hutu genocidal propaganda spread from the city of Kigali into the rural areas of the country largely through radio. With “staggering speed and brutality” citizens took up weapons against their neighbors, murdering them in cold blood.² In response to the genocide, the Tutsi controlled Rwandese Patriotic Front³ launched a military offensive in July and seized control of the country, leading to hundreds of thousands more dying in the process. In the aftermath of the genocide and the subsequent military offensive, nearly two million refugees were displaced, creating a severe humanitarian crisis.

Much of the cultural tensions between the majority Hutus, minority Tutsis and small number of Twa arose from the European colonial administration and exploitation of Rwanda. Rwanda was controlled by the Germans under the name of German East Africa from 1894 to 1918. Rwanda was placed under the authority of Belgium after World War I pursuant to a League of Nations Mandate.⁴ During the period of Belgium’s colonial rule,

¹ Rwanda Genocide: *100 Days of Slaughter*, BBC, 2014.

² Id.

³ *The Rwandan Patriotic Front*, Human Rights Watch, 2016.

the Belgians favored Tutsis over the Hutus creating a cultural tension that led to violence amongst the groups several times before the genocide in 1994. Ethnic tensions rooted in colonial policies would continue to divide the country after Rwanda gained its independence from Belgium in 1962.

In 1973 a military coup placed a Hutu, General Juvenal Habyarimana, in power. Habyarimana led the country and the new National Revolutionary Movement for Development Party for nearly twenty years with little political competition. In 1978 the Rwandan constitution was ratified and Habyarimana was elected as president “in 1978 and reelected in 1983 and 1988, when he was the sole candidate.”⁵ Members of the Rwandese Patriotic Front, composed primarily of Tutsi refugees located in Uganda, invaded Rwanda in 1990. The conflict paused during a ceasefire which permitted negotiations between Habyarimana’s government and the RPF in 1992. An agreement calling for a transitional and Rwandese Patriotic Front inclusive government was signed in August 1993; viewed as unacceptable, by some Hutu extremists. Habyarimana’s plane was shot down on April 6, 1994, although it remains unclear whether it was committed by Hutu extremists, members of the RPF, or other actors. Shortly after Habyarimana’s death, members of the Rwandan armed forces and the Presidential Guard acted in coordination with Hutu militia groups, the Interahamwe (“Those Who Attack Together”) and the Impuzamugambi (“Those Who Have the Same Goal”).⁶ These governmental and non-governmental entities established roadblocks and began murdering both Tutsis and moderate Hutus. One of the first victims was Prime Minister Agathe Uwilingiyimana, a

⁴ Myers, P. Denys, *The Mandate System of the League of Nations*, Vol. 96, 2015.

⁵Rwanda Genocide: *100 Days of Slaughter*, BBC, 2014.

⁶ Id.

moderate Hutu politician. An extremist Hutu political group from the Rwandan military would step in and fill the power vacuum. The mass killings quickly spread from the capital of Kigali through the rest of the country, enhanced greatly with the extremist Hutu propaganda played through the radio stations.



Figure 1: Map of Rwanda

2. Failure to Respond

The lack of response from the international community with regard to the Rwandan Genocide is widely held as one of the largest failures of the international community in the last half of a century, and former United States President Bill Clinton has described the Rwandan genocide as one of his “greatest regrets” throughout the course of his eight years as president and stated that “had the U.S. and the world intervened earlier,” some 300,000 people may have not lost their lives.⁷ The current Ambassador to the United Nations, Samantha Power, laid the blame primarily on the United States government when she said “The United States government knew enough about the genocide early on to save lives, but passed up countless opportunities to intervene.”⁸ Ambassador Power’s statement strikes a chord with accusations towards the Clinton administration which claim that the United States knowingly ignored the loss of life in Rwanda, while knowing it amounted to genocide. One claim was that officials within the Clinton Administration were instructed not to describe the loss of life in Rwanda as genocide despite knowledge to the contrary. The administration’s position stood in stark contrast to that of the United Nations Secretary General, whose experts stated that there was no doubt that the violence was part of a “deliberate and widespread extermination of an ethnic group.”⁹ However, in an effort to sidestep any obligation to act, the Clinton administration drafted guidance which instructed members of the

⁷ *20 Years After Rwanda Genocide Regret and Remembrance*, ABC New, 2014.
<http://abcnews.go.com/blogs/headlines/2014/04/20-years-after-rwanda-genocide-regret-and-remembrance/>

⁸ Id.

⁹ *World Officials Told to Avoid Calling Rwanda Killings Genocide*, *New York Times*, 1994.
<http://www.nytimes.com/1994/06/10/world/officials-told-to-avoid-calling-rwanda-killings-genocide.html>

government to state that only “acts of genocide may have occurred.”¹⁰ David Rawson, the United States Ambassador to Rwanda at the time, stated in an interview that “As a responsible Government, you don’t just go around hollering ‘genocide’, you say that acts of genocide may have occurred and they need to be investigated.”¹¹ Despite these opposing viewpoints, there were reports from the ground of what was transpiring in Rwanda at the time and calls for assistance were made and ignored.

3. Inaction Drove a Need

a. Rwandan Genocide

On April 21, 1994, two weeks into the Rwandan Genocide, that would continue for several months, General Remeo Dallaire requested an additional five to eight thousand soldiers from the United Nations Security Council to prevent the slaughter of Tutsis. General Dallaire was the Canadian commander of the United Nations Peace Keeping force in Rwanda at the time. General Dallaire informed the United Nations Security Council and the United States Department of State that if his request were met he could end the genocide. However, The United Nations Security Council refused his request for additional soldiers and instead reduced the size of his command from 2500 to 270 soldiers. General Dallaire’s self-blame for the event is well documented in the 2004 documentary “Shake hands with the Devil: The Journey of Romeo Dallaire.

Many are of the opinion that had General Dallaire been granted the additional soldiers as he requested instead of having his force reduced that he could have in fact prevented the genocide in Rwanda from reaching such an incredible loss of life, and

¹⁰ Id.

¹¹ Id.

possibly saved hundreds of thousands of lives. According to an article in the New Yorker, many believe that “a few thousand soldiers with tanks and big guns could have knocked out the radio, closed off Rwanda’s main roads, and shut down the genocide in one or two days.”¹² The United States government has faced additional scrutiny and criticism for not assisting in the shutdown of the radios which contributed greatly to the genocide. Some sources have stated that the United States government was the only entity with the capabilities of jamming the radios without even necessitating the entry of soldiers into Rwanda. However, the United States government has rejected these accusations.¹³ The lack of response to the Rwandan Genocide played a key role in shaping the consciousness of the international community in a way that would eventually allow for the Responsibility to Protect Doctrine to emerge. The Rwandan Genocide was not the only failure of the international community to respond to widespread human rights abuses. The Srebrenica Genocide also played a significant role in laying the ground for what would eventually bring about the Responsibility to Protect Doctrine.

b. Srebrenica Genocide

Along with the genocide in Rwanda, the Srebrenica massacre (also known as the Srebrenica Genocide” occurred in 1995 and resulted in the deaths of more than 8000 Muslim Bosnians. Those murdered in the Srebrenica genocide consisted predominantly of boys and men. In addition to the murders of the Bosnians, approximately 30,000 Bosnian women, children, and elderly were forcibly moved, meeting the threshold of ethnic cleansing. Members of the Bosnian Serb Army of Republika Srpska led at the time

¹² *After the Genocide*, The New Yorker, 1995. <http://www.newyorker.com/magazine/1995/12/18/after-the-genocide>

¹³ *Bystanders to Genocide*, The Atlantic, 2001.

by General Ratko Mladic in addition to a Serbian paramilitary organization known as the Scorpions were the primary antagonists during the Srebrenica Genocide. Of note is the fact that the genocide occurred in a jurisdiction which was at the time supposedly controlled by the United Nations in the Drina Valley of northeastern Bosnia, designated as a safe area before its capture by the Bosnian Serb Army of Republika Srpska.

The event was officially declared a genocide through a 2004 ruling by the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia and upheld by the International Court of Justice in 2007. Secretary-General of the United Nations BanKi-Moon stated that the United Nations had “made serious errors of judgement, rooted in a philosophy of impartiality.”¹⁴

As a result of this failure to act by the international community, Kofi Annan would later play a key role in advocating on behalf of the Responsibility to Protect Doctrine. The events of the genocide in Srebrenica, played a significant role in the willingness of the international community to engage in dialogue that involved the infringement of sovereignty in the name of preventing further instances of severe human rights abuses.

4. International Commission on Intervention and State Sovereignty

The International Commission on Intervention and State Sovereignty was one form of response to the critiques of the failure of the international community to respond to the human rights atrocities that occurred during the Rwandan Genocide, the Srebrenica Genocide, and elsewhere. With the support of the Canadian Government, a commission was founded which consisted of members from the General Assembly of the United

¹⁴ *Secretary-General's Message to Ceremony Marking the 10th Anniversary of the Srebrenica Massacre*, The United Nations, 2005.

Nations. The primary goal of the International Commission on Intervention and State Sovereignty was to answer the following question raised by Kofi Annan that “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 affect every precept of our common humanity?”¹⁵ Members on the committee include participants from Australia, Algeria, Canada, the United States, Canada, Russia, Germany, South Africa, the Philippines, Switzerland, Guatemala, and India.

The International Commission on Intervention and State Sovereignty’s main purpose was the production of a report to seek to answer the question formally raised above by Kofi Annan. The commission released its report in December 2001, and thus the mandate of the commission was complete. However, the Government of Canada continued to follow upon the findings made by the commission.

The report made by the International Commission on Intervention and State Sovereignty delves into the long debate between the two seemingly non-compatible components of international law; the recognition of state sovereignty and of humanitarian intervention in the face of human rights atrocities.

5. Major Reports

a. “The Responsibility to Protect”

The major report produced by the International Commission on Intervention and State Sovereignty includes eight chapters titled “The Policy Challenge, A new Approach: ‘The Responsibility To Protect’”, The Responsibility to Prevent, The Responsibility to

¹⁵ *The Responsibility to Protect*, Report of the International Commission on Intervention and State Sovereignty, 2001. <http://web.archive.org/web/20070731161527/http://www.iciss-ciise.gc.ca/report2-en.asp>

React, The Responsibility to Rebuild, The Questions of Authority, The Operational Dimension, and The Responsibility To Protect: The Way Forward.”¹⁶

The first chapter titled “The Policy Challenge” begins by outlining the difficult and controversial position that humanitarian intervention rests within. “External military intervention for human protection purposes has been controversial both when it has happened-as in Somalia, Bosnia and Kosovo-and when it has failed to happen, as in Rwanda. For some the new activism has been a long overdue internationalization of the human conscience; for others it has been an alarming breach of an international state order dependent on the sovereignty of states and the inviolability of their territory. For some, again, the only real issue is ensuring that coercive interventions are effective; for others, questions about legality, process and the possible misuse of precedent loom much larger.”¹⁷ This excerpt succinctly and accurately summarizes many of the different positions concerning the evolution of humanitarian intervention and thus R2P. On one hand of the moral dilemma is the reality of unconscionable acts of violence and on the other is the fear of misuse that could lead to further acts of violence or abuse. There is no easy solution to this problem, especially considering the history of intervention in the last two centuries alone, where much of the world was divided amongst super powers for systematic colonial and neo-colonial exploitation in the name of civilizing or lifting people of from barbarism.

¹⁶ *The Responsibility to Protect*, Report of the International Commission on Intervention and State Sovereignty, 2001. <http://responsibilitytoprotect.org/ICISS%20Report.pdf>

¹⁷ Id.

b. Kofi Annan: “In Larger Freedom”

One of the strongest voices on the side of preventing acts of mass violence even in the face of weakening sovereignty was the former Secretary General of the United Nations, Kofi Annan.

Kofi Annan is a diplomat from Ghana and served as the seventh Secretary-General of the United Nations, preceding the current Secretary-General, Ban Ki-moon. Secretary-General Annan was a recipient of the Nobel peace prize in 2001 and issued the Report of the Secretary-General of the United Nations for decision by Heads of State and Government in September 2005, titled “In Larger Freedom”. “In Larger Freedom” played a significant role in the emergence of the Responsibility to Protect Doctrine. Mr. Annan later quit his position as the UN-Arab League Joint Special Representative for Syria due to frustration by the lack of progress the United Nations had made in the Syrian crisis.

Mr. Annan was a strong advocate for the redefining of state sovereignty in order to afford individual sovereignty (or protection from human rights violations) in alignment with the Declaration of Human Rights and the United Nations charter. It was Mr. Annan’s inclusion of the Responsibility to Protect Doctrine as third part of his larger report that was endorsed by the United Nations General Assembly from which many have interpreted a formal endorsement by the United Nations Members States of the Responsibility to Protect Doctrine.

The report, “In Larger Freedom” was divided into four main sections: Freedom from Want, Freedom from Fear, Freedom to Live in Dignity, and Strengthening the United Nations. The third piece of his report, the Freedom to Live in Dignity, implored member states to solidify human rights efforts, democracy, and the rule of law within

their respective states. He specifically requested member states to “embrace the principle of the ‘Responsibility to Protect’, as a basis for collective action against genocide, ethnic cleansing and crimes against humanity.”¹⁸

c. 2005 World Summit Outcome Document

The 2005 United Nations World Summit included representatives from 191 member states with a focus on “areas of development, security, human rights and reform of the United Nations.”¹⁹ At the event, which was one of the largest gatherings of world leaders in recent history, delegates made “important steps forward...[to include an] agreement on the responsibility to protect populations suffering from gross human rights violations.”²⁰ This agreement has since been interpreted as an endorsement of the Responsibility to Protect Doctrine as created by the International Commission on Intervention and State Sovereignty. However, there was a general “reluctance of both the Security Council and the wider United Nations membership...to discuss the Responsibility to Protect following the 2005 World Summit.”²¹ Despite the general reluctance towards the Doctrine in the aftermath of the 2005 world summit, the support of United Nations Secretary-General Ban Ki-Moon, who some have said is “personally committed to the principles,”²² and a “handful of likeminded countries, activists, and scholars” the Responsibility to Protect became the accepted reference for both responding

¹⁸*In Larger Freedom*, United Nations, http://www.un.org/en/events/pastevents/in_larger_freedom.shtml

¹⁹ *The 2005 World Summit: An overview*, United Nations, 2016, un.org.

²⁰ *2005 World Summit Outcome Document: A Glass Half Full?*, The United Nations Association of Great Britain and Northern Ireland (UNA-UK), 2016.

²¹ Bellamy, Alex J., *Libya and the Responsibility to Protect: The Exception and the Norm*, (2011). http://search.proquest.com/docview/900868446?accountid=14698&rfr_id=info%3Axri%2Fsid%3Aprimo

²² Id.

and preventing mass atrocities up until the intervention of the United States government in Libya in 2011.

6. Ban Ki-moon

United Nations Secretary-General Ban Ki-Moon, like his predecessor, Kofi Annan, was a strong supporter of the Responsibility to Protect Doctrine. Secretary-General Ban Ki-Moon issued a report in 2009 titled “Implementing the Responsibility to Protect”, further legitimizing the Doctrine. The report “Implementing the Responsibility to Protect” proposed the three-pillar organization of the Responsibility to Protect Doctrine.

