The Legality of Interventions of a Humanitarian Nature with a Special Focus on the Libyan Intervention

Verity Louise Jessop Adams

Abstract

This thesis considers the legality of interventions based on humanitarian grounds, with especial reference to the 2011 intervention in Libya. The underlying principles of international law are those of sovereignty and non-intervention; thus, in order to defend humanitarian interventions and those made under the responsibility to protect, there is a much higher legal hurdle to overcome. This study closely examines the development of the peremptory norms of non-intervention and sovereignty contained in United Nations Charter Article 2(4), the prohibition on the use of force therein, and the extent to which State practice and *opinio juris* support a conclusion that a humanitarian intervention international norm has developed. It is advanced that, to date, State practice does not demonstrate this. Rather, States have repeatedly asserted that interventions justified solely on humanitarian grounds violate the Article 2(4) prohibition on the threat and use of force and the customary principle of non-intervention. In addition to commenting upon interventions in the domestic affairs of other States in the twentieth century, the creation of the responsibility to protect, by the International Commission on Intervention and State Sovereignty in 2001, is examined. It is proposed that the resultant adoption of the doctrine at the 2005 World Summit stripped it of its normative framework, thereby removing its ability to develop into an international norm.

A critical analysis of the Libyan intervention is undertaken, focussing on NATO's exceeding Resolution 1973 (2011). The thesis concludes that the Libyan intervention lacked legality and confirmed fears that interventions on humanitarian grounds were prone to abuse. The result, as evidenced in Syria, is a refusal by States to allow authorisation of Chapter VII measures. Accordingly, the paper concludes that intervention on humanitarian grounds remains illegal in international law and that, after Libya, an international norm is unlikely to develop in the foreseeable future.

University of Durham

School of Law

The Legality of Interventions of a Humanitarian Nature, with a Special Focus on the Libyan Intervention

Master of Jurisprudence

Verity Louise Jessop Adams

LLB Hons *(Dunelm)*

2013

Table of Contents

List of Abbreviations

BRIC	Brazil, Russia, India and China
ECOMOG	ECOWAS Cease-Fire Monitoring Group
ECOWAS	Economic Community of West African States
FRY	Federal Republic of Yugoslavia
ICISS	International Commission on Intervention and State Sovereignty
KLA	Kosovo Liberation Army
LAS	League of Arab States
NATO	North Atlantic Treaty Organization
NIFAG	Nigerian Forces Assistance Group
NPFL	National Patriotic Front of Liberia
OAS	Organization of American States
OECS	Organization of Eastern Caribbean States
OIC	Organization of the Islamic Conference
RUF	Revolutionary United Front
SOFA	Status of Forces Agreement
UN	United Nations
UNGA	United Nations General Assembly
UNSC	United Nations Security Council

Statement of Copyright

Acknowledgements

I would like to thank both my supervisors, Dr Gleider Hernandez and Dr Andrés Delgado Casteleiro, for their assistance, insight, comments and patience throughout the writing of this thesis. I would also like to thank my fiancé, family and friends for giving me so much support throughout this year.

Chapter One:

Introduction

In a little over three months in 1994, over 500,000 people in Rwanda were slaughtered[1] in what Weiss describes as one of the 'worst genocides of the post-Second World War period'.[2] The Hutu-dominated Rwandan military perpetrated rape, killing, and torture during their attempt to eradicate the Tutsi race.[3] Although aware of the violence being committed and the Hutu intention to 'exterminate Tutsis',[4] the international community 'stood by … as the bloodshed … unfolded'.[5] United Nations peacekeepers were already stationed within Rwanda at the start of the genocide,[6] and had indicated to the United Nations the extent of the Hutu plans,[7] yet their limited numbers rendered them incapable of preventing the massacre. The subsequent removal of United Nations forces under Security Council Resolution 912 (1994) made their presence futile.[8] Just a year later, in July 1995, the world watched as the Army of Republika Srpska killed more than 8,000 Bosniaks in the Srebrenica massacre,[9] in a single part of the

---

[1] 'Numbers' in A Des Forges, Leave None to Tell the Story (Human Rights Watch 1999) <http://www.hrw.org/legacy/reports/1999/rwanda/Geno1-3-04.htm#P95_39230> accessed 26 September 2013.
[2] T Weiss, *Humanitarian Intervention* (Polity Press 2012) (Weiss Intervention) 94.
[3] Approximately 70% of all Tutsis were murdered; E Harsch, 'OAU sets inquiry into Rwanda genocide' [1998] 12(1) Africa Recovery 4, 4.
[4] G Stanton, 'The Rwandan Genocide: Why Early Warning Failed' [2009] 2(1) Journal of African Conflicts and Peace Studies 6 (Stanton), 8.
[5] Weiss Intervention (n 2) 94.
[6] S Chesterman, *Just War or Just Peace: Humanitarian Intervention and International Law* (OUP 2001) (Chesterman Just War) 145.
[7] Stanton (n 4), 8.
[8] UNSC Resolution 912 (1994) (21 April 1994) UN Doc S/RES/912 (1994), [7].
[9] C Paul, C Clarke and B Grill, *Victory has a Thousand Fathers: Sources of Success in Counterinsurgency* (Rand Publishing 2010) 25.