The 2009 report derives its mandate from sections 138, 139 and 140 of the 2005 World Summit Outcome Document. Section 138 states that “Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity...we accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.”²³ After supporting the Responsibility to Protect, Secretary General Ban Ki-Moon then acknowledges the sensitive balance between the state sovereignty and attempts from the international community to prevent human rights abuses, and believes that the solution lays within the solidification of R2P in order to deter misuse.

The report by Ban Ki-Moon supports the position that the best way to “discourage States or groups of States from misusing the responsibility to protect for inappropriate purposes would be to develop fully the United Nations strategy, standards, processes,

²³ Id.

tools and practices for the responsibility to protect.”²⁴ Thus, it is evident that the secretary general saw the developing Responsibility to Protect Doctrine not only as a means of preventing future mass human rights abuses and atrocities but also as a way of minimizing territorial infringement or invasion on the basis of humanitarian grounds.

Secretary-general Ban Ki-Moon then goes on to clearly outline the three-pillar strategy as discussed earlier, which places an equal emphasis on not just reacting to a severe human rights abuses but also equally preventing them from occurring in the first place, and rebuilding in their aftermath. It was with this renewed emphasis and support from the United Nations Secretary General that R2P enjoyed a brief highpoint of hope and idealism before it was implemented by the United States led coalition in Libya in 2011.

7. Libya and the Responsibility to Protect

The United States led coalition in Libya was justified by its advocates under the existing structure of R2P that had begun to solidify in 2005 after the United Nations World Summit. The action of the international community under the R2P were in response to allegations that the government of Libya headed by President Gaddafi had committed war crimes and crimes against humanity upon Libyan citizens who were engaging in what they described as peaceful civilian protests, and was further preparing to escalate such action. Gaddafi raised particular concern from many in the international community when labeling protesters as “cockroaches” and “rats” and urging his supporters to attack protesters and to “cleanse Libya house by house,” all language which likely resonated strongly with the language used by the Hutu power structure during the

²⁴ <http://responsibilitytoprotect.org/implementing%20the%20rtop.pdf>.

Rwandan Genocide to compel people to commit violence upon their neighbors. This similarity in language, when seen from the lens of the failure to prevent the Rwandan Genocide played a significant role in building international support for the Libyan intervention under R2P in 2011.



Figure 2: Map of Libya

a. Events Leading up to Resolution 1973

The Libyan civil war began as a series of political demonstrations inspired by the neighboring protests in Tunisia and Egypt that were motivated by allegations of government, ineptitude, corruption and abuse at the hands of the former Libyan government, controlled at the time by the authoritarian dictator Muammar Gaddafi.

Gaddafi founded a revolutionary group within the military and led the coup d'état which overthrew the former King Idris who had ruled Libya as an absolute monarch .Gaddafi had seized power in a military coup in 1969. While seeking to connect with other Arab nationalist's governments and Islamic socialist movements, Gaddafi also sought to expel foreign imperialist influences from Libya. Between 1969 and 1977 Gaddafi led Libya as the leader of the Libyan Arab Republic and then transitioned into the position titled "Brotherly Leader and Guide of the Revolution of Libya" of the Great Socialist People's Libyan Arab Jamahiriya from 1977 until 2011. In 1977 Gaddafi reformed the government and renamed it the Jamahiriya or "state of the masses", a new socialist state. Gaddafi ruled through his military power and responded harshly to dissidents and political opponents through notorious policing of the Libyan people, ruthlessly eliminating threats to his rule until his demise in 2011.

Gaddafi helped to instill his own interpretation of Arab Nationalism and Arab Socialism and was a supporter of Pan-Africanism and eventually served as the Chairperson of the African Union for two years, ending in 2010. Toward the end of his rule, Gaddafi turned away from some of his previous policies and began to support economic privatization and improved relations with western economic powers during the 1990s, which coincided with his role in the African Union. He was eventually captured

and killed by militant members of the National Transitional Council during the 2011 civil war in the aftermath of the United States led coalition intervention.

The protest in Libya began on February 15, 2011 and gained international notoriety when the Gaddafi regime responded to the protest with extreme force. The harsh government response took the form of crowd dispersals, arrests, tear gas, and eventually the deadly use of small arms fire against protestors. The government rapidly labeled the protestors as an “armed rebellion” and responded with alarming violence.²⁵ Members of the international community declared that the harsh government response may have amounted to crimes against humanity; meanwhile the country was divided in zones controlled by the Gaddafi government and rebellion forces.

The United Nations Security Council adopted Resolution 1970 on February 26, 2011, which sought to “impose immediate measures to stop the violence, ensure accountability and facilitate humanitarian aid”²⁶ The measure was unanimously approved by members of the United Nations Security Council. Major components of Resolution 1970 included an arms embargo to be placed upon Libya, freezing of assets of key members of the Gaddafi regime, and the facilitation of humanitarian assistance.²⁷ In addition the resolution referred the allegations of crimes against humanity to the International Criminal Court, and obligated the Security Council to review the situation as necessary. However, despite the implementation of Resolution 1970 the situation in Libya continued to deteriorate and the government continued to use increasingly severe

²⁵ *Libya Revolt of 2011*, Encyclopedia Britannica, 2016.

²⁶ Halabi, Sam Foster, *Traditions of Belligerent Recognition: The Libyan Intervention In Historical and Theoretical Context*, American University, 2012.

²⁷ *Id.*

levels of force against larger and more militarized protestors and allegations of war crimes and atrocities among both parties became increasingly frequent.

b. United Nations Security Council Resolution 1973

Resolution 1973 by the United Nations Security Council authorized action to be taken by the international community in order to prevent the continued harm of Libyan citizens by the Gaddafi government. Resolution 1973 "authorizes member states that have notified the secretary-general, acting nationally or through regional organizations or arrangements, and acting in cooperation with the secretary-general, to take all necessary measures...to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya...while excluding a foreign occupation force of any form on any part of Libyan territory."²⁸

Resolution 1973 adopted by the United Nations Security Council in 2011 began by condemning the failure of the Libyan government to adhere to the requirements of resolution 1970. The resolution then uses language directly aligning with R2P Doctrine when it states "reiterating the responsibility of the Libyan authorities to protect the Libyan population and reaffirming that parties to armed conflicts bear the primary responsibility to take all feasible steps to ensure the protection of civilians."²⁹

This language speaks to the first pillar of the R2P Doctrine; the responsibility that a state has to protect its population from genocide, war crimes, crimes against humanity, and ethnic cleansing. Resolution 1973 then continues by "condemning the gross and systematic violation of human rights, including arbitrary detentions, enforced

²⁸ Williams, Ian, *Resolution 1973: Responsibility to Protect, Not Humanitarian Intervention in Libya*, 2011, http://search.proquest.com/docview/864819527?accountid=14698&rfr_id=info%3Axri%2Fsid%3Aprimo

²⁹ http://www.nato.int/nato_static/assets/pdf/pdf_2011_03/20110927_110311-UNSCR-1973.pdf.

disappearances, torture and summary executions.”³⁰ Additionally the resolution points towards the “acts of violence and intimidation committed by the Libyan authorities against journalists, media professionals and associated personnel and urging these authorities to comply with their obligations under international humanitarian law as outlined in resolution 1738.”³¹ The Security Council also went so far as to state that the “widespread and systematic attacks currently taking place in the Libyan Arab Jamahiriya against the civilian population may amount to crimes against humanity”³². Here the language shifts from urging the Libyan government to adhere to its responsibility to protect its own people towards suggesting that it will ensure the protection of civilians, an action that falls under the third pillar of the R2P, that if a state fails to protect its citizens from the aforementioned mass atrocities, then the international community has the responsibility to intervene through various measures, the last of which is military intervention.

After urging the Gaddafi regime to meet its responsibility to protect its people, the United Nations Security Council ordered airstrikes on March 17th, with abstentions from both Russia and China, in order to “ensure the protection of civilians.”³³ NATO led the mission in Libya labeled Operation Unified Protector in an effort to implement Resolution 1973. This was the first complete test of R2P since its adoption in 2005 and it was backed explicitly by the United Security Council. The goal of preventing a massacre

³⁰ Id.

³¹ Id.

³² Id.

³³ *The Lessons of Libya: Outsiders had good reason to intervene in Libya. But there cause may suffer from it*, 2011. <http://www.economist.com/node/18709571>

in Benghazi was achieved shortly, and Gaddafi forces hastily retreated after their air defenses were destroyed. However, as the war continued and NATO continued to strike wider targets and according to one advocate who later became a critique of R2P, “for those of us who feared that R2P was just a warrant for war, our fears have been vindicated.”³⁴

The intervention in Libya quickly resulted in a regime change and a host of airstrikes that resulted in numerous deaths of civilians. Mr. Rieff of *The Economist* articulated the common opinion that Libya shows both how “a modest dose of air power can save lives; but also that the rhetoric of civilian protection can be stretched to justify a creeping mission.”³⁵ It has now been five years since Gaddafi was overthrown and Libya has become a failed state. Elections have failed to bring about unity, and forces competing for power have seized their own areas of control as the Fajr Libya (Libya Dawn) forces have battled the internationally recognized government which relocated to Tobruk. Both sides have received support from outside countries. To further complicate the issue, ISIS has taken advantage of the political instability and begun to spread into the region. As Mr. Rieff illustrated, the invoking of the responsibility as a justification and the unfavorable results have largely polarized the critiques and proponents of the Doctrine.

8. Critiques of the Responsibility to Protect

Critiques of the Responsibility to Protect Doctrine are abundant and varied and range from political science based realist critiques to postcolonial critiques. In Jeremy

³⁴ Id.

³⁵ Id.

Moses's critique of the R2P titled "Sovereignty as irresponsibility? A Realist critique of the Responsibility to Protect" published in the Review of International Studies, Moses offers a critical view of the idea that has developed since the 1990s of "sovereignty as responsibility."³⁶ This idea, upon which the responsibility is a crux, is a more universalist perspective and counters the traditional position that sovereignty allows state leaders to "abuse their own citizens without fear of external intervention to halt the abuse."³⁷ Mr. Moses argues that there are problems associated with this assumption and questions whether R2P and "sovereignty as responsibility" truly depart from the traditional views of sovereignty. The realist argument questions those who see sovereignty as "a variable, arguing that its precise meaning and behavioral implications vary from one historical context to another" contrasting that of the realist who views sovereignty as de facto power.³⁸

a. Concerns from the Global South

While proponents of R2P see the language of the Doctrine as a complete reversal of the language used with regard to humanitarian intervention, for example as Dr. Rama Mani, an international peace and security scholar from Oxford points out, R2P shifted away from the "right of outsiders to intervene and towards the rights of populations at risk to assistance and protection and the responsibility of outsiders to come to the rescue", although for many this exchange of language is insufficient to separate the Doctrine from the previous abuses imposed upon the global south in the name of

³⁶Moses, Jeremy, *Sovereignty as Irresponsibility? A Realist Critique of the Responsibility to Protect*, 2012. <http://journals.cambridge.org/action/displayFulltext?type=1&fid=8824548&jid=RIS&volumeId=39&issueId=01&aid=8824546&bodyId=&membershipNumber=&societyETOCSession=>.

³⁷ Id.

³⁸ Id.

humanitarianism throughout colonialism and neo-colonialism. For example the Nicaraguan president of the General Assembly, Miguel d'Escoto Brockmann, described R2P as nothing more than a form of “redecorated colonialism.”³⁹

International affairs scholar Noam Chomsky, in “The skeleton in the closet: The responsibility to protect in history,” discusses the precarious relationship between the R2P and exploitative practices being undertaken in the name of assisting others. Mr. Chomsky points to Japan’s 1931 attack on Manchuria, Mussolini’s 1935 invasion of Ethiopia, and Hitler’s occupation of Czechoslovakia in 1938 and highlights how each of these self-serving political undertakings were done in the name of protecting population who were said to be suffering from oppression of varying kinds. These memories, along with the lingering harm of systematic colonial exploitation led to the South Summit of 133 states, which met in April 2000. At the summit, it was declared that ‘the so-called “right” of humanitarian intervention, which has no legal basis in the United Nations Charter or in the general principles of international law.’⁴⁰ While the Responsibility to Protect Doctrine was in many ways a response to the dissatisfaction of the loose humanitarian intervention of the 1990s and early 2000s many see it as an insincere or superficial change and look at the R2P as neo-colonialism in a new coat.

Post-colonial theory-based critiques point at the unequal application of intervention and views this unequal application as indication not as benevolence but as mere self-interest. Some point to the contradiction between the willingness of the United

³⁹ Rama Mani and Thomas G. Weiss, *Responsibility to Protect, Cultural perspectives in the global South*, 2011.

⁴⁰ Noam Chomsky, *Skeletons in the closet*, <https://books.google.com/books?id=k206yi2PIWUC&pg=PA4&dq=responsibility+to+protect+colonialism&hl=en&sa=X&ved=0ahUKEwi0rLP298jMAhXBHpQKHZHPBUYQ6AEINTAE#v=onepage&q&f=false>

States to intervene in Sudan but not called for action in the Democratic Republic of the Congo. Brendan Stone of the Dominion suggests that in this particular case the willingness of the West to intervene in Sudan is of strategic value given its position of entry in the Middle East and its recent use of its oil generated funds for projects that do not align with the principles of the International Monetary Fund. George Bush had even endorsed “Save Darfur” rallies calling for humanitarian intervention. Contrarily, there has been relative silence with regard to the millions who have died in the Congolese civil wars.

Post-colonial critiques voices by many leaders of the global south also argue that R2P reinforces a system of “Western hyper-sovereignty and conditional Eastern sovereignty.”⁴¹

The post-colonial critique of R2P by Mojtaba Mahdavi titled “A Postcolonial Critique of Responsibility to Protect in the Middle East” problematizes the “selective, arbitrary and punitive implementation of international law in Iraq, Israel/Palestine, Libya and Syria” and suggests that the policing language of human rights is merely the disguised neo-liberal hegemony and a means of maintaining a paternalistic legacy. The author then calls for reform of the United Nations, and the empowerment of regional organizations and the withholding of R2P until there is first a responsibility for justice in the form of decolonization and democratization of the world.

Another post-colonial criticism of R2P is that those who claim to do the protecting of human rights are often human rights abusers themselves. The Former Haitian Minister of Defence, Patrick Elie posed the questions “who is protecting the

⁴¹ Id.

rights of the people of Iraq, killed by the bombs of those who would grant themselves the ‘responsibility to protect?’” The scholar Edward Said stated that “colonialism is not just the occupation of territory, but it requires a state of mind as well; a state of mind which, includes ideas that certain people and certain territories require and beseech domination.”

Despite these critiques, there are still strong advocates in favor of the Responsibility to Protect Doctrine. Gareth Evans, the former Australian Foreign Minister stated that “R2P is a framework for action for pragmatists, not purists, and this is very well understood by those who have to apply it, not just write about it.”⁴²

While strong voices ring on both sides of the debate, and many seem fixed in their positions, there are some who are advocating for a middle approach of tweaking elements of the Responsibility to Protect Doctrine, whether it be removing outright military intervention or necessitating stronger monitoring capabilities.

Some, such as Justin Morris, the Head of the Department of Politics and International Studies at the University of Hull, suggest that R2P should be “reconstituted as a standard of acceptable sovereign behavior...while decisions over coercive military intervention...should be made outside of the R2P framework.”⁴³ Others have argued for building upon R2P as oppose to trimming it down.

On the geopolitical scale, Brazil has proposed supplementing R2P with what it calls “responsibility while protecting” which include two key proposals: one, that a set of criteria be debated before the Security Council approves the use of military force, and two, that an improved monitoring and review process be enabled. The goal is to ensure

⁴²*In Support of R2P No Need to Reinvent the Wheel*, Open Canada, 2016.
<https://www.opencanada.org/features/in-support-of-r2p-no-need-to-reinvent-the-wheel/>

⁴³ Morris, Justin, *Libya and Syria: R2P and the spectre of the swinging pendulum*, 2013.
<http://ejournals.ebsco.com/Article.asp?ContributionID=31019720>

that all non-military options are fully explored, and that the response is proportional, and that a balance of consequences be analyzed for those suffering. While the issue of R2P has become polarized, its usage has not stagnated entirely. While there hasn't been a full-fledged Libya like event there have been other instances of action taken in the name of R2P and actions that resemble R2P characteristics. Meanwhile, dialogues by the United Nations have continued since the intervention in Libya in 2011. One such instance will be assessed in greater detail in the chapter devoted to the Yazidi people.

9. Other Actions Related to the Responsibility to Protect

Other instances relating to R2P included the events in Kenya between 2007 and 2008 where the declaration of Mwai Kibaki as president led to widespread political and ethnic based violence as members of the Orange Democratic Movement and Party of National Unity fought largely along ethnic lines. The French Foreign Minister Benard Kouchner asked the United Nations Security Council in January 2008 to act “in the name of the responsibility to protect”. Kofi Annan led a mediation effort which led to a power-sharing agreement. Human Rights Watch declared the response “a model of diplomatic action under the ‘Responsibility to Protect’ principles.”⁴⁴

The language of the Responsibility to Protect Doctrine is also visible in the United Nations response to the post-election violence in the Ivory Coast between 2010 and 2011. During this period there was a wave of post-election violence committed by both former President Gbagbo and President Ouattara supporters. On March 30 2011, the United Nations Security Council adopted resolution 1975 which stated that it is the

⁴⁴ *Ballots to Bullets: Organized Political Violence and Kenya's Crisis of Governance: The Response of International Actors*, hrw.org.

“primary responsibility of each State to protect civilians.”⁴⁵ The resolution also stated that United Nations Operation in Ivory Coast (UNOCI) had the right to use “all necessary means to protect life and property” and called for the transfer of power to President Ouattara.

In 2013, in response to the ethno religious violence within the Central African Republic, the African Union activated an African international support mission to the Central African Republic known as the African-led International Support Mission to the Central African Republic (MISCA).⁴⁶ MISCA was unable to curtail the rising violence within the Central African Republic and as a result the United Nations General Assembly sponsored France with Resolution 2121 to assist MISCA in their mission to protect civilians and restore security within the Central African Republic.

Additionally, with regard to ongoing conflict in Syria, the United States government attempted at various times over the past several years to invoke the Responsibility to Protect Doctrine through the United Nations Security Council. However, these attempts were vetoed by the Russian and Chinese representatives arguing that R2P had been misused by the United States government in Libya.

J. Other United Nations Dialogues

Since 2009, there have continued to be various debates and discussions amongst member states within the United Nations General Assembly. In 2009 there was the General Assembly Debate on R2P. In 2010 the United Nations General Assembly held an Interactive Dialogue on Early Warning, Assessment and the Responsibility to Protect.

⁴⁵ *Presidential Elections*, UNOCI Resources – United Nations Operation in Côte d'Ivoire, 2016. un.org.

⁴⁶ Id.

There was also the 2011 General Assembly Informal Interactive Dialogue on the Role of Regional and Sub-regional Arrangements in Implementing the R2P. In 2012 The General Assembly held an Informal, Interactive Dialogue on the Responsibility to Protect: Timely and Decisive Response. Finally, in 2013 The United Nations General Assembly held an Informal, Interactive Dialogue on the Responsibility to Protect: State Responsibility and Prevention.

Additional reports were produced from several of these meeting, including the 2010 report titled “Early Warning, Assessment and the Responsibility to Protect and the 2011 report which look at The Role of Regional and Sub regional Arrangements in Implementing the Responsibility to Protect.”

The goal of this first chapter was to provide an overview of the critical events that led to and shaped the emergence of R2P. I have charted the evolution of R2P, beginning after the International Community’s failure to respond to the Rwandan and Srebrenica Genocides, and continued through the International Commission on Intervention and State Sovereignty, major reports to include “The Responsibility to Protect”, “In Larger Freedom”, the 2005 World Summit Outcome Document, support from the United Nations Secretary General Ban Ki-moon. I have also shown how R2P was applied during the Libyan intervention in 2011 and discussed some critiques of R2P and other actions that relate to R2P. Now that I have charted the major historical events that contributed to the emergence of the R2P I will next define the current legal status of the R2P.

CHAPTER II

THE CURRENT STATUS OF THE RESPONSIBILITY TO PROTECT

A. Current Status

1. Overview

The Responsibility to Protect Doctrine or norm or principle, depending on your point of view, is a concept rooted in international law. The Responsibility to Protect Doctrine in its current status is divided up into three main pillars. The first pillar declares that States have a primary responsibility to protect their populations from genocide, war crimes, crimes against humanity, and ethnic cleansing. The Second pillar of R2P declares that the international community has a responsibility to assist a state to fulfill its first responsibility to protect their populations from genocide, war crimes, crimes against humanity, and ethnic cleansing. The third pillar of R2P declares that if a state fails to protect its citizens from the aforementioned mass atrocities, then the international community has the responsibility to intervene through various measures, the last of which is military intervention.

2. Responsibility to Prevent, React, and Rebuild

Under the current status of R2P there are three separate obligations. The first obligation under R2P Doctrine is the responsibility to prevent. The responsibility to prevent mandates that both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk be addressed.

The second obligations is the responsibility to react, necessitating response to situations of compelling human need with appropriate measures, which may include

coercive measures like sanctions and international prosecution, and in extreme cases military intervention.

The third obligation is the responsibility to rebuild, which requires full assistance with recovery, reconstruction and reconciliations, addressing the causes of the harm the intervention was designed to halt or avert, particularly after military intervention.

3. Current Legal Status

The Responsibility to Protect Doctrine finds its authority through different existing sources of international law. The Responsibility to Protect Doctrine explicitly states that nations must protect their populations from genocide, war crimes, crimes against humanity, and ethnic cleansing. For example in the case of genocide, states are required to prevent and punish genocide in accordance with the Genocide Convention.

The obligation to protect a state's population from war crimes is rooted in international humanitarian law and laws of war. States' obligations to respect international humanitarian law are enumerated in the Geneva Conventions and Additional Protocols.

While crimes against humanity do not have their own international treaty or convention explicitly states nation's responsibilities, crimes against humanity are defined in the Rome Statute of the International Criminal Court and have been recognized international crime. Additionally, many components of crimes against humanity have their own conventions, including crimes such as slavery or torture (in the Convention Against Torture for example).

The fourth crime demanding a response under the Responsibility to Protect Doctrine is ethnic cleansing. Ethnic cleansing is defined as “the planned deliberate removal from a specific territory, persons of a particular ethnic group, by force or intimidation, in order to render that area ethnically homogenous” by a United Nations Commission in 1993. Ethnic cleansing can constitute both a crime against humanity and a war crime.

The crimes denoted in the Responsibility to Protect Doctrine find their authority in previously existing bodies of public international law; therefore, the Responsibility to Protect Doctrine has been greatly influenced by pre-existing legal structures. The relationship between R2P and other sources of public international law are examined in greater depth in Chapter III, but first I will outline the history of the emergence of the Responsibility to Protect Doctrine beginning with the Rwandan Genocide in 1994.

4. Responsibility to Protect and the Yazidi Overview

The Responsibility to Protect Doctrine is a relatively newly formed international norm in the realm of public international law, wherein sovereignty can be forfeited by states due to their failure to protect their citizens from crimes against humanity, ethnic cleansing, genocide, and war crimes.⁴⁷ The Responsibility to Protect Doctrine was positively received by much of the international community in the mid 2000’s prior to its implementation in the Libyan intervention in 2011.

The third pillar of R2P is the aspect of the norm which draws the heaviest critiques as it has been compared to humanitarian intervention. Humanitarian intervention is widely unpopular due to its infringements on state sovereignty and given how easily it

⁴⁷ International Coalition for the Responsibility to Protect, 2016. <http://www.responsibilitytoprotect.org/>

has been abused in the past. The use of the third pillar of R2P by the United States led North Atlantic Treaty Organization (NATO) intervention in Libya in 2011 also received wide criticism from the international community.⁴⁸ The Libyan intervention and the subsequent instability in the region have greatly harmed the reputation of the Responsibility to protect Doctrine, which was originally created as a means of reigning back ambiguous and less restricted humanitarian intervention. The following quote from the news agency Al-Jazeera highlights the distinction between the utilization of the third pillar in Libya by the United States in 2011 and the employment of the second pillar of the Responsibility to Protect Doctrine in the case of the Yazidi humanitarian response.

“The Obama administration and its allies intervened in Libya despite Gaddafi’s obvious objections, while the effort in Iraq received a rubber-stamp approval from the central government in Baghdad.”⁴⁹

The distinction is important. The Iraqi government’s approval leaves intact what little sovereignty Baghdad possesses after more than a decade of civil conflict.”⁵⁰ It is important also to note the critical view of Al-Jazeera of even the utilization of the second pillar of the Doctrine. Here the news agency is insinuating that the authority given by the Iraqi government is questionable because of the position of weakness. I would go further and argue that not only was the Iraqi government in a position of weakness, but it was in a position of weakness directly brought about by the actions of the United States due to their intervention in Iraq in 2003 and subsequent occupation and withdrawal. Al-

⁴⁸ The Economist, *Lessons from Libya*, <http://www.economist.com/node/18709571>

⁴⁹ *The Yazidi Crisis and the Future of the Responsibility to Protect*, Al-Jazeera America, 2014. <http://america.aljazeera.com/opinions/2014/8/iraq-s-yazidi-u-shumanitarianinterventionresponsibilitytoprotect.html>

⁵⁰ Id.

Jazeera's criticism is valid although I would press further and suggest that ideally it should not have been a United States led coalition that intervened on behalf of the Yazidi people given this recent history of intervention but should instead have been another member of the international community. However, despite these qualms, it was in fact the United States who led the response to the Yazidi humanitarian crisis.

Al-Jazeera further commented by saying "With Baghdad's approval, the U.S. intervention has become a second-pillar operation under RtoP."⁵¹ The international coalition for the responsibility to protect stated in agreement that the "assistance...measures to prevent the imminent genocide of the Yazidi population, [is] a clear example of upholding the second pillar of the responsibility to protect."⁵²

This chapter defined the current status of R2P, provided an overview of the responsibility to prevent, react and rebuild, defined the obligations within R2P, gave an overview of the legal basis of R2P, and summarized the status through which R2P was applied to the Yazidi people. I will next look at the relationship between R2P and other Doctrines in the field of public international law.

⁵¹ Id.

⁵² *Convert, Pay, Flee, or Be Killed" Iraq's Minorities Under Threat*, International Coalition for the Responsibility to Protect, 2016.

CHAPTER III

THE RELATIONSHIP BETWEEN THE RESPONSIBILITY TO PROTECT AND OTHER AREAS OF INTERNATIONAL LAW

A. Law of War: Overview

Modern international law is influenced heavily from the “Law of War and Peace” written by the 17th century legal scholar Hugo Grotius in 1625. Within the “Law of War and Peace” it states that there are three “just” causes of war to include, defense, the recovery of what’s our own, and punishment. I will examine the first of these three just causes to provide insight into the relationship between the international legal theory “defense of others”; a branch of thought off of “just” defense, and the Responsibility to Protect Doctrine.

The international laws of war were solidified in Article 51 of the United Nations Charter which states that “nothing in the present Charter shall impair the inherent right of collective or individual self-defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security.”⁵³ Measures taken by members in exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.”⁵⁴

⁵³ United Nations Charter, Article 51.

⁵⁴ *Id.*

This language from the United Nations charter explicitly recognizes rights of states to the legitimate use of force in self-defense. The Nicaragua case held before the International Court of Justice affirmed the rights of states to use force in self-defense and clarified to some extent what level of force is appropriate in certain situations. Further tests for the use of force in international law include the test Caroline test and the imminent threat requirement. The Caroline test derived from customary law, requires the presence of “a necessity of self-defense, instant, overwhelming, leaving no choice of means, and no moment of deliberation, and that action taken must be proportional.”⁵⁵ The Caroline test has also been used as the basis for the much disputed and controversial preemptive strike or preemption Doctrine made infamous as the justification for the infamous invasion of Iraq by the United States government. From this foundational right of self-defense, the concept legitimate defense and self-defense sprung forth, which in turned have an important relationship with the Responsibility to Protect Doctrine.

B. Legitimate Defense

1. Self-Defense

The idea of legitimate self-defense is rooted in natural law under the notion of self-preservation or in a more modern dialect the right of existence. Theorists specializing in natural law during the eighteenth and nineteenth centuries laid the foundation for the use of military force to counter an attack in the name of self-preservation. Speaking to the right of self-preservation as an inalienable aspect of natural law is Christian Wolff, who stated that “man is bound to preserve himself by nature...likewise the right of defending one’s self against the injuries of others belongs to

⁵⁵ Nichols, Thomas, *The Coming Age of Preventive War*, University of Pennsylvania Press, 2008.

man by nature, and the law of nature itself assigns it to a nation”. At the end Mr. Wolff is declaring that the same natural law principle can be extrapolated upon nation states. Mr. Vattel similarly stated that “The right of employing force, or making war, belongs to nations no farther than is necessary for their own defense, and for the maintenance of their rights. Now, if any one attacks a nation, or violates her perfect rights, he does her an injury. Then, and not till then, that nation has a right to repel the aggressor, and reduce him to reason. Further, she has a right to prevent the intended injury, when she sees herself threatened with it”. These ideas have been accepted and incorporated into the United Nations Charter, securing states the right of military self-defense.

From this same source of international law, article 51 of the United Nations Charter, comes the modern realization of the concept of legitimate defense in the international legal sense. While the English translation of Article 51 of the United Nations Charter speaks of the inherent right of self-defense, individual or collective, the French interpretation of the charter, influenced by the civil law system speaks of the “droit naturel de légitime défense.” Translated into English this says “the right to natural and legitimate defense”. This is critical because in civil law jurisdictions the notion of legitimate defense includes the allowance of the use of force to fend off attacks against themselves or a third party. Thus some legal scholars argue that this idea of the common law defense of others is rolled into international law of war. This broader civil law interpretation of legitimate defense and therefore the defense of others provides an argument which is favorable of outside intervention, when taken in order to defend another from violence, while defense of another nation is distinct from humanitarian intervention, there are common threads between legitimate defense and the

Responsibility to Protect Doctrine.⁵⁶ There are however distinctions and qualifications associated with any intervention justified through the legitimate defense and the defense of others.