Bosnian conflict resulting from the breakup of the Socialist Federal Republic of Yugoslavia.[10]

The failure of both the United Nations and the international community in general to prevent or halt massacres such as these stimulated calls for the creation of a principle – humanitarian intervention – to ensure that such events would never again be allowed to occur.[11] Numerous academics have called for the creation of a humanitarian intervention norm,[12] although the creation of a norm which promotes non-consensual intervention in a foreign State directly contradicts the customary principles of sovereignty and non-intervention,[13] in addition to the United Nations Charter prohibition on the threat or use of force.[14] The issue of whether interventions based on humanitarian grounds can be legally justified continues to be a prominent problem within international law. With the effects of the Arab Spring spreading to Libya and Syria, concerns over humanitarian crises have again arisen as a consequence of the use of military force by both the Libyan and Syrian regimes to quash public protests.[15] Under the broad concept of the

[10] D Forsythe, *Encyclopaedia of Human Rights: Volume 1* (OUP 2009) 145.
[11] Chesterman Just War (n 6), 144.
[12] A Eckert, 'The Non-Intervention Principle and International Humanitarian Interventions' [2001] 7 International Legal Theory 48, 56; F Tesón, *Humanitarian Intervention: An Inquiry into Law and Morality* (Transnational Publishers 1997) 315; A Buchanan, 'Reforming the International Law of Humanitarian Intervention' in J Holzgrefe and R Keohane (eds), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (CUP 2003) 131; R Higgins, 'International Law and the Avoidance, Containment and Resolution of Disputes' [1991] 9 Recueil des Cours de l'Académie de Droit International 230, 313; C Burke, *An Equitable Framework for Humanitarian Intervention* (Hart Publishing 2013) 5; D Luban, 'Just War and Human Rights' [1980] 9 Philosophy and Public Affairs 160, 162; J Moore, *Law and Civil War in the Modern World* (Johns Hopkins Press 1974) 24.
[13] Text to (n 80) in Chapter Two.
[14] Charter of the United Nations (adopted 26 June 1945, entry into force 24 October 1945) 1 UNTS XVI (Charter), Article 2(4).
[15] ABC Radio, 'Defiant Gaddafi Issues Chilling Threat' *World Today* (23 February 2011) <http://www.abc.net.au/worldtoday/content/2011/s3146582.htm> accessed 5 September 2013; G Cronoghue, 'Responsibility to Protect: Syria: The Law, Politics and Future of Humanitarian Intervention Post-Libya' [2012] 3 International Humanitarian Legal Studies 124, 146.

responsibility to protect, and in response to worsening threats by then-President Muammar Gaddafi in relation to rebel forces, the Security Council authorised an intervention in Libya under Chapter VII.[16] However, the resultant NATO intervention has spurred questions as to the validity of interventions for humanitarian purposes, and the legality and status of any norm relating to humanitarian interventions.[17]

This thesis seeks to determine whether any international norm has developed which would support the legality of interventions of a humanitarian nature. Two possibilities exist for such a norm: the principle of humanitarian intervention; and the responsibility to protect doctrine. It is the proposition of this thesis that no new norm relating to interventions of a humanitarian nature has developed. Instead, it is argued that the peremptory norm Article 2(4)[18] remains unaffected by calls for a right to intervene or a responsibility to protect.[19] The principle of humanitarian intervention lacks both the requisite state practice and *opinio juris* required to pronounce it as having developed into custom under international law.[20] In addition, the principle directly violates the express prohibition against the threat

[16] UNSC Resolution 1973 (2011) (17 March 2011) UN Doc S/RES/1973 (2011).
[17] E Phillips, 'The Libyan Intervention: Legitimacy and the Challenges of the "Responsibility to Protect" Doctrine' [2012] 25 Denning Law Journal 39, 60.
[18] J Crawford, *The Creation of States in International Law* (2nd edn, OUP 2006) 146; L Hannikainen, *Peremptory Norms (Jus Cogens) in International Law: Historical Development, Criteria, Present Status* (Finnish Lawyers' Publication Company 1988) 323; N Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (OUP 2000) 44; M Karoubi, *Just or Unjust War?: International Law and Unilateral Use of Armed Force by States at the Turn of the 20th Century* (Ashgate 2004) 108; O Schachter, 'In Defense of International Rules on the Use of Force' [1986] 53 University of Chicago Law Review 113, 129; M Schmitt, 'Computer Network Attack and the Use of Force in International Law: Thoughts on a Normative Framework' [1999] 37 Columbia Journal of Transnational Law 885, 922; B Simma, 'NATO, the UN and the Use of Force: Legal Aspects' [1999] 10 European Journal of International Law 1, 3.
[19] Chesterman Just War (n 6), 236.
[20] ibid 84-87.

and use of force as laid down in the Charter.[21] Moreover, the responsibility to protect, though initially a strong framework within existing exceptions to the Charter's prohibition on the use of force, has failed to develop into a norm since its introduction in 2001.[22] Upon its adoption in 2005 at the World Summit, it was stripped of its normative framework,[23] leaving a weak acceptance of both pre-existing concepts of the responsibility of States to their citizens, and the responsibility of the international community to respond to threats to the maintenance of international peace and security.[24] The 2011 intervention in Libya has only reinforced concerns regarding the ease with which humanitarian interventions can be abused. The effects of such concerns, demonstrated through the use of veto power in the Syrian crisis by Russia and China, show that neither the responsibility to protect in its most basic form was accepted; nor is it likely to be in the future. Accordingly, this thesis examines the legality of both the principle of humanitarian intervention and the responsibility to protect doctrine with specific regard to the Libyan intervention.