2. Defense of Others

The use of defense of others in the international legal sense, rooted in legitimate defense theory would, in situations where a victim is entitled to exercise the use of force in their self-defense allow for others to exercise the use of force on behalf of the victim. While this idea is generally accepted by the international legal community there is debate as to whether this legitimate defense of others, in the case of one state coming to the aid of another state that is being attacked can be read as if there is also a legitimate ground for a Doctrine of humanitarian intervention incorporated into legitimate defense. The primary issue with this extrapolation is that a formal request for assistance is unlikely given that in a humanitarian emergency it is rarely the state apparatus that is asking for assistance but a sub national group that is being targeted from other components either within or outside of the state. Thus the relationship between the international legal concepts of legitimate defense or defense of others and the Doctrine of humanitarian intervention is delicate, with some arguing that there is a justification for one within the other and some arguing that they are entirely different concepts. Those who see a strong connection between these concepts or perhaps a legitimate ground for a Doctrine of humanitarian intervention within legitimate defense would also likely encapsulate this relationship within the aspects of R2P which incorporates humanitarian intervention, specifically within the responsibility to react and within the second and third pillars of the

⁵⁶*The Doctrine of Legitimate Defense*, UNSWC, (<https://www.usnwc.edu/getattachmeint/8bd01db7-fc3b-498a-bd66-a5092beb54dc/The-Doctrine-of-Legitimate-Defense.aspx>).

Responsibility to Protect Doctrine. Another major piece of public international law with which the responsibility shares a strong relationship is the Genocide Convention.

B. Genocide Convention

1. Overview

The 1948 Convention on the Prevention and Punishment of the Crime of Genocide known colloquially as Genocide Convention was adopted by the United Nations General Assembly on December 9th in response to the atrocities committed by the Ottoman Empire against the Armenian people during World War 1 and against the Jewish people by the Nazi regime during World War II.

The convention came into force on 12 January 1951 and stands as one of the strongest examples of compulsory international human rights law. There are currently 147 member states that have ratified the convention. Those who have ratified the convention are required to both act to prevent n punish acts which meet the threshold of genocide, whether they are carried out in times of war or peace.

One of the key components of the Genocide Convention is the definition of genocide found within Article 2 of the document. Article 2 defines the genocide convention as “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

Article 3 of the Genocide Convention lists the crimes that are punishable underneath it as

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

The Genocide Convention also includes both preventative and repressive measure that must be taken with regard to a genocidal event. Article 5 of the convention requires that State Parties must enact “the necessary legislation to give effect to the provisions of the Convention, and, in particular, to provide effective penalties for persons guilty of genocide of the other acts enumerated in Article III.”⁵⁷ Therefore, the actionable duties of a state wherein genocide is occurring include punishing or making punishable all perpetrators, making it possible to try alleged genocidal actors before courts within the State or before an international tribunal⁵⁸. Article 5 while requiring “effective penalties” for persons found guilty of genocide does not explicitly state what satisfies the requirement of “effective penalties.”⁵⁹

The relationship between the Genocide Convention and the Responsibility to Protect Doctrine is clear. Genocide being the one of what is known as the “four crimes”: genocide, war crimes, ethnic cleansing, and crimes against humanity, the genocide convention is effectively defining one of the four circumstances under which R2P rooted action could take place. Therefore, given that R2P is principle and not legally binding in its current state, it is grounded in existing pieces of international law to include the

⁵⁷ *What Specific Actions does the Genocide Convention Require from States*, The Sentinel Project, 2013. (<https://thesentinelproject.org/2013/08/01/what-specific-actions-does-the-genocide-convention-require-from-states/>)

⁵⁸ The Genocide Convention, Article 6.

⁵⁹ The Genocide Convention, Article 5.

Genocide Convention. As previously mentioned the four crimes of the responsibility to protect are also rooted in the Geneva Conventions and Protocols and the Rome Statute of the International Criminal Court. Next I will discuss the relationship between the Responsibility to Protect Doctrine and the Geneva Conventions and Protocols.

D. Geneva Conventions and Protocols

Another source of public international law that bears a strong relationship with R2P is the Geneva Conventions and Additional Protocols. The Geneva Conventions of 1949 and Additional Protocols, and their Commentaries are the binding international law governing international humanitarian law, also known as laws of war, and thus defining what types of acts constitute war crimes. The Geneva Conventions are made up of four treaties. The treaties were established in 1864, 1906, 1929 and 1949, with additional updated terms being added to the first three treaties during the 1949 convention. The four pieces of international law are focused on “Wounded and Sick in Armed Forces in the Field”, “Wounded, Sick and Shipwrecked of Armed Forces at Sea”, “Prisoners of War”, and the final major convention was devoted to Civilians, brought about by the severe violence and mass murder perpetrated upon civilians during World War II.

In addition to the main four treaties or conventions there also two annexes, that were created in 1977, one of which was amended in 1993. Accompanying the two annexes, the first of two Additional Protocols was also introduced in 1977, which was followed by a second additional protocol in 2005.

Common Article 3 also states that rules of war are applicable to armed conflicts within the territory of a single member state. Applicable provision with regard to those not taking part in hostilities prohibit violence upon their persons, murder, mutilation,

cruelty, torture, the taking of hostages, humiliation and degradation among others. Violations of the Third and Fourth Geneva Conventions that meet the definition of a “grave breach” of international humanitarian law constitute a war crime and include inhumane treatment, torture, killing, biological experiments, causing great suffering or serious injury, forcing someone to serve in the armed forces, depriving people of a right to a fair trial if that person is accused of a war crime, the taking of hostages, the unlawful deportation, transfer, or confinement of others, or the wanton destruction of property.

Similar to the Genocide Convention’s relationship to R2P, one of the four crimes denoted under R2P, that of war crimes, is rooted in and finds its authority within the Geneva Conventions and Additional Protocols. Another connection that must be addressed is the connection between the Responsibility to Protect Doctrine and the Rome Statute of the International Criminal Court.

E. Rome Statute of the International Criminal Court

The Rome Statute of the International Criminal Court is also where one of the four crimes denoted in the Responsibility to Protect is grounded. The Rome Statute of the International Criminal Court defines crimes against humanity as “any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national,

ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(i) Enforced disappearance of persons;

(j) The crime of apartheid;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.”

There have also been additional slightly altered definitions used during the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, and the Extraordinary Chambers in the Courts of Cambodia.⁶⁰ While Crimes against humanity does not have its own treaty, elements of the crime as listed above are included in other conventions. An R2P action could likely be justified under any of the criteria used in these definitions.

F. Humanitarian Intervention

Humanitarian Intervention is the body upon which R2P was both built upon and was built in response too, and therefore the most similar piece of international law with regard to the Responsibility to Protect Doctrine. Humanitarian intervention is defined as the use of military force when its primary declared aim is to end human-rights violations in the state where the military force is being applied. The key characteristics of humanitarian intervention include the use of military force, interference in the internal affairs of a sovereign state by sending military forces into the territory or airspace that has not committed an act of aggression against the sender, and that the intervention is in response to humanitarian crises. While this definition includes most of the most commonly understood elements of humanitarian intervention, there is no set legal definition or threshold to be met. Humanitarian intervention plays upon a critical tension

⁶⁰Harris, *Crimes Against Humanity*. https://law.wustl.edu/harris/crimesagainsthumanity/?page_id=469

of public international law, and one that will be revisited in this examination; that of the struggle between sovereignty and intervention.

The 1648 Treaty of Westphalia upholds the right of sovereign states to act as they will within their own territories or borders. This source of public international law is the root of modern sovereignty and was incorporated into the 1945 United Nations Charter in article 2(7) which states that “nothing should authorize intervention in matters essentially within the domestic jurisdiction of any state.”⁶¹ However, this principle apparently comes into conflict within Chapter VII of the United Nations Charters which allows the United Nations Security Council to act in response to situations that constitute a “threat to the peace, breach of the peace or act of aggression.” This issue becomes more contentious when action is taken both without the consent of the host government and importantly, without approval by the United Nations Security Council.

Tony Blair stated that there is a moral right to “get actively involved in other people’s conflicts”. When he made this statement he was referencing one instance where the United Nations Security Council did not approval of military action. As a result of statements such as this by leaders of world superpowers and notably by the actions taken by groups of states or regional organizations without United Nations Security Council approval there have been instances of interventions being taken without authorization that have undermined the current international security status quo. Notable instances of unauthorized interventions taking place without United Nations Security Council approval include the United States led intervention in the aftermath of the Gulf War which was rationalized as a humanitarian response to the vulnerability of the Kurdish

⁶¹ *The UN and humanitarian intervention: To protect sovereignty or to protect lives?*, 2008.
<http://www.economist.com/node/11376531>

people in Northern Iraq. A second and highly controversial instance of humanitarian intervention being utilized without United Nations Security Council approval was the North Atlantic Treaty Organization's (NATO) intervention in Kosovo. This intervention in particular is seen as having played a significant role in damaging United States and Russian relations in the post-soviet period.

The Responsibility to Protect Doctrine has a controversial relationship with the international legal concept of humanitarian intervention. On the one hand R2P was driven in part by the near unilateral humanitarian interventions of the 1990s and from these, a need arose to attempt to codify or limit the broad means through which intervention in another sovereign was being justified. Despite this position from which R2P arose, the similarities between humanitarian intervention and the Responsibility to Protect Doctrine have harmed the reputation of R2P, even in its stages of infancy. The greatest supporters of the Doctrine of humanitarian intervention have largely hailed from African and European nations while those opposed have included many South American and Asian nations.

Doctrinally, there are also similarities that must be discussed. Humanitarian intervention as I will define as the interference in the internal affairs of a sovereign state by sending military forces into the territory or airspace that has not committed an act of aggression against the sender, and that the intervention is in response to humanitarian crises, falls within the second pillar of the Doctrine. As discussed earlier the Responsibility to Protect Doctrine is comprised of three obligations: the responsibility to prevent, react, and rebuild. Under the second obligation, the responsibility to react, is the responsibility to "respond to situations of compelling human need with appropriate

measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention. Thus humanitarian intervention was repackaged as a last resort within the second pillar of R2P, and it is from the connection that much of the ire towards the Doctrine has manifested.

G. Customary International Law

According to Article 38 (1) (b) of the Statute of the International Court of Justice there are four sources of international law. International law can derive from international conventions, international custom, the general principles of law, or judicial decisions and teachings of highly qualified experts.⁶²

Customary international law is drawn from established state practice.⁶³ This is significantly different than obligations from written international treaties and other codified sources of law. According to the ICJ Statute there are two factors necessary to show that customary international law can be established.⁶⁴ Firstly, customary international law must be established by showing state practice. In order for the state practice requirement to be met a particular state practice must be followed regularly or according to *United Kingdom v. Iceland* be “common, consistent and concordant”. Effectively this means that for a particular state practice must include a substantial number of states and lack substantial dissent.⁶⁵ The International Court of Justice has

⁶² *Sources of International Law*, Cornell University Law School, https://www.law.cornell.edu/wex/sources_of_international_law, 2015.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ International Court of Justice, *Case Concerning the Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* (Merits), note 4 at pg. 98, 27, 1986.

ruled in the past that a claim for customary international law was lacking because it lacked consistency.

It is important to note that a state that wishes to dissent the opposition of a rule may do so by persistently objecting to the application of a rule.⁶⁶

State practice can be either physical or verbal. Examples of physical state behavior include battlefield behavior, the use of certain weapons, and the treatment of people. Verbal state practice includes military manuals, legislation, case law, instruction to military forces, diplomatic protests, opinions of legal advisers, executive decisions, and statements made in international organizations and at international conferences.⁶⁷ In order for customary international law to be established the second factor of opinion juris must also be present. Opinio juris “denotes a subjective obligation, a sense on behalf of a state that it is bound to the law in question...whether the practice of a state is due to a belief that it is legally obliged to do a particular act is difficult to prove objectively. Therefore, opinion juris is an unsettled and debated notion in international law.”⁶⁸

International customary law is relevant with regard to the Responsibility to Protect Doctrine in several regards. As stated by Peter Stockburger, a professor of international law at the University of San Diego School of Law “the responsibility to protect Doctrine is generally described in one of two ways: (1) either as an emerging

⁶⁶ International Court of Justice, *North Sea Continental Shelf (Federal Republic of Germany/ Netherlands)* note 6 at pg 229, 232, 20, 1969.

⁶⁷ The International Committee of the Red Cross, Customary International Law, https://www.icrc.org/customary-ihl/eng/docs/v1_rul_in_asofcuin, 2015.

⁶⁸ Cornell University Law School, *Opinio Juris*, https://www.law.cornell.edu/wex/opinio_juris_international_law, 2015.

norm of customary international law or (2) as a new binding principles of customary international law. Regardless of whether you are of the opinion that R2P is an emerging norm or a binding principle it is clear that the Responsibility to Protect Doctrine finds some of its legitimacy in international customary law.

A second more tenuous relationship between the Responsibility to Protect Doctrine and customary law concerns state behavior and the precedent being set by recent invocations of the Doctrine. While the four crimes that the Responsibility to Protect Doctrine is designed to protect against, find their authority in the other bodies of public international law discussed above, some of the aspects such as what meets the requirements for fulfilling the responsibility to prevent or rebuild. Another area that is not yet solidified is that although it states that military force must only be used under the responsibility to react as a last resort it does not explicitly state which actions must be undertaken before military force is appropriate. Given that R2P is still relatively new and that it has only been used on a few occasions it is still impressionable under customary international law, especially in the area of state practice.

The actions taken by the United States led coalition in Libya for example played a role in shaping the “common, consistent and concordant” state practice, and more specifically through physical state behavior on the battlefield. It is possible that future actions taken in the name of R2P could more easily neglect the responsibility to prevent and rebuild as the United States led coalition did in the Libyan intervention in 2011. R2P also influenced notable regional institutions such as the African Union.

H. Regional Organization Use: African Union

The African Union played a significant role in the formulation of the Responsibility to Protect Doctrine and has some of the strongest language with regard to legislation which aligns significantly with the spirit of the Responsibility to Protect Doctrine. In 2000, the African Union codified its regulations with which to organize and conduct itself, which took the form of the Constitutive Act of the African Union. All 53 signatory states of the African Union have ratified the act. Within the Constitutive Act of the African Union, Article 4(h) speaks most directly to the themes included in the Responsibility to Protect Doctrine.

Article 4(h) states that “the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide, and crimes against humanity”. Thus, Article 4(h), with the exception of “ethnic cleansing” is nearly verbatim to the circumstances when which R2P states that action is required. Effectively, signatory states were voluntarily giving up their ultimate right to state sovereignty if these extreme circumstances were to arise in their territories. The right to “intervene” could likely take the form of Pillar II related international assistance and helping to build of the capacity of the host government to respond to the emergency, or pillar III of R2P, actual response from a foreign state representing the African Union.

In 2005, the African Union moved even more towards the Responsibility to Protect Doctrine with the adoption of the Ezulwini Consensus. The Ezulwini Consensus speaks directly to R2P and the legality of the use of force in relation to it. The consensus states that the use of force should be in line with Article 51 of the United Nations charter.

The chapter sought to show the relationship between R2P and other Doctrines in the field of public international law. I discussed the law of war, self-defense, legitimate defense, defense of others, the Genocide Convention, the Geneva Conventions and Protocols, the Rome Statute of the International Criminal Court, humanitarian intervention, customary international law, the use of R2P by regional organizations, and the relationship between these concepts and R2P. I will now examine the ongoing persecution of the Yazidi and its relationship with R2P.