Definition of Humanitarian Intervention

Before examining the legality of the principle of humanitarian intervention, the term must be defined. While some academics aver that 'the doctrine of

[21] O Schachter, 'The Legality of Pro-Democratic Invasion' [1984] 78 American Journal of International Law 645, 649.
[22] D Berman and C Michaelson, 'Intervention in Libya: Another Nail in the Coffin for the Responsibility-to-Protect?' [2012] 14 International Community Law Review 337 (Berman and Michaelson), 343-344.
[23] A Bellamy, 'Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit' [2006] 20 Ethics and International Affairs 142, 166.
[24] Berman and Michaelson (n 22), 344.

[humanitarian intervention] is inherently vague'[25] and a 'usable general definition … would be extremely difficult to formulate',[26] a basic definition has emerged over time. In its simplest form, humanitarian intervention is, as Murphy asserts, 'a threat or use of force by a State … for the purpose of protecting the nationals … from widespread deprivations of internationally recognised human rights'[27] which 'shock[s] the conscience of mankind'.[28] Humanitarian intervention may also encompass 'non-forcible methods, namely intervention undertaken without military force to alleviate mass human suffering within sovereign borders',[29] such as 'economic, diplomatic, or other sanctions'.[30] Additionally, some scholars deem the term humanitarian intervention to include the use of armed force to protect or rescue nationals abroad.[31]

While the purpose of this thesis is not to define precisely the term "humanitarian intervention", this thesis advances that the protection of nationals abroad, a practice which has taken place both before and after the creation of the Charter, falls under the auspices of self-defence and not humanitarian intervention. Tsagourias notes that 'nationals constitute the human component of a state', thus 'an attack on a national is an attack on the state' and any action taken towards

[25] I Brownlie, *International Law and the Use of Force by States* (OUP 1963) 338.
[26] T Franck and N Rodley 'After Bangladesh: The Law of Humanitarian Intervention by Military Force' [1973] 67 American Journal of International Law 275, 277.
[27] S Murphy, *Humanitarian Intervention: The United Nations in an Evolving World Order* (University of Pennsylvania Press 1996) 11-12.
[28] L Oppenheim, *International Law* (H Lauterpacht ed., 8th edn, McKay 1952) 312.
[29] D Scheffer, 'Towards a Modern Doctrine of International Humanitarian Intervention' [1992] 23 University of Toledo Law Review 253, 266; N Krylov, 'Humanitarian Intervention: Pros and Cons' [1995] 17 Loyola of Los Angeles International and Comparative Law Review 365 (Krylov), 366.
[30] J Holzgrefe, 'The Humanitarian Intervention Debate' in J Holzgrefe and R Keohane (eds), Humanitarian Intervention: Ethical, Legal, and Political Dilemmas (CUP 2003) 18.
[31] Krylov (n 29), 367; M Reisman and M McDougal, 'Humanitarian Intervention to Protect the Ibos' in R Lillich (ed.), Humanitarian Intervention and the United Nations (1973) 167.

securing their safety falls under the Article 51 exception to the prohibition on the threat or use of force.[32] In the First Report on Diplomatic Protection in 2000, it was stated that 'the threat or use of force in the exercise of diplomatic protection can only be justified … as self-defence' and that 'there [was] no suggestion that defence of nationals may be categorised as humanitarian intervention'.[33] While there is an argument that the creation of Article 51 introduced a 'complete and exclusive formulation of the right of self-defence',[34] Bowett[35] asserts that the inclusion of the term 'inherent right'[36] in Article 51 maintains the pre-existing customary law on self-defence. This was confirmed by the International Court of Justice in *Military and Paramilitary Activities in and against Nicaragua*,[37] when the Court noted that 'it is hard to see how [the inherent right to self-defence] can be other than of a customary nature, even if its present content has been confirmed and influenced by the Charter'.[38] The inclusion of the protection of nationals abroad in self-defence is further supported by State practice. For example, the 'Non-combatant Evacuation Operations' adopted by a number of countries including the United Kingdom,[39] United States[40], France,[41] and Australia[42] all

[32] N Tsagourias, 'Necessity and Use of Force: A Special Regime' in I Dekker and E Hey (eds), *Netherlands Yearbook of International Law Volume 41: Necessity Across International Law* (Springer 2011) 22.
[33] ILC, 'First Report on Diplomatic Protection by Mr John R Dugard, Special Rapporteur' (10 July 18 August 2000) UN Doc A/CN.4/506, [55].
[34] ibid [57].
[35] D Bowett, *Self-Defence in International Law* (Praeger 1958) 184-186.
[36] Charter (n 14), Article 51.
[37] *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v United States*) (Judgment) 1986 ICJ Rep 14.
[38] ibid 94.
[39] Ministry of Defence, 'Joint Doctrine Publication 3-51: Non-Combatant Evacuation Operations' (2nd edn, February 2013) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/142584/20130301-jdp3_51_ed3_neo.pdf > accessed 5 August 2013, [3B7].
[40] Joint Chiefs of Staff, 'Joint Publication 3-68: Noncombatant Evacuation Operations' (December 2010) <http://www.fas.org/irp/doddir/dod/jp3-68.pdf> accessed 5 August 2013, I-3.

refer to the rescue of nationals as justifiable on the grounds of self-defence. Self-defence has also been used as the justification for interventions by Israel,[43] the United States,[44] the United Kingdom,[45] and Russia.[46] Moreover, though the interventions themselves may have been criticised, as Tsagourias comments, 'such criticisms [often] do not concern their legal status but evolve around issues of proportionality or genuineness'.

Humanitarian intervention may also be used to refer to non-forcible interventions. While it is accepted that sanctions, such as those implemented after the 1990 Iraqi invasion and annexation of Kuwait,[47] are attempts to intervene directly in the internal affairs and decision of a State and can often 'see[m] to target the poor and

---

[41] Ministère de la Défense, 'Doctrine interarmées DIA – 3.4.2: Les opérations d'évacuation de ressortissants' (July 2009) <http://www.cicde.defense.gouv.fr/IMG/pdf/DIA_3-4-2.pdf> accessed 5 August 2013, 23.

[42] Department of Defence, 'Operations Series ADDP 3.10: Noncombatant Evacuation Operations' (June 2011) <www.defence.gov.au%2Fadfwc%2FDocuments%2FDoctrineLibrary%2FADDP%2FADDP_3_10_Noncombatant_Evac_Ops.pdf&ei=JnELUpiTNYer0AWohIDoAg&usg=AFQjCNEncKnc5F7HHKJb2DRaa-Fi1r9fLA&bvm=bv.50723672,d.d2k> accessed 5 August 2013, [4.35].

[43] UNSC Verbatim Records (9 July 1976) UN. Doc S/PV.1939 (1976), [105] – [121].

[44] In relation to the Panamanian intervention the Department of State justified the American intervention on several bases, one of which was 'the inherent right of self-defense, as recognized in Article 51 of the UN Charter', Department of State File No. P90 0018-0477/0482 cited in M Leich, 'Contemporary Practice of the United States Relating to International Law' [1990] 84 American Journal of International Law 536, 548; upon United States intervention in Grenada, self-defence on the basis of the protection of nationals was used as justification for the action taken, Hoagland, 'US Invades Grenada' *Washington Post* (Washington DC, 26 October 1983) A1.

[45] Gray notes that during the Suez crisis in 1956 the United Kingdom justified the intervention in order to rescue British citizens, C Gray, *International Law and the Use of Force* (3rd edn, OUP 2008), 158.

[46] Council of Europe Parliamentary Assembly '2009 Ordinary Session: Report of Fifth Sitting Addendum 2' (28 January 2009) AS (2009) CR 5

[47] Shortly after the initial Iraqi invasion on 2nd August 1990, Security Council Resolution 661 (1990) implemented various mandatory sanctions including the halting of importing Iraqi or Kuwaiti products, prevention of States' nationals being involved in the export of Iraqi or Kuwaiti goods, the prevention of the sale of goods from their nationals or territories to Iraq or Kuwait (or bodies therein) and the prevention of any commercial, economic or financial assistance to Kuwait or Iraq UNSC/UN Doc 661(1990). Further resolutions included greater sanctions including the imposition of a sea blockade UNSC/UN Doc 665(1990) and all aviation links UNSC/UN Doc 670(1990).

vulnerable',[48] the purpose of this thesis is to examine the legality of the threat and use of force against foreign States on the basis of humanitarian intervention, and not the possible ramifications of collective or unilateral political decisions regarding either economic or diplomatic sanctions. Accordingly, within this thesis, humanitarian intervention will refer to non-consensual,[49] trans-boundary military interventions, by a single State or group of States, which are justified on the basis of ending or preventing grave and widespread violations of fundamental human rights of individuals who are not nationals of the intervening State and for which the acting States have not received prior Security Council Chapter VII authorisation.[50]

Structure of Thesis

This thesis is divided into five substantive chapters, as well as introductory and concluding chapters. Following on from the introduction, Chapter Two addresses the principle of non-intervention in international law. In so doing it first examines the historical development of the principles of non-intervention and sovereignty and their development into customary international law. Having established non-

[48] T Weiss and D Hubert, 'Interventions after the Cold War' in ICISS, The Responsibility to Protect: Research, Bibliography, Background (International Development Research Centre 2001) 86.