CHAPTER IV

THE YAZIDI PEOPLE AND THE RESPONSIBILITY TO PROTECT

A. Introduction

The Yazidi people have been targeted by the extremist organization known as the Islamic State in Iraq and Syria (ISIS), and been forced to either convert, flee, or be executed. ISIS has also enslaved hundreds of Yazidi women and girls, claiming them as wives or servants. The Yazidi people are followers of a distinct religion that combines aspects of Islam, Zoroastrianism, and Mithraism. The Yazidis are a predominantly Kurdish population, historically located in the northern region of Iraq and have faced persecution for their religious beliefs since the 16th century. The international community responded to the persecution of the Yazidis in the form of a military coalition and non-governmental organization (NGO) led humanitarian assistance under the international legal authority of the still developing Responsibility to Protect Doctrine.

The purpose of this paper is firstly to highlight the human rights abuses committed upon the Yazidi population by the extremist organization known as ISIS. Secondly, this essay will investigate the humanitarian response under the second pillar of the Responsibility to Protect Doctrine as conducted by a United States led international coalition. Thirdly, this essay will critique some of the means of assistance being offered and considered to include the granting of asylum and the deployment of humanitarian and aid based responses to assist the Yazidis. The goal of this chapter is to offer insight into the egregious human rights crisis befallen upon the Yazidi community that is still unfolding and show how the international community has responded, which has truly been imperfect.

B. The Yazidi

1. Historical Persecution of the Yazidi

The Yazidi people (also known as the Yezedi, or Ezidi), predominantly located in Iraq's Nineveh Province have been persecuted for centuries because of their unique religious beliefs. Yazidism, the religion of the ethno-religious group known as the Yazidi people, bans marriage to non-Yazidis which has helped to foster a unique religion and culture, that is distinct from other neighboring societies and their associated cultures.

Yazidism is a monotheistic religion that has ties to ancient Mesopotamian religions as well as components of Christianity and Islam.⁶⁹ The two Yazidi holy books are claimed by some to be the Kiteba Cilwe (Book of Revelation) and the Mishefa Res (Black Book), although many scholars insist that that the manuscripts of these two books were forgeries written in response to interest from western scholars, as they do not align with Yazidi traditions.⁷⁰ The Yazidi traditions are maintained primarily through hymns that are orally passed to newer generations and supplemented with stories to give context.⁷¹

According to Yazidism, there is one god who created the world and below him are seven angels.⁷² The chief angel is known as Melek Taus and second in importance only to the creator. Each of the seven angels is associated with an animal⁷³. Melek Taus

⁶⁹ Furlani, Giuseppe, *The Religion of the Yezidis: Religious Texts of the Yezidis: Translation, Introduction, and Note*, pg. 3.

⁷⁰ *Encyclopaedia Iranica: Yazidis*, Iranicaonline.org

⁷¹ Id.

⁷² Asher-Schapiro, Avi, *Who Are the Yazidis, the Ancient, Persecuted Religious Minority Struggling to Survive in Iraq?*, National Geographic, 2015.

⁷³ Van Bruinessen, Martin, *The Kurds: A Contemporary Overview*, ed. Philip G. Kreyenbroek, Stefan Sperl, Routledge, 2005.

is affiliated with a peacock, contributing to the description of Yazidis by outsiders as “peacock worshippers”⁷⁴. The chief angel Melek Taus, is responsible for both the good and bad in the world⁷⁵. In their religious story, Melek Taus angers the creator and falls from his grace into a fiery hell⁷⁶. However, differing greatly from the other monotheistic traditions, Melek Taus is redeemed through his remorse, and his tears put out the fires of hell and he is released and welcomed back by the creator.⁷⁷

This particular aspect of their religion-the fall of Melek Taus-is the root of much of the persecution that has befallen the Yazidi people. Others have drawn similarities between Melek Taus and Satan resulting in centuries of persecution.⁷⁸ Evidence of persecution at the hands of the Ottomans dates back to 1640/⁷⁹ In this instance, approximately 40,000 soldiers were sent to attack multiple Yazidi villages throughout the Sinjar mountain area.⁸⁰ Throughout the battles over three thousand Yazidi were killed and another 2000 that had hidden from the violence were discovered and murdered.⁸¹ During this same act of violence, over three hundred Yazidi villages were looted and then set on fire.⁸² A second act of violence committed by the Ottomans upon the Yazidi

⁷⁴ Asher-Schapiro, Avi, *Who Are the Yazidis, the Ancient, Persecuted Religious Minority Struggling to Survive in Iraq?*, National Geographic, 2015.

⁷⁵ Id.

⁷⁶ Id.

⁷⁷ Id.

⁷⁸ *Why Does ISIS Consider the Yazidi 'Devil Worshippers?'*, Ultra Culture, 2014.

⁷⁹ Evliya Çelebi, *The Intimate Life of an Ottoman Statesman: Melek Ahmed Pasha, 1588–1662*.

⁸⁰ Id.

⁸¹ Id.

⁸² Id.

people took place in 1892 in accordance with an order by Sultan Abdulhamid II.⁸³ During this time, Sultan Abdulhamid was running a massive campaign to spread Islam throughout the Ottoman Empire.⁸⁴ As a result, religious minorities were targeted for widespread conscription and in many cases were murdered outright.⁸⁵ This campaign targeted Armenians, Christians, and Yazidis among others religious minorities.⁸⁶

Several centuries later, the Yazidi have not escaped persecution on behalf of their religious beliefs. In 2007 a bus was hijacked in Mosul, Iraq. The stolen bus was carrying Muslims, Christians, and Yazidis. After the bus was hijacked, the Muslims and Christians on board were allowed to leave the bus. However, the 23 Yazidis on board were not allowed to leave, and were then driven to a remote location and murdered.⁸⁷ This incident shows how the violence directed towards the Yazidi people is also being carried out by smaller actors than the state level such as the Ottoman Empire or even ISIS for example, indicating that some people have internalized the messages directing ill towards the Yazidis.

Later the same year, in August 2007, the Yazidi villages of Qahtaniya and Jazeera were attacked by vehicle born improvised explosive devices⁸⁸. Four separate vehicles carrying over two tons of explosives detonated in the Yazidi villages killing

⁸³ *Communalism and the State in Iraq: The Yazidi Kurds, 1869-1940*, Middle Eastern Studies, Vol. 35, 1999.

⁸⁴ Id.

⁸⁵ Id.

⁸⁶ Id.

⁸⁷ *Al-Qaeda blamed for Yazidi carnage*, The Scotsman, 2007.

⁸⁸ *Al-Qaeda blamed for Yazidi carnage*, The Scotsman, 2007.

approximately 500 people and injuring close to 1500⁸⁹. No entity ever claimed the attacks in Qahtaniya or Jazeera. However, the United States government assessed Al-Qaeda to be the likely culprit with the main indicator being the complexity and coordination of the vehicle bombings in the Yazidi villages.⁹⁰

More recently, the Yazidi people who are recognized as a distinct ethnic group by the United Nations have been pressured by Kurdish authorities to identify as ethnically Kurdish⁹¹. This push has been predominately composed of demands for compliance in the Kurdish efforts to annex disputed areas in the region.⁹² As a result, the Yazidi people are stuck between those who seek to exploit them and those who are attempting to forcibly convert or kill them.

2. Current Persecution of the Yazidi

ISIS is currently carrying out what has been labeled as “ethnic cleansing” by the human rights organization, Amnesty International, in the northern Iraq province of Nineveh against various religious minorities to include the Yazidi people.⁹³ Ethnic and religious minorities which have lived in the region for centuries are being threatened with death if they refuse to convert to the extremist group’s warped interpretation of Islam.⁹⁴

⁸⁹ Id.

⁹⁰ Id.

⁹¹ *Minorities under Pressure from Sunni Insurgents and Kurds*, Human Rights Watch. <http://www.epic-usa.org/human-rights-watch-ninewa%E2%80%99s-minorities-under-pressure-from-both-sunni-insurgents-and-kurds/>

⁹² Id.

⁹³ *Amnesty: Islamic State Carrying Out Ethnic Cleansing in Iraq*, The Associated Press, (2014). <http://www.haaretz.com/middle-east-news/1.613645>

⁹⁴ *Ethnic Cleansing on a Historic Scale: Islamic State’s Systematic Targeting of Minorities in Northern Iraq*, Amnesty International, 2014.

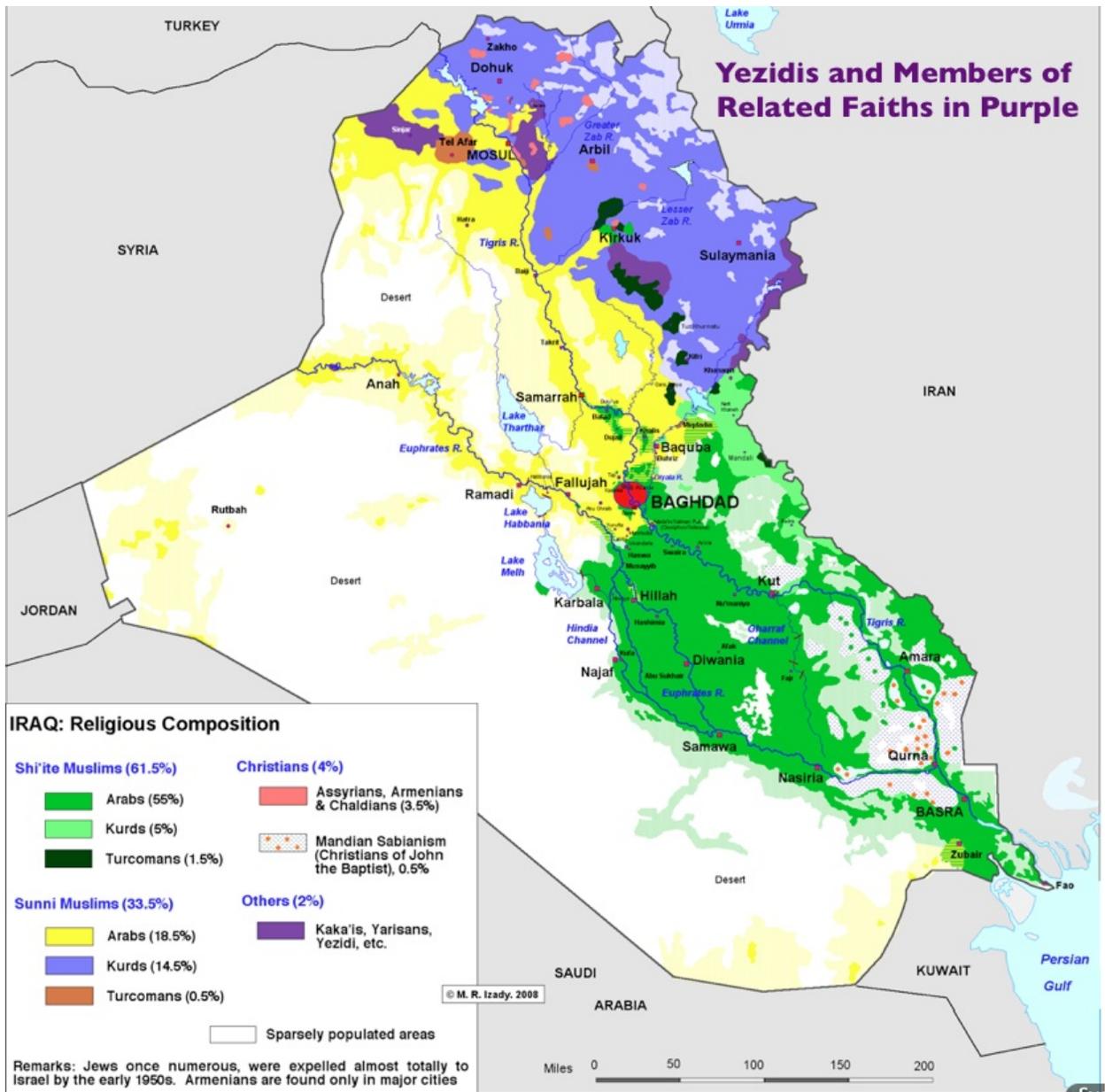


Figure 3: Map of the Religious Composition in Iraq

Ethnic cleansing is defined as the “mass expulsion or killing of members of an unwanted ethnic group in a society.”⁹⁵ The targeted minorities include Assyrian Christians, Turkmen Shi’a, Shabak Shi’a, Kakai, Sabean Mandaean and Yazidis.⁹⁶

⁹⁵ <http://www.merriam-webster.com/dictionary/ethnic%20cleansing>

While the Yazidi people are not the only minority group to be targeted by ISIS, they are one of the most vulnerable given the relatively small population size, with global estimates as low as 300,000.⁹⁷ The small population size is due in part to the exclusive nature of the religion which only passes on to others through birth and does not accept converts.⁹⁸

It is estimated that over fifty thousand Yazidis fled from the Sinjar region as ISIS overtook the area.⁹⁹ Those who were unable to flee in time were abducted by ISIS, to include many women and children. Allegations of rape and sexual abuse of detained women and children are rampant.¹⁰⁰ As ISIS advanced through the villages and towns in the Sinjar region some put up armed resistance. Those who resisted were captured and executed in large groups as a warning to others.¹⁰¹ ISIS allegedly gave the men who did not resist one of three choices, to give up their women, their religion, or their head. ISIS released footage of Yazidi men converting to Islam, no doubt in an effort to save themselves and their families. Many of the towns overtaken by ISIS are still occupied by the extremist organization leaving the Yazidi people unable to return to their homes.

⁹⁶ *Ethnic Cleansing on a Historic Scale: Islamic State's Systematic Targeting of Minorities in Northern Iraq*, Amnesty International, 2014.

⁹⁷ Henne, Peter, *Iraqi Yazidis: Hazy population numbers and a history of persecution*, 2014. <http://www.pewresearch.org/fact-tank/2014/08/12/iraqi-yazidis-hazy-population-numbers-and-a-history-of-persecution/>

⁹⁸ Asher-Schapiro, Avi, *Who are the Yazidis, the Ancient, Persecuted Religious Minority Struggling to Survive in Iraq?* (2014). <http://news.nationalgeographic.com/news/2014/08/140809-iraq-yazidis-minority-isil-religion-history/>

⁹⁹ Id.

¹⁰⁰ Wood, Paul, *Islamic State: Yazidi women tell of sex-slavery trauma*, 2014. <http://www.bbc.com/news/world-middle-east-30573385>

¹⁰¹ Amnesty International, *Ethnic Cleansing on a Historic Scale: Islamic State's Systematic Targeting of Minorities in Northern Iraq*, 2014.

Additionally, none who were captured, even those who converted, have been allowed to leave ISIS controlled territory.¹⁰² Reports have also emerged of ISIS destroying the religious sites of non-Muslims, further contributing to the cultural and historical vulnerability of the Yazidi people in the region.¹⁰³

Many of the Yazidi who successfully evaded ISIS fled into Kurdistan and parts of Syria. Fortunately, the majority of these minority communities escaped before ISIS militants took over their towns. However, those who managed to escape were only able to escape with what they could carry, creating a massive humanitarian emergency. Many of the Yazidi people who have fled into Kurdistan and Syria have arrived in refugee camps managed by humanitarian and aid organizations. One refugee camp known as the Newroz refugee, alone, has been host to approximately 15,000 Yazidi people with hundreds of others staying in nearby villages and towns.¹⁰⁴

According to a recent Amnesty International Report, ISIS has committed violence upon ethnic and religious minorities, to include the Yazidi people, within Northern Iraq in a manner that meets the threshold of ethnic cleansing. The report states that “ISIS has systematically targeted non-Arab and non-Sunni Muslim communities, killing or abducting hundreds, possibly thousands and forcing more than 830,000 others to flee the areas captured since 10 June 2014”¹⁰⁵. The report goes on to state that thousands of

¹⁰² Id.