[49] Consensual use of force, that which has been requested by the legitimate government of the State to which the military force will be sent, does not fall under humanitarian intervention as consent to use of force is an exception to the Article 2(4) prohibition on the use of force and does not violate the sovereignty of the State; such action is often referred to as "humanitarian assistance", R Jennings and A Watts (eds), *Oppenheim's International Law: Volume I* (9th edn, Longman 1992) 435; J Rytter, 'Humanitarian Intervention without the Security Council: From San Francisco to Kosovo – and Beyond' [2001] 70 Nordic Journal of International Law 121, 122; also note that Gordon states 'humanitarian intervention is usually without the consent of the target government', R Gordon, 'Humanitarian Intervention by the United Nations: Iraq, Somalia, and Haiti' [1996] 31 Texas International Law Journal 43, 45.

[50] D Richemond 'Normativity in International Law: The Case of Unilateral Humanitarian Intervention' [2003] 6 Yale Human Rights & Development Law Journal 45, 47.

intervention and sovereignty as peremptory norms, the chapter subsequently analyses the various Charter provisions relating to both sovereignty and non-intervention and their effect on States' conduct in international law. Thereafter, Chapter Two considers the purpose behind the principles of non-intervention and sovereignty and their importance in maintaining international peace and security.

Chapter Three focusses on the theory of humanitarian intervention, while corresponding analysis of possible humanitarian interventions is conducted in Chapter Four. This allows the theory of humanitarian intervention to be identified before Chapter Four explores interventions in practice. Accordingly, in the first part of Chapter Three, the principles behind the creation of the concept of humanitarian intervention are examined. Thereafter, the chapter analyses the foundations upon which humanitarian intervention is grounded before reviewing both the moral and legal arguments used to justify humanitarian intervention as a legal norm in international law. Finally, the authority for humanitarian intervention and the lack of Security Council authorisation is assessed.

Building directly upon the theories of humanitarian intervention, a number of cases is examined in Chapter Four. The first section addresses interventions during the period between the establishment of the United Nations (1945) and the end of the Cold War (1990). The second section comments upon those interventions that occurred during the final decade of the twentieth century. Within this study, interventions have been selected which have been previously argued to provide the necessary state practice and *opinio juris* for humanitarian intervention to become custom under international law. Chapter Four gives a brief background to the interventions, including the conditions under which they took

place, the legal justifications given, and the extent to which they have helped establish humanitarian intervention as custom. In so doing Chapter Four determines whether or not a norm of humanitarian intervention was created through State practice and *opinio juris* in the twentieth century.

Chapter Five explores the theory and principles of the responsibility to protect. Accordingly, the chapter first outlines the background to the Report from the International Commission on Intervention and State Sovereignty in order to identify the context in which it was developed. Having done so, the six principles of the doctrine are examined to determine the scope of the responsibility to protect. In so doing, the second part of the chapter identifies the framework which the responsibility to protect proposes, before determining how such a framework fits into existing exception to the prohibition on the use of force. Finally, Chapter Five analyses the initial international reactions to the responsibility to protect, with an emphasis on its adoption by the General Assembly in 2005 and resultant use of the responsibility to protect by the Security Council.

Chapter Six focusses on the Libyan crisis and the subsequent NATO intervention. Initially, the chapter provides a brief background to the Libyan crisis, outlining the various elements which led to the rebellion. Thereafter, Chapter Six examines the precursors to the intervention, studying international reactions to the violence within the Libyan State and Security Council action. The intervention is analysed in the third part of the chapter, with regard to the mandate of Resolution 1973 (2011). Through so doing, the issue of whether or not the NATO intervention fell outside the mandate given by the Security Council is discussed. Finally, the chapter examines the effects of the Libyan intervention on any further

implementations of the responsibility to protect and international responses to the development of the responsibility to protect as a norm. This is done with specific reference to the current crisis in Syria. The final chapter, Chapter Seven, provides a summary of the thesis as a whole and provides concluding remarks on the legality of interventions based on humanitarian grounds.

Chapter Two:

Non-Intervention as a Principle of International Law

Introduction

Humanitarian intervention and the responsibility to protect both rely on the ability of a State to intervene in the affairs of another State on the basis of the supremacy of human rights.[1] In order to find that human rights have supremacy over State independence and sovereignty there exists the presumption that 'the normative status of sovereignty is derived from humanity' and that 'this humanistic principle is also the *telos* of the international legal system' for the law 'has thus been humanised'.[2] It is the premise of this thesis, however, that the underlying 'guiding principle' of international law is not human rights, but one of sovereignty and non-intervention.[3] International law, in serving its purpose to regulate relations between States,[4] must first 'recognise the sovereign equality of all States'.[5] In order to do so, international law must be based upon matters which relate to the State and not the individual. If the underlying principles of international law are

[1] N Tsagourias, 'Humanitarian Intervention and Legal Principles' [2001] 7(1) International Legal Theory 83 (Tsagourias), 83.
[2] A Peters, 'Humanity as the A and Ω of Sovereignty' [2009] 20(3) European Journal of International Law 513, 514. Article 53 of the Vienna Convention on the Law of Treaties states that 'a treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law' and that a 'peremptory norm of general international law is a norm accepted and recognised by the international community of States as a whole as a norm from which no derogation is permitted'. Therefore, a treaty is unable to make sovereignty subordinate to human rights as sovereignty is a peremptory norm as defined in the Article and humanitarian intervention, as is noted in Chapters Three, Four and Five, has not developed into a 'subsequent norm of general international law having the same character'. Vienna Convention on the Law of Treaties (adopted 23 May 1969, entry into force 27 January 1980) 1155 UNTS 331, Article 53.
[3] Tsagourias (n 1), 83.
[4] A Slaughter, 'International Law in a World of Liberal States' [1995] 6 European Journal of International Law 503, 504.
[5] R Kissack, 'What's the Use of Arguing? European Union Strategies for the Promotion of Human Rights in the United Nations' *Conference Paper* (April 2009) <http://www.unc.edu/euce/eusa2009/papers.php> accessed 10 August 2013.

those of sovereignty and non-intervention, then in order to defend humanitarian interventions and interventions under the responsibility to protect, there is a much higher hurdle to surpass. Therefore, as a backdrop to how the principle of non-intervention works within the United Nations Charter, its development must be charted, so as to see how much of an intrinsic part of international law it has become. This chapter will first review the development of the non-intervention principle from its base origin in the legal maxim of *par in parem non imperium habet*,[6] to its becoming the basis of peace agreements prior to the establishment of the United Nations. Secondly, the role of the principle of non-intervention in the United Nations Charter will be analysed, with a focus on how the principle interacts with other articles and its supremacy within the Charter. Finally, the chapter will consider both the rationale behind the principle of non-intervention and existing academic commentary to ascertain the position of the principle within international law. Through so doing, and in analysing the principle's formation and subsequent interaction in international law, this chapter will determine whether non-intervention is indeed the 'fundamental principle … on which the whole of international law rests'.[7]

Developing a Custom: Pre-Charter Non-Intervention

Non-intervention is the direct manifestation of the legal maxim *par in parem non imperium habet,* which advances the precept that each sovereign State should have an equal vote, regardless of its relative power, wealth, status, population or

[6] Translated into English meaning: among equals no one is superior.
[7] *Case Concerning the Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Merits Judgment) [1986] ICJ Rep 14 (*Nicaragua*) [263].

military capabilities.[8] The principle of non-intervention itself, however, can be argued to have its foundation in the Augsburg Peace Treaty (1555), with the concept of *cuius regio, eius religio*[9] giving German princes the ability to determine freely and independently the religion of their territories without intervention.[10] The same precept was used in the Treaty of Westphalia;[11] it is this treaty that is most commonly recognised as the first time that the principles of independence and State sovereignty were laid as the foundation of the modern international legal era.[12] These principles relied upon the presumption that, in order to maintain independence and sovereignty, States must respect the right not to have other States intervene in their domestic relations. Without non-intervention, there was little to support the continued system of sovereignty and independence; without one, the others would fall. The importance of sovereignty and independence came from the need to develop a system of independent and equal States so as to establish a prolonged period of peace and order within Europe,[13] after 30 years of war had ravaged the continent.[14]

After the Treaties of Westphalia, the principle of non-intervention became a more prominent feature within States' own international relations doctrines. The French Constitution of 1793 specifically provided, in Article 119, that France would neither interfere in the governments of other nations, nor permit other nations to

[8] A Conteh, 'Sierra Leone and the Norm of Non-Intervention: Evolution and Practice' [1995] 7 American Journal of International and Comparative Law 166, 166.
[9] Translated into English meaning: whose realm, his religion.
[10] L Gross, 'The Peace of Westphalia, 1648-1948' [1948] 42 Americal Journal of International Law 20, 28.
[11] Treaty of Westphalia 1648.
[12] S Krasner, 'The Hole in the Whole: Sovereignty, Shared Sovereignty, and International Law' [2004] 25 Michigan Journal of International Law 1075, 1077.
[13] F Hinsley, *Sovereignty* (Basic Books 1966) 126.
[14] S Krasner, 'Compromising Westphalia' [1996] 20 IS 110, 115.

interfere in its own.[15] Thus, not only was the precept of non-intervention advanced by States as that which they themselves should practise, but States also began to see non-intervention as a legal principle by which they, and other States, were obliged to abide. Non-intervention came, therefore, to be seen as an international norm. Subsequently, in 1823, the Monroe Doctrine was introduced in the United States, which required its foreign policy to maintain the independence of States within North and South America in an attempt to prevent further European colonisation of the area.[16] The Doctrine itself stated:

> the American continents, by the free and independent condition which they have assumed and maintain, are … not to be considered as subjects for future colonization … the United States … consider[s] any attempt on their part [European Powers] to extend their system to any portion of this hemisphere as dangerous to our peace and safety.[17]

Thus, since the inclusion of the principle of non-intervention into the French Constitution, there has been a developing international tendency to view violations of the principle of non-intervention as acts which States should refrain from undertaking. Such violations, in turn, were seen as direct attacks on international peace and security. This position was supported by the inclusion of Article VII of the Treaty of Paris 1856, which obliged all Treaty parties[18] to 'respect the Independence and the Territorial Integrity of the Ottoman Empire'.[19] The inclusion of Article VII illustrated two concepts: that respect for sovereignty and non-

[15] 'Il ne s'immisce point dans le gouvernement des autres nations; il ne souffre pas que autres nations s'immiscent dans le sien' Acte Constitutionnel 1791, Article 119.
[16] G Herring, *From Colony to Superpower: US Foreign Relations since 1776* (OUP 2008) (Herring) 153.
[17] J Monroe, 'The Monroe Doctrine' (2 December 1823) <http://avalon.law.yale.edu/19th_century/monroe.asp> accessed 13 September 2013.
[18] Great Britain, Austria, France, Prussia, Russia, Sardinia, and Turkey.
[19] Treaty of Paris 1856, Article VII.

intervention was considered internationally as vital to the maintenance of peace; and that the community of States believed that international law afforded rights to those States considered equal.[20] Such a shift in attitude showed that the principle of non-intervention had developed into a customary international norm; States obeyed for fear of international repercussions. Moreover, it was not solely the United States that actively protected the principle of non-intervention. Great Britain agreed with the basic premise of the Monroe Doctrine and worked in agreement with the United States to attempt to preserve the independence of the North and South American States.[21] Over the course of the nineteenth century, the continual trail of interventions between Concert of Europe States began to take its toll. The destruction, both regional and economic, wrought by the Crimean, Austro-Prussian and Franco-Prussian wars left Russia weakened, Austria isolated, and Prussia emboldened.[22] In the Hague Conventions of 1899 and 1907, Europe recognised the need to regulate warfare and refrain from solving diplomatic disagreements through war with the implementation of Laws and Customs of War,[23] and the introduction of the Permanent Court of Arbitration,[24] both of which were aimed at the preservation of peace and prevention of armed conflicts.[25]

---

[20] P Balfour (Lord Kinross), *The Ottoman Empire* (Folio Society 2003) 495.
[21] Herring (n 16), 155.
[22] R Gildea, *The Short Oxford History of the Modern World: Barricades and Borders Europe 1800-1914* (OUP 1987) 182.
[23] Convention with Respect to the Laws and Customs of War on Land (Hague II) (adopted 29 July 1899, entered into force 4 September 1900) in D Schindler and J Toman, *The Laws of Armed Conflict* (Brill 1988) 63.
[24] Convention for the Pacific Settlement of International Disputes (Hague I) (adopted 29 July 1899, entered into force 4 September 1900) in ibid 54.
[25] Convention with Respect to the Laws and Customs of War on Land (Hague II) (adopted 29 July 1899, entered into force 4 September 1900) in ibid 63, Preamble; Convention for the Pacific Settlement of International Disputes (Hague I) (adopted 29 July 1899, entered into force 4 September 1900) in ibid 54, Preamble.

Notwithstanding the outbreak of the First World War seven years later, there was, finally, in the twentieth century, a cohesive movement towards an international recognition of the principle of non-intervention, with international agreements calling for States to respect the sovereignty and independence of other States by refraining from intervening in such States' internal affairs. In 1928, the Kellogg-Briand Pact[26] created an international agreement between States to refrain from using war to resolve disputes or conflicts (whatever the origin of the dispute itself) and to settle disputes peacefully and without recourse to armed activities. Though the effectiveness of the Pact itself was relatively poor, and short-lived, with it doing little to reduce increasing militarisation or prevent the Second World War, it was a clear sign that the principle of non-intervention had been internationally accepted.[27] While the Pact had only 54 signatories, such signatories included the main powers of the time with the United Kingdom, the United States, France, Russia, Japan, and much of Europe. This level of acceptance indicates that, by 1929, the principle of non-intervention had become a principle which was widely respected as being part of international law and which had already become part of most countries' domestic and foreign affairs. In the same year that the Kellogg-Briand Pact was signed, the General Act for the Pacific Settlement of International Disputes ['General Act'] was concluded. It provided a specific framework within which parties could settle disputes, stating in Article 1 that

> disputes of every kind between two or more Parties … which it has not been possible to settle by diplomacy shall, subject to such reservations as

[26] Commonly known as the Pact of Paris.
[27] Kellogg-Briand Pact 1928 (adopted 27 August 1928, entered into force 24 July 1929) 46 USSL 2343.

> may be made … be submitted … to the procedure of conciliation.[28]

While the General Act itself never specifically mentioned the principle of non-intervention, it clearly set out the requirement of Parties to ensure that they did not intervene in other States where there evolved a dispute between States. Finally, in 1936, at the Inter-American Conference for the Maintenance of Peace, there was a distinct declaration of the principle of non-intervention. It was due to the combination of all these singular acts and treaties that the principle of non-intervention became a solid customary international principle. The Additional Protocol Relative to Non-Intervention declared in its preamble that it was

> Desiring to assure the benefits of peace in their mutual relations and in their relations with all the nations of the earth and to abolish the practice of intervention … solemnly affirming the fundamental principle that no State has the right to intervene in the internal or external affairs of another.[29]

There was therefore an unambiguous recognition both of the principle of non-intervention and the necessity of ensuring that such a principle was protected by States in their own relations, and the relations of others. It is for this reason that Shen argues that, during the late eighteenth and early nineteenth centuries, 'non-intervention eventually became accepted by other major powers as a customary rule of international law',[30] with, from 1919, the League of Nations Covenant specifically providing that '[i]f the dispute between parties is … found by the Council, to arise out of a matter which by international law is solely within the