¹⁰³ Id.

¹⁰⁴ *UNHCR steps up aid as Yazidis stream into Syria from Iraq’s Mount Sinjar*, UNHCR, 2014. <http://www.unhcr.org/53ecb7a29.html>

¹⁰⁵ *Ethnic Cleansing on a Historic Scale: Islamic State’s Systematic Targeting of Minorities in Northern Iraq*, Amnesty International, 2014.

Yazidis, predominantly women and children, were abducted in early August and are still being held by the Islamic State, with the exception of a few escapees.¹⁰⁶ The few Yazidis who managed to escape from mass killings or imprisonment by the Islamic State have claimed they and others were being forced to convert to Islam, taken from their families to unknown locations, and sexually abused and raped.¹⁰⁷

The abductions occurred after an initial advance by the Islamic state resulted in the death of hundreds of Yazidi men and boys from villages and towns throughout the Sinjar region. While many Yazidi put up armed resistance, many were “captured and shot in cold blood, scores in large groups, others individually, seemingly in reprisal for resisting and to dissuade others from doing so.”¹⁰⁸ One major piece of evidence that supports the accusations of ethnic cleansing consists of video footage of Islamic State fighters converting groups of Yazidi men who had been previously captured. The video was distributed on social media as Islamic State propaganda. A second piece of evidence supporting the claim that the Islamic State has committed ethnic cleansing towards the Yazidi people concerns the destruction of places of worship. The report claims that in a manner resembling previous examples of ISIS destroying ancient artifacts, the fighters have specifically targeted Yazidi places of worship in an attempt to erase their culture and history. This technique is reminiscent of the efforts undertaken by the Nazis during World War II to erase Jewish culture and heritage through the destruction of artwork and books by Jewish artists and authors.

¹⁰⁶ Id.

¹⁰⁷ Id.

¹⁰⁸ Id.

ISIS has been accused of killing minorities in the northern Iraq villages of Qiniyeh and Kocho and smaller villages such as Solagh resulting in the deaths of hundreds between August 3 and August 15.¹⁰⁹ The atrocities committed in these villages are some of the most well documented pieces of evidence concerning the allegations of ethnic cleansing towards ISIS. Next are firsthand accounts of the killings committed by ISIS as described by a witness who managed to hide from the ISIS fighters as they attacked the village:

A white Toyota pick-up stopped by the house of my neighbor, Salah Mrad Noura, who raised a white flag to indicate they were peaceful civilians. The pick-up had some 14 ISIS men on the back. They took out some 30 people from my neighbor's house: men, women and children. They put the women and children, some 20 of them, on the back of another vehicle which had come, a large white Kia, and marched the men, about nine of them, to the nearby wadi [dry river bed]. There they made them kneel and shot them in the back. They were all killed; I watched from my hiding place for a long time and none of them moved. I know two of those killed: my neighbor Salah Mrad Noura, who was about 80 years old, and his son Kheiro, aged about 45 or 50.¹¹⁰

In the small Yazidi village of Kocho with approximately 1200 inhabitants, ISIS fighters killed more than a hundred men and boys on August 15th. Those who survived told humanitarian organizations that members of ISIS gathered everyone they could capture at the village school near the edge of the village. After gathering the Yazidis they placed the men and some of the boys into trucks, 15-20 at a time and drove them a short distance before shooting them. Approximately 400 men and boys have still not been accounted for.¹¹¹

¹⁰⁹ *Ethnic Cleansing on a Historic Scale: Islamic State's Systematic Targeting of Minorities in Northern Iraq*, Amnesty International, 2014.

¹¹⁰ Id.

¹¹¹ Id.

In the village of Qiniyeh a group of more than 300 Yazidis from the town of Tal Qasab were trapped trying to escape to Mount Sinjar. ISIS fighter caught them and separated the men and boys from the women and young children. Close to a hundred of the men and boys were massacred.¹¹² A firsthand account from a villager named Mohsen Elias who narrowly survived the massacre stated that:

They split us into two groups, men and boys of 12 and older in one group and women and younger children in another group. They started to load the women and children in the vehicles and made us (men and boys) walk to the nearby wadi. The youngest of the group was my brother Nusrat, 12 years old. We were made to squat by the edge of the wadi, which was deep. They told us to convert to Islam and we refused. One grabbed me by my shirt from behind and pulled me up and tried to shoot me but his weapon did not fire. My brother Nusrat was scared and was crying. They opened fire from behind us. I fell into the wadi and was not injured. My brother Nusrat was right next to me and was killed. My father, Elias, and my four brothers, Faysal, Ma'amun, Sa'id and Sofian, were all killed. Most of the other men and boys were also killed, including more than 43 of my relatives.¹¹³

Amnesty International also reported on a similar act of violence occurring near the village of Jdal.¹¹⁴ A group of 50-60 men accompanied with their families were shot to death near the Qahtanya and Sinjar crossroad. Like in the other attacks, after the men were killed the women and children were taken away by the ISIS fighters.

Nearly all of the women and children who were abducted by ISIS fighters are still being held in captivity. However, through smuggled communications a few women have been able to communicate with relatives who escaped. ISIS has also released recruiting videos with men discussing the presence of Yazidi women suggesting that most of the

¹¹² Id.

¹¹³ Id.

¹¹⁴ *Ethnic Cleansing on a Historic Scale: Islamic State's Systematic Targeting of Minorities in Northern Iraq*, Amnesty International, 2014.

women and children are still alive.¹¹⁵ However, for those who survived, allegations of rape and sexual abuse are rampant. Reports include instances of rape and sexual abuse of Yazidi women and girls, forced marriages, sexual slavery, and torture.¹¹⁶ Among the few who have escaped there are often feelings of that “their ‘honor’ has been tarnished and fear that their standing in society will be diminished as a result.”¹¹⁷



Figure 4: Yazidi Fleeing

¹¹⁵ *ISIS Recruiting Brides*, CNN, 2016. <http://www.cnn.com/videos/world/2016/01/20/isis-recruiting-brides-todd-dnt-tsr.cnn>

¹¹⁶ Holdaway, Owen, *Two Yazidi sex slaves relive the unspeakable cruelty they suffered at the hands of ISIS fighters*, 2015. <http://www.dailymail.co.uk/news/article-3152034/Tied-bed-injected-morphine-stay-silent-beaten-badly-couldn-t-walk-two-months-Two-teenage-Yazidi-sex-slaves-relive-unspeakable-cruelty-suffered-hands-ISIS-fighters.html>

¹¹⁷ Id.

C. Responsibility to Protect: Yazidi Crisis

1. Response of the International Community

In response to the multifaceted crisis in northern Iraq, the international community responded with coercive humanitarian action in conjunction with traditional humanitarian aid. President Obama authorized airstrikes to “protect the delivery of humanitarian aid for threatened Iraqis” and to stymie the assault of ISIS.¹¹⁸ The international community further responded with the influx of numerous humanitarian organizations and NGOs into refugee camps with the stated goal of assisting the targeted minority populations, to include the Yazidis.

With regard to the coercive humanitarian action, the international community responded to the targeting of the Yazidi people by forming a military coalition that seemed to align with the humanitarian trends of the 1990s which “sought to influence the character and course of a developing conflict that was neither taking place on nor directly threatening national territory” but instead “intended to do good: looking after the victims of conflict, defending the weak and vulnerable against their oppressors.”¹¹⁹ The military coalition was composed of armed forces from the United States, United Kingdom, and Australian governments, supported by other members of the international community. The coalition airstrikes were used to assist the fleeing Yazidis people in the Sinjar Mountains in August 2014. Coalition aircraft dropped food, water, and portable shelter in response to the emergency. On August 14 the siege of Mount Sinjar was broken by coalition forces and thousands of Yazidi refugees escaped. However, despite the

¹¹⁸ *Obama authorizes airstrikes in Iraq to protect U.S. officials and refugees trapped by ISIS rebels*, Daily Mail, 2015. <http://www.dailymail.co.uk/news/article-2719203/US-weighs-airstrikes-humanitarian-aid-Iraq.html>

¹¹⁹ Freedman, Lawrence, *Using Force for Peace in an Age of Terror*, pg. 245.

seemingly benevolent humanitarian reasons for entering the conflict, the coalition has continued to engage militarily with ISIS in an ever expanding manner that extends beyond solely a humanitarian mission.

Shortly after, the initial coercive humanitarianism in the form of airstrikes to halt the advance of ISIS towards the Sinjar Mountain, the United States began to conduct more frequent air attacks on ISIS targets in Iraq. On January 15, 2015, it was reported that more than 16,000 airstrikes have been conducted by the coalition¹²⁰. Russian and American soldiers have also entered Syria, with the stated purpose of assisting the Assad regime and moderate rebel groups respectively, combat ISIS.¹²¹ With this increase, the coalition response is looking much less like the humanitarian interventions of the 1990s and more like the post 9/11 global war on terrorism as described by former Secretary of Defense Donald Rumsfeld “we’re looking at a sustained engagement that carries no deadline. We have no fixed rules about how to deploy our troops.”¹²² While the coercive actions of the international community escalate, traditional humanitarian work continues to respond to the Yazidi crisis.

In the aftermath of the coalition response, the United Nations High Commissioner for Refugees (UNHCR) is coordinating a United Nations response in Syria to assist the Yazidi people. The joint United Nations mission included efforts by the UNHCR, the World Food Programme and UNICEF. Additional efforts including included an airlift of 2000 tents and 5000 mattresses. The UNHCR has also provided plastic sheets, blankets,

¹²⁰ Mehta, Aaron, *A-10 Performing 11 Percent of Anti-ISIS Sorties*, Defense News. 2014.

¹²¹ *US special forces to arrive in Syria ‘very soon’ as Assad hails Russian airstrikes*, The Guardian, 2015. <http://www.theguardian.com/world/2015/nov/23/us-special-forces-to-arrive-in-syria-very-soon-as-assad-hails-russian-air-strikes>

¹²² Freedman, Lawrence, *Using Force for Peace in an Age of Terror*, pg. 254.

hygiene kits, ready to eat food, high energy biscuits, children’s summer clothes and soap, and other household items.¹²³ The United Nations led response has also been supplemented by numerous NGOs and non-profit organizations.

D. Responsibility to Rebuild

One of the reasons why R2P initially was viewed as an improvement upon mere humanitarian intervention was because it carried with it a responsibility to not only



Figure 5: Yazidi Movement Patterns

¹²³ UNHCR steps up aid as Yazidis stream into Syria from Iraq’s Mount Sinjar, UNHCR, 2014. <http://www.unhcr.org/53ecb7a29.html>

react but also separate responsibilities to both prevent and rebuild. While many would argue that the international community failed to prevent the atrocities being committed upon the Yazidi people, most would agree that the coalition response meets the requirement to react, although yet to be fulfilled is the responsibility to rebuild. It is in the responsibility to rebuild component of the Responsibility to Protect Doctrine where I see the greatest potential in this developing norm. As was stated during a UN General Assembly debate on R2P in 2009 “The concept of responsibility to protect implies a process that not only includes prevention and response to violence, but also subsequent reconstruction to prevent reoccurrence of conflicts.”¹²⁴ I will next look critically at two distinct methods of assistance that could fall under the responsibility to rebuild aspect of the Doctrine. Firstly, I will look at asylum grants as a means of assistance that could potentially fall under the responsibility to rebuild and make the argument that the Yazidi people fulfill the requisites for asylum, although this may not be the ideal solution. Secondly, I will critique humanitarian assistance being provided by the Christian Aid Mission in an effort to show that allowing humanitarian organizations unfettered access to a vulnerable population bears grave risks.

E. Asylum

One possible response to the persecution of the Yazidi people which may fall under the responsibility to rebuild is the international community’s granting of asylum as a form of protection. The concept of granting relief to victims of conflict through resettlement is one with significant historical precedent, although it has also become more controversial in the last few years with the European refugee crisis and the influx of

¹²⁴ International Coalition for the Responsibility to Protect, 2016.
<http://www.responsibilitytoprotect.org/index.php/about-rtop/related-themes/2417-pbc-and-rtop>

Central American refugees seeking entry into the United States. There is in fact an entire bureau within the United States Department of State devoted to providing humanitarian assistance and aid through repatriation, local integration and resettlement, known as the Bureau of Population, Refugees, and Migration.¹²⁵

The most supported means of resettlement is through the granting of asylum in accordance with the 1951 Refugee Convention and subsequent 1967 protocol. However, asylum according to the convention has a high threshold and there are strict requirements that must be met before an asylum seeker may be granted legal status within signatory states. I believe that the Yazidi people were targeted and thus clearly meet the threshold for religious persecution according to the 1951 Refugee Convention. There is likely a strong argument that many of the Yazidi people meet the 1951 Refugee Convention threshold for asylum on the basis of race or membership in a particular social group, however as of today there have been no asylum grants to Yazidis on the basis of religious persecution at the hands of ISIS.¹²⁶ I will now go through the required components in order to display how these different avenues may be met.

In its broadest terms asylum, in accordance with the refugee convention is met when a person is outside their country of birth and they seek protection from persecution on the basis of race, religion, nationality, political opinion or membership in a particular social group.¹²⁷ For a past persecution claim to be met, the asylum seeker must prove past persecution and must also prove that it was on the basis of one of the five protected areas

¹²⁵ <http://www.state.gov/j/prm/>

¹²⁶ Grider, Geoffrey, *Yazidi Refugees Flee ISIS, but Find Door to US Asylum Closed*, 2015. <http://www.nowtheendbegins.com/obama-refuses-to-allow-yazidi-christians-fleeing-isis-to-enter-united-states/>

¹²⁷ <http://www.unhcr.org/4ec262df9.html>

of the nexus requirement. Any survivor from the aforementioned executions would clearly meet this threshold, and there is a strong argument that all of the Yazidi people who fled from the persecution of ISIS would meet this requirement.

A successful claimant must prove not only that the persecution was on one of the protected grounds, such as on the basis of religion, but also that the persecution was harmful enough to warrant asylum. Persecution is generally linked to a strong violation of fundamental human rights norms. Persecution can take the form of physical abuse such as beatings.¹²⁸ Persecution in the form of physical abuse can also be so extreme as to constitute torture. The human rights abuses outlined by the survivors of the executions and those of the captured women should all fulfill the requirement.

The court in *Matter of Mogharrabi* case reasoned that an applicant has an established well-founded fear if a reasonable person under his or her circumstances would fear persecution.¹²⁹ The court reasoned that subjective components such as testimony and affidavits must suggest a well-founded fear.¹³⁰ The court also reasoned that the well-founded fear must also be objectively reasonable as evident through sources such as newspapers, country reports and other similar cases.¹³¹ Thus, members of the Yazidi communities who escaped the attacks by ISIS but are still trapped within relatively close proximity could make an argument that they have a well-founded fear of persecution and thus could likely be granted asylum in many cases.

¹²⁸ Id.

¹²⁹ *Matter of Mogharrabi*, 1987.
<https://www.justice.gov/sites/default/files/eoir/legacy/2012/08/14/3028.pdf>

¹³⁰ Id.

¹³¹ Id.

However, due to the relatively small Yazidi population and the fact that it has remained in the same area of northern Iraq since its inception, as Avi Asher-Schapiro put it “It’s difficult to see how Yazidism could exist if they all left northern Iraq. The struggle is truly existential.” The vulnerability of the Yazidi religion and people as a whole suggests that asylum may not be the ideal solution to this tragedy and that other possible solutions must be explored. Thus, while providing asylum to members of the Yazidi community may be appropriate in many situations, the Yazidi culture as a whole may be further weakened by this remedy. Therefore, other interpretations of the responsibility to rebuild, under R2P must be examined; however, as I will show, not all efforts to assist the Yazidi people in the region have been appropriate.

F. Humanitarian Aid: A Critique of the Christian Aid Mission

The Christian Aid Mission is now serving over 35,000 people with much needed food, clothes, blankets, and heaters. The organization has also provided a mobile medical clinic which has helped many of the Yazidi people living in refugee camps. The coordination of the mobile medical clinic along with the indigenous ministry in Iraq “began visiting sick refugees with a large van equipped as a mobile medical clinic. Three volunteer doctors, five volunteer nurses, five church members, one psychologist and one dentist have served 2,500 refugees – about 50 to 80 per day” providing much needed medical assistance¹³². The mobile medical unit has also provided medical assistance for highly treatable medical conditions such as diabetes which would not be an immediate health risk if it were not for lack of access. One statement from the Christian Aid Mission shows the importance of the medical aid being delivered. A “refugee from the Yazidi

¹³²*Traumatized Yazidis Find Healing, Salvation in Christ*, Christian Aid Mission, 2015.
<http://www.christianaid.org/News/2015/mir20150806.aspx?SC=MIR>

community was on the verge of death due to lack of medicine from diabetes...we provided insulin for him, which made his condition completely stable.”¹³³

The Christian Aid Mission has recently been critiqued, on the ethicality of its policy of using aid as a means of converting Yazidi refugees in Kurdistan to Christianity. According to one report, the Christian Aid Mission “distribute[s] bibles and pamphlets containing information about Christianity” while they are delivering aid.¹³⁴ The Christian Aid Mission publicly called the humanitarian mission in Kurdistan a “golden opportunity” for conversion.¹³⁵ Missionaries had previously been unable to access the Yazidi people given their home in the mountainous region bordering Turkey. The Christian Aid Mission also stated that they have interpreted the attack by ISIS upon the Yazidi people as God bringing the Yazidi people to Christianity¹³⁶. Sometimes members of the Yazidi community willingly convert in order to gain a better chance of obtaining a visa to a western country, creating a situation whereby Yazidis are converting to Islam to survive their encounters with ISIS and converting to Christianity to attempt to leave the region entirely. The number of Yazidi who have converted to Christianity as a result of the Christian Aid Mission is approximately 800 people.¹³⁷

While Christian proselytization is nothing new, the exploitative manner in which it is being delivered to a highly vulnerable population should be critically analyzed. Many

¹³³ Id.

¹³⁴ Dettmer, Jamie, *Yazidis Say They Are Being Targeted for Christian Conversion*, Voanews, 2014.

¹³⁵ Id.

¹³⁶ Id.

¹³⁷ *Traumatized Yazidis Find Healing, Salvation in Christ*, Christian Aid Mission, 2015.
<http://www.christianaid.org/News/2015/mir20150806.aspx?SC=MIR>

of the Yazidi people who are being targeted by Christian aid organizations such as the Christian Aid Mission are experiencing severe trauma and instability. The Christian Aid Mission specifically mentions the story of one Yazidi boy name Shirkahn which is posted on their media outlets directly above a contribution link.¹³⁸ The fifteen year old Yazidi boy who the Christian Aid Mission claims has “surrendered his life to the Lord” comes from an incredibly vulnerable position.¹³⁹ Looking beyond the fact that he is a child of fifteen years old and not an adult he is also emerging from an incredibly traumatic experience. Shirkahn’s two sisters were kidnapped by ISIS and he does not know where they are or if they are even alive still. Additionally, Shirkahn’s father was paralyzed during the ISIS campaign that left Shirkahn fleeing for his life and without a home. When Christian Aid Mission workers met Shirkahn he was supporting his mother and father by shining shoes for 25 cents. According to the Christian Aid Mission, Shirkahn stated that he hadn’t eaten for four days.¹⁴⁰ The Christian Aid Mission did not include any information about how they improved Shirkahn or his family’s position beyond his conversion to Christianity in the article titled “Islamic State Drives Yazidis to Christ.” This is one of the success stories of the mission and unfortunately this situation does not seem abnormal. In the piece “Dealing with War Trauma: a DO NO HARM Perspective” by Rupen Das, he explains that trauma recovery is a cathartic process and that “many communities have traditional methods of coping with trauma. But, with the breakdown of traditional societies and their social support structures, much knowledge of traditional

¹³⁸*Traumatized Yazidis Find Healing, Salvation in Christ*, Christian Aid Mission, 2015.
<http://www.christianaid.org/News/2015/mir20150806.aspx?SC=MIR>

¹³⁹ Id.

¹⁴⁰ Id.

medicine and coping strategies...also get lost.”¹⁴¹ Not only is the Christian Aid Mission contributing to the breakdown of the Yazidi society through targeted conversion, but it may also be doing more harm than good by adding to the loss of traditional coping strategies.

G. Recent Events

On March 17, 2016, Secretary of State John Kerry recently made an announcement that the United States has officially determined that the persecution being committed upon minorities in Iraq to include the Yazidi people qualify as genocide. Secretary Kerry stated that his “purpose here today is to assert in my judgement, (ISIS) is responsible for genocide against groups in areas under its control including Yazidis, Christians and Shiite Muslims.”¹⁴²

This conservative controlled House of Representatives passed a resolution which called the actions taken by ISIS against Christian groups in Syria and Iraq “genocide.” While the motivation seemed primarily geared towards defending Christian minorities the non-binding measure also included other ethnic and religious minorities such as the Yazidis. The measure was backed 393 to 0. The resolution likely played a role in the State Department helmed by Kerry to make this official designation, the first official designation of genocide to occur since the term was used by the State Department in 2004 with regard to the genocide in Darfur.

A member of the Yazidi community who has been working to help evacuate Yazidis from ISIS in rehabilitation efforts in Germany stated that “I am very happy to

¹⁴¹ Das, Rupen, *Dealing with War Trauma: a DO NO HARM Perspective. Options for Aid in Conflict: Lessons from Field Experience* (Mary B. Anderson, Editor) pg. 62.

¹⁴² Kerry, John, *ISIS responsible for Genocide*, 2016. <http://www.cnn.com/2016/03/17/politics/us-iraq-syria-genocide/index.html>

heat that (the U.S.) will recognize the genocide of Yazidi and Christian minorities. This is an important step to stop the suffering of the persecuted people under the control of the extremist Islamic groups, especially ISIS. And this is also important for my community to trust the international community again, because we were left in the hands of Islamic State.”¹⁴³

The declaration of ISIS committing genocide is unlikely to directly change the actions taken by the Obama administration because as the New York Times stated “The United States is already leading a coalition that is fighting the militants, and American aircraft have been bombing Islamic State leaders and fighters, its oil smuggling operations and even warehouses where the groups has stockpiled millions of dollars in cash.”¹⁴⁴

While some would argue that the response by the United States is already fulfilling the requirements imposed upon them by recognizing the designation of the violence as genocide, under the genocide convention. I would also use this as an example as to why R2P should be further solidified. In this situation the designation of genocide does not require further assistance to be provided to the Yazidi people, however as genocide is one of the criteria under R2P, additional protections maybe required under this other system of international law.

In conclusion, it is evident that the Yazidi people are in an incredibly vulnerable position given their systemic persecution at the hands of the extremist organization

¹⁴³ Id.

¹⁴⁴ Rosenberg, Matthew, *Citing Atrocities, John Kerry Calls ISIS Actions Genocidal*, 2016. http://www.nytimes.com/2016/03/18/world/middleeast/citing-atrocities-john-kerry-calls-isis-actions-genocide.html?_r=0

known as ISIS. The response from the international community appears to fall directly within R2P, and specifically under the second pillar given Baghdad's approval of the coalition response. However, the humanitarian response has been muddied at best and harmful at worst. Meanwhile, most of the captured Yazidi women and children are still being held captive by extremists and the vulnerable escapees are being aggressively targeted for religious conversion while the United States government, pursues ISIS militarily now that they have procured their legal justification for re-entering the conflict under the guise of assisting the Yazidi people. This human rights disaster must not be allowed to continue and the international community must not sit idly by while world powers use vulnerable communities to justify military campaigns only to promptly ignore the communities once they have secured their moral coverage. The Yazidi people are trapped between extremists who wish to kill and enslave them, Kurdish political actors who desire their resources, members of the International community who wish to use them to justify their military campaigns, proselytizers who wish to convert them in their moment of vulnerability with even the greatest hope in many of their eyes, asylum in another country, holding consequences for the continuation of a small and ancient culture. I argue that while R2P has been enacted it has not been fulfilled and the international community has a responsibility to help the Yazidi people rebuild their lives and new interpretations of the responsibility to rebuild must be considered.

Having discussed the historical persecution of the Yazidi, the current persecution of the Yazidi, the international community's response, the potential of the responsibility to rebuild, the applicability of asylum as a remedy, a critique of the humanitarian response, and recent events, I will next offer my assessments and recommendations as to

how R2P could be better used to both assist the Yazidi people and set an improved precedent for assisting targeting peoples in the future.

CHAPTER V

ASSESSMENTS AND RECOMMENDATIONS

A. The Potential of the Responsibility to Protect Doctrine to Assist the Yazidi

With regard to the precarious and vulnerable position of the Yazidi people, I am of the opinion that the United States-led coalition in northern Iraq consisting of airstrikes and humanitarian assistance, falls under the second pillar of the Responsibility to Protect Doctrine. This coalition reaction with Iraqi government approval meets the responsibility to react component, although while it does not set a good precedent for escalation of reactions before resulting to military force, in this situation, perhaps more so than the Libyan intervention of 2011 swift military action was appropriate because by the time the airstrikes were initiated hundreds of Yazidis had already been killed by members of ISIS. The responsibility to rebuild component is woefully lacking and the Yazidi people are suffering because of it. While traditional development may of much help to the Yazidi people, for reason discussed further, I have several suggestions that I believe could fall under the responsibility to rebuild, while setting a positive precedent for future implementation of R2P as a whole and hopefully ease the suffering of the Yazidi people.

One piece that I believe is essential to the recovery and healing of the Yazidi people in Northern Iraq is the security of their land from either ISIS or others who would seek to exploit or displace them. In the meantime this could take the form of a military cordon by coalition forces set up close enough to respond to threats to the Yazidi villages. In the long term, a United Nations Peacekeeping force, despite their many flaws, would likely be the best course of action. One of the primary mandates of United Nations Peacekeeping is the protection of civilians from physical violence. Once the physical

security of the Yazidi people is established other methods of rebuilding can begin to take place.

While the dumping of funds into local economies almost always has ramifications, I believe that some financial assistance will be required to allow for the rebuilding of the homes and basic infrastructure in the Yazidi villages that were overtaken by ISIS. In order to best avoid the concentration of power in village leaders I would like to see small grants for the purpose of rebuilding individual homes be distributed to the lowest familial level possible so that those who are able to return have the financial means necessary to start their lives again. This will also necessitate health focused humanitarian assistance.

Allowing a carefully selected and limited number of non-governmental organizations who specialize in medical assistance and mental health and trauma counseling to offer their services in several Yazidis villages would allow those who wish for assistance to have access at their will. Organizations that are attempting to use limited medical assistance as a cover for religious conversion, such as the Christian Aid Mission should not be allowed to access the Yazidi people, and if this is not possible then at the very least not be given any funding. I believe that these suggestions for rebuilding under the responsibility to rebuild portion of R2P are an obligation that the international community owes the Yazidi people, initiated with the first airstrikes in the region under the second pillar of the Doctrine. While my recommendations are fairly limited I will next discuss why the international community shouldn't attempt to rebuild the Yazidi people in the traditional large scale development sense.

B. Development Risks Associated with Attempting to Rebuild Under the Responsibility to Protect Doctrine.

1. Ulterior Motives

James Ferguson, author of the *Anti-Politics Machine*, offers a highly critical view of traditional large scale western model development practices and I believe that several of his arguments are applicable to why the responsibility to rebuild may not actually benefit the recipients. His critiques offer insight into why attempts at rebuilding under R2Pin the traditional sense may cause more harm than good. Mr. Ferguson argues that the assumption that development agencies and projects are politically neutral is fundamentally incorrect given the conflict of interests, and political and economic motivators behind state actions. Secondly, the Mr. Ferguson argues that development projects have a cleansing effect upon politically motivated actions, thus the development industry becomes the machine for accomplishing political goals in an obfuscated manner, often with the development workers themselves unable to decipher the political results or possible motivations. Mr. Ferguson has also called for the de-politicization of the development industry as a whole, although Ferguson avoids making generalized prescriptions.

While many would see the actions of the World Bank as non-political, they are in fact applying a very top down modernization based development theory along with other Washington D.C. based institutions, mere blocks away from the seat of the United States government. Interventions in the name of development often draw from “a small and interlocking pool of personnel.”¹⁴⁵ This relatively small pool of typically western

¹⁴⁵ Ferguson, *The Anti-Politics Machine*, pg. 258, 1990.

“experts” are sent to introduced standardized development models that are drawn from and also reinforce the knowledge apparatus discussed by Escobar, which is then used to influence the Third World. Therefore, the powerful are creating knowledge within limited parameters and applying this knowledge through their own institutions. This is evident through the homogenization of development reports on Lesotho which “look as though they would work nearly as well with the word ‘Nepal’ systematically substituted for ‘Lesotho.’”¹⁴⁶ This homogenization becomes more nefarious when the instrumental effects of development discourse are analyzed after they are implemented.

Ferguson states that when the failure to achieve the stated goals of a project is the widely accepted norm and there is little evidence of particularly poor planning or execution, that one must consider the political effects that are manifested alongside the failure to improve the quality of life of the intended targets of the development scheme.¹⁴⁷ Ferguson is insinuating that perhaps the reason why development projects, which fail time after time, are repeatedly funded is because the desired end goal of the project actually lies within the instrumental effects. The term “instrumental effects” is defined by Ferguson as both “the institutional effect of expanding bureaucratic state power... [and the] ideological effect of depoliticizing both poverty and the state.”¹⁴⁸ Thus, the instrumental effects become the arm of the anti-politics machine, through expanding state power in a facially de-political manner. Ferguson suggests that if the “expansion and entrenchment of state power [is]...the principal effect...then the promise

¹⁴⁶ Id. at 70.

¹⁴⁷ Id. at 254.