[28] General Act for the Pacific Settlement of International Disputes (adopted 26 September 1928, entered into force 16 August 1929) 2123 LNTS 345.
[29] Additional Protocol Relative to Non-Intervention (adopted 23 December 1936, entered into force 25 August 1937) 188 LNTS 31.
[30] J Shen, 'The Non-Intervention Principle and Humanitarian Interventions under International Law' [2001] 7(1) International Legal Theory 1 (Shen), 2.

domestic jurisdiction of that party, the Council … shall make no recommendation as to its settlement'.[31]

Non-Intervention and the Charter

By 1945, non-intervention had been firmly established as a customary international principle. States had consistently adhered to the concept that intervention was and continued to be unlawful unless some form of pre-existing consent had been given.[32] With the creation of the United Nations and the United Nations Charter in 1945, the principle of non-intervention was finally codified within several provisions. Non-intervention, in its various forms, is contained within Articles 2(1), 2(3), 2(4) and 2(7).

Article 2(1): The Sovereign Equality of All Members

Article 2(1) of the Charter 'attributes to all States the same rights and imposes upon them reciprocally the same duties' by ensuring the equality of all Member States.[33] By that principle, the smallest and weakest State should 'have the same capacity' for international rights, duties and obligations as the most powerful State.[34] Equality is, therefore, intrinsically related to non-intervention; States would be unable to exercise the same capacity to rights and duties were they

[31] Covenant of the League of Nations (adopted 28 June 1919, entered into force 10 January 1920) 225 CTS 195 (League of Nations), Article 15.
[32] Shen (n 30) 4.
[33] E Dickinson, *The Equality of States in International Law* (Harvard University Press, 1920) 105.
[34] H Kelsen, 'The Principle of Sovereign Equality of States as a Basis for International Organisation' [1944] 53(1) Yale Law Journal 207 (Kelsen), 209; it should be noted that the inclusion of Article 2(1) was not the first embodiment of equality as it was first enshrined in the Treaty of Westphalia 1648, D Hassan, 'The Rise of the Territorial State and the Treaty of Westphalia' [2006] 9 Yearbook of New Zealand Jurisprudence 62, 63.

subject to the intervention of other States within their domestic affairs.[35] A single State must be safe from being subject to another State's will in order to exercise its single equal vote adequately; thus, in order for each State to be equal, each State must adhere to the principle of non-intervention.[36] Such a notion aligns with Oppenheim's four rules within sovereign equality:[37] all States have a right to a single vote;[38] each vote must be considered equal;[39] no State has power over another State;[40] and no State has jurisdiction over another State.[41]

The moment a State intervenes in the domestic affairs of another State, the intervening State presupposes that it has power over the other State. Such a supposition results in a hierarchy of States being created, which international law has refused to allow in two different ways. First, both global and regional organisations have continued to support the theory that each State within the organisation must have a single equal vote. The League of Nations,[42] Organization of the American States (OAS),[43] League of Arab States (LAS),[44] and Economic Community of West African States (ECOWAS)[45] have all, for example, included within their Covenants or Treaties an article specifically giving

[35] Kelsen (n 34), 209.
[36] R P Anand, 'Sovereign Equality of States in International Law – II' [1966] 8 *International Studies* 386, 387.
[37] ibid 386.
[38] L Oppenheim, *International Law: A Treatise* (H Lauterpacht ed., 8th edn, McKay 1952) (Oppenheim Treatise) 263.
[39] ibid 263.
[40] G Badr, *State Immunity: An Analytical and Prognostic View* (Martinus Nijhoff, 1984) 89.
[41] Oppenheim Treatise (n 38) 267.
[42] League of Nations Covenant (n 31), Article 3.
[43] Charter of the Organization of the American States (adopted 30 April 1948, entered into force 13 December 1951) 119 UNTS 3, Article 10.
[44] Charter of the Arab League (adopted 22 March 1945, entered into force 22 March 1945) LXX UNTS 237, Article 3.
[45] Treaty of the Economic Community of West African States (adopted 28 May 1975, entered into force 1 August 1975) 14 ILM 1200, Article 4(a).

each Member State a single vote, equal to the vote of each other Member. Secondly, in the *Sambiaggio* case,[46] Rolston did not accept the Italian claims that Venezuela was not privy to the protection of the international legal principle of the non-liability of governments for the act of revolutionary agents.[47] Italy claimed that, due to the frequency with which revolutions occurred in Venezuela, the government could not afford itself the protection of the principle.[48] Instead, Rolston noted that to do so would be to find Venezuela 'moving on a lower international plane' and that he would 'indulge no presumption which could be regarded as lowering [Venezuela]… He [Rolston] was bound to assume equality of position and equality of right'.[49] The principle of sovereign equality was further confirmed in the *Jurisdictional Immunities of the State* case, where the International Court of Justice asserted that 'the principle of sovereign equality of States … is one of the fundamental principles of the international legal order'.[50]

Given the consistent efforts made to ensure that equality is maintained between States, any new principle