¹⁴⁸ Id. at 256.

of agricultural transformation appears simply as a point of entry for an intervention.”¹⁴⁹ Here Ferguson goes farther and suggests that the named development goals are little more than a means of accessing a country with the intent of implementing what are clearly political goals. The expansion of de-politicized state power alongside the repeated failure of development projects is particularly evident through the coalescence of governmentality in Lesotho.

2. Ramifications: Governmentality

One critique of the Responsibility to Protect Doctrines responsibility to rebuild is a critique that mirrors the ramifications of traditional large scale development. Governmentality is a term created by the philosopher Michel Foucault used to describe the processes in which governments attempt to manipulate their citizen base to better fit with government policies and also the means through which citizens are governed. In “The Anti-Politics Machine” Ferguson elucidates the inherent connections between large scale development projects and the expansion of governmentality. Ferguson explains that this connection is natural “because ‘development’ agencies operate on a national basis, and... work through existing governments and not against them” and goes on to say that development agencies are not prepared to accept representations of governments, which they view as the primary tool for planning and implementing “economic and social policy”, as anything besides a “neutral tool of enlightened policy”¹⁵⁰. Ferguson goes on to show that this narrow view can have severe and unintended ramifications for the

¹⁴⁹ Id. at 255.

¹⁵⁰ Id. at 72

targets of development projects. In his book, Ferguson uses a development project in Lesotho to highlight his critique of development practices.

Development projects in Lesotho, while generally failing to improve the quality of life of the people, consequently strengthened the governmentality of the state through the creation of a road, the increased availability of government services, and the facilitation of direct military control, all of which could happen to the Yazidi people if traditional development projects are used to rebuild in the Yazidi territory, an area historically isolated. While the costly road building of the Thaba-Tseka development project did not improve the well-being of the population, it did allow for easier governance by allowing the government greater access to a mountainous region. The original goal of the construction of a road between the capital and the Thaba-Tseka region was to “bring about ‘decentralization’ or more ‘popular participation.’”¹⁵¹ In this goal the project failed, however according to Ferguson the road “was instrumental in...giving the Government of Lesotho a much stronger presence in the area than it had ever had before.”¹⁵² While failing to bring about the intended results, the development of this road did allow for easier governance of the Thaba-Tseka region by the national government, illustrating governmentality.

While the perceived well-being of the people actually declined after the implementation of the Thaba-Tseka development project, the project did have the result of bringing a host of government services into the region. The construction of a project center and the action of making the center the capital of a new district resulted in the

¹⁵¹ Id. at 252

¹⁵² Id.

creation of a Post Office, a police station, an immigration control office, the ministry of the interior, and a new prison. These government services all had the effect of strengthening the government's control over the bodies of its citizens, embodying Foucault's idea of "biopower". Ferguson makes the argument that the creation of many of these seemingly benign government institutions, created with project resources, had the effect of fulfilling the "desire of the Government to gain political control of the opposition strongholds in the mountains."¹⁵³ The creation of new government services in the region in an effort to increase political control illustrates the idea of governmentality.

Though the development projects in the Thaba-Tseka region are seen as failing to accomplish their intended results they did facilitate later direct military control in the region. The newly created district capital in Thaba-Tseka not only brought government services to the region but also military personnel. The district capital eventually housed a central base of Lesotho's army known as the "Para-Military Unit" and large numbers of armed soldiers whose brown uniforms were later seen frequently throughout the region.¹⁵⁴ The Thaba-Tseka development projects resulted in the increased militarization of the Thaba-Tseka region, allowing for greater governmental control, illustrating the idea of governmentality.

While the development projects in Lesotho failed to ameliorate the lives of the impoverished they did succeed in expanding state power, as evident by the increased governmentality in the Thaba-Tseka region, which took the form of a new road, new government services, and a military base. This likely side effect of increased state power

¹⁵³ Id. at 253

¹⁵⁴ Id. at 253

and governmentality is one of many reasons why rebuilding the Yazidi people through traditional development models must be very critically assessed before any actions to rebuild are taken under R2P. However, despite these risks, I still believe that the limited actions I suggested earlier would ameliorate the situation of the Yazidi people hopefully few ramifications from any rebuilding assistance offered.

C. Conclusion

In conclusion, I am arguing on behalf of reinvigorating the Responsibility to Protect Doctrine for both the potential that I see in the positive aspects of the Doctrine and for fear of what consequences a reversion to humanitarian intervention would hold for global security. I see a great deal of potential within the Doctrine within the obligations outside of the obligation to react. The Responsibility to Protect Doctrine, despite being imperfect is a good foundation to improve upon, given the wide popularity it received in the United Nations during its introduction. Another reason why I believe that the Doctrine is worth preserving is that I fear the ramifications of allowing R2P to degrade. I believe the Responsibility to Protect Doctrine is a movement in the right direction away from the “right to intervene” mentality that existed before the emergence of the Doctrine. Concerning a solution, I believe that the ideal solution for both victims of the four crimes and for global stability lies within the standardization of the Responsibility to Protect Doctrine.

I see a great deal of potential within the non-reaction focused obligations included within the Responsibility to Protect Doctrine. I see the equal importance that is placed upon the responsibility to prevent and the responsibility to rebuild, as with the responsibility to react as very hopeful. Even if the most interventionist voices within the

international community are pushing for the acceptance of the Responsibility to Protect Doctrine in order to afford themselves another tool for regime change, by accepting R2P as this tool they are bringing with them these other responsibilities that I believe members of the international community who are dissatisfied with the more belligerent members, such as the United States with regard to Libya, may have a position from which to demand action or remedy. So long as the nation or group of nations who are given authority to intervene by the United Nations Security Council are invoking R2P, nation states that neighbor host nations should have the ability to demand that the intervener fulfill its equally weighted duty of rebuilding in the aftermath of the acting. For example, concerning the degraded condition of Libya given the regime change brought about by NATO involvement in 2011, neighboring countries should impress upon the United Nations that NATO or NATO allies have a responsibility to rebuild and not allow the country to disintegrate into a failed state, and if not neighboring countries than perhaps bodies within the United Nations. While, as I discussed before, there are some risks associated with the responsibility to rebuild, however dissatisfaction with the dropping of two of the obligations from R2P should be vocalized to undermine any future arguments against the obligation to prevent or rebuild grounded in state practice.

While this thesis did not focus on the responsibility to prevent obligation within the Responsibility to Protect Doctrine, given it was too late to be of much use in the Yazidi crisis, it is an area that deserves future analysis. Ideally, if a nation is complying with the intent of R2P then they have already taken an equal amount of action in the form of prevention before any direct action is taken. I believe that regional entities taking a more proactive and aware role when potential conflicts are boiling up could allow for

many instances of extreme violence to be prevented through nonmilitary conflict resolution based plans.

There are strong voices within the international community who wish to continue to build upon R2P and to improve upon it, and in this I see even greater potential to fine tune the Doctrine and resolve its shortcomings. As discussed earlier some nation states such as Brazil, have argued for clearer methods of monitoring reviewing action taken. I believe that significant progress in this particular area of R2P could allow for one of the greatest downfalls or shortcomings of the Doctrine to be addressed; that of the possibility of continued conflict merging from the humanitarian based action. The United Nations Security Council should or appointed neutral investigators should regularly assess any action being taken under R2P with a focus on misuse for political gains. If any abuses are discovered, such as the pursuance of political goals or unauthorized regime change in the react phase, or harmful consequences or attempts to profit economically during the rebuilding phase, then the member states leading the United Nations Security Council or State approved mission should be replaced by another capable member state or states. While unlikely I would also like to see a restriction placed upon future R2P based action for a period of several years.

Another condition that I would like to see added to R2P, as I discussed earlier would be a conflict of interest clause. Member states who played a role in a recent regime change, such as the United States in Iraq regarding the Yazidi situation, or have a colonial history for example, should not be authorized to take action within a state with whom they share this history with. I would like to see any actions being taken by members outside the region of influence of the host state so as to ensure the greatest level

of neutrality possible. While, this is certainly an idealistic position, a call for a reduction of conflicts of interests built upon the foundation of R2P could improve some of the most significant failures of R2P in its current status, such as its use as a tool for a government to overthrow one regime and then rebuild or back the entities within the state who they wish to succeed. Alternatively, if nations authorized to intervene during the react phase still had the obligation to rebuild but instead of emplacing their own development organization were instead required to fund the bill while another regionally distinct member state or group of states were to be charged with carrying out the rebuilding I believe this would serve as a deterrent for the pattern of regime change to rebuild, which I believe the Yazidi situation falls under. While I see many possible aspects and potential within R2P, I also see severe consequences for global security if R2P is allowed to die as a piece of public international law.

Despite the many flaws of the current state of R2P and with the current state of the development industry as a whole, as I argued earlier I am of the position that the Doctrine is a movement in the right direction away from the even more controversial humanitarian intervention. There are many historical examples of military intervention in the name of humanitarian reasons leading to harmful and exploitative outcomes, with R2P there are necessary precursors before humanitarian action can be taken, and steady evolution away from unilateral military action is benefit from my point of view.

Examples of humanitarian intervention gone afoul include the intervention in Somalia in 1992, wherein the country is still trying to deal with security issues, violent extremist groups, and boundary issues with constituent states. The North Atlantic Treaty Organization's bombing of the Federal Republic of Yugoslavia in between March and June

1999 which resulted in the death of approximately 500 civilians and the destruction of critical infrastructure such as bridges, power plants, and public buildings, and severe harm to the post-soviet relationship between the Russia and NATO members. The events in Libya as discussed, while taken under the name of the R2P, in practice ignored many of the potentially beneficial aspects of the Responsibility to Protect Doctrine and filtered down into a response that more resembled military based humanitarian Interventions. This intervention in Libya by the United States led coalition set a poor precedent for R2P, by effectively ignoring all of the facets which improved upon humanitarian intervention.

Humanitarian intervention is a piece within the R2P that if done correctly should go through many other actions first, which will hopefully prevent the need for military based humanitarian intervention. The first duty under the R2P is the responsibility to prevent and if R2P is allowed to continue to falter then this important facet will no longer be required before military action in the name of humanitarianism is taken. While in practice, there will almost always be non-militaristic action taken through an escalation of force, however not having a source of public international law requiring this may weaken the importance or value of prevention and alternate dispute resolution techniques rather than force. The benefit of explicitly stating that military action will only be taken as a last resort even within the responsibility to act portion of R2P is greatly undervalued in my opinion. A loss of these formalized pre-requisites prior to taking military action in the name of humanitarianism is effectively a reversion back towards the loose humanitarian intervention that became so unpopular with the United States led invasion of Iraq under the Bush regime.

Any movement away from unilateral military action in the name of humanitarianism in my opinion is strength. The ability for any global power to infringe upon the sovereignty of another without the approval of the United Nations Security Council is a risk for global stability. By devolving back towards humanitarian intervention through the loss of R2P might reinvigorate voices calling for the right to unilateral intervention. While there is the pre-requisite for Security Council dysfunction for this to be the case, given the polarization of the current United Nations Security Council, any improvement to this is unlikely in the near future. This would allow for future interventions of a similar fashion to the United States' effectively unilateral invasion of Iraq in 2003. The former United Nations Secretary-General Kofi Annan, stated that the Iraq war was illegal because the Iraq invasion did not meet the requirements under the United Nations Charter and the Security Council did not approve. Despite this, the United States acted without retaliation given its military power and influence. In a similar fashion the Russian-Georgian war in 2008 was not prevented by the United Nations. The method with which the Responsibility to Protect Doctrine was employed in the Libyan Intervention and the coalition response to the Yazidi crisis made future R2P actions which focus only on military action more likely, and given the still emerging status of the Doctrine under customary international law, more justifiable.

Unfortunately the Yazidi situation has reinforced the unfavorable precedent set by the United States led coalition in the 2011 Libyan Intervention, with regard to the Responsibility to Protect Doctrine. The response largely ignored the responsibility to prevent and then only reacted well after genocide was occurring at the hands of ISIS. The reaction, while in this scenario not entirely inappropriate elevated straight to the level of

military focused humanitarian intervention, reinforcing the heavy handed reaction in Libyan and painting R2P as simply humanitarian intervention redecorated in more favorable language. The response has also been severely lacking in appropriate rebuilding efforts. The United States led coalition response to the Yazidi crises also likely fulfilled most people's greatest fears about the Doctrine being used as a tool to authorize perpetual warfare and regime change. While in Libya R2P was used to justify overthrowing Gaddafi, in Iraq the Yazidi people were used to grant legitimacy to an indefinite war against ISIS. However, I strongly believe that the best course of action is not to simply let the Responsibility to Protect Doctrine die, but instead attempt to standardize the Doctrine and demand the utilization of all of the obligations of the Doctrine be utilized in alignment with the intent of the mass of supporters in 2005.

I am in favor of standardizing the Responsibility to Protect Doctrine, the most likely form that this speculative standardization could take would be the form of a United Nations Convention; the same form that many developments in public international law have taken since the formation of the United Nations. As I have argued, I believe that the benefits of the Responsibility to Protect Doctrine outweigh the negatives of not having such a Doctrine or allowing for a return to solely humanitarian intervention as it was in the late 1990s and early 2000s. The benefits of standardizing the Responsibility to Protect Doctrine such as in the form of an international convention would likely include more uniform and comprehensive application of the Doctrine, a more solid foundation upon from which other aspirational principles may build on, and importantly it may, depending on the language applied, allow for the possible enforcement against those who do not

adhere to the requirements. Standardization could also allow for the inclusion of all of the obligations of R2P through customary international law.

The pathway for the Responsibility to Protect Doctrine to become a binding treaty would be long and arduous; although given the successive support of multiple United Nations Secretary Generals I do not believe that it is impossible. Another positive sign for R2P for one advocating for its standardization is the already impressive level of acceptance that it currently holds among member states of the general assembly, evident by the endorsement at the 2005 World Summit to prevent genocide, war crimes, ethnic cleansing, and crimes against humanity. This is of course tempered by the disfavor that befell the emerging Doctrine in the aftermath of the 2011 Libyan debacle.

One benefit of a more standardized Responsibility to Protect Doctrine, such as in the form of a treaty or convention would be that global super powers or veto holding members of the United Nations Security council would find it harder to only act upon one aspect or pillar of the Responsibility to Protect Doctrine as I argue was the case in Libya, where the United States led coalition took action that lacked sufficient prevention and possibly rebuilding efforts. If the United States had signed a treaty requiring the order of operations concerning the obligations of the Responsibility to Protect Doctrine I believe that they would have had to reasonably attempt more preventative steps prior to the use of force as well as tried more measures other than simply military force taking the form of regime change. This standardization would also likely help to disallow the invocation of R2P as a moral cover the Doctrine from being misused for political objectives.

Thus, I believe that despite its many flaws, the Responsibility to Protect Doctrine should be preserved and not left to deteriorate as a body of public international law. The

positive aspects of the Doctrine should be built upon and a reversion to humanitarian intervention should be avoided at all costs. Despite its imperfections, R2P should be improved upon, given the wide popularity it received in the United Nations during its introduction and the potential within its non-reactionary obligations. To counteract these dangers, I believe that the Responsibility to Protect Doctrine should be standardized for the benefit of both the victims of genocide, ethnic cleansing, war crimes and crimes against humanity, such as the Yazidi people, and for general global stability. For these reasons I believe that the voices who wish to improve upon the Responsibility to Protect Doctrine should be supported.

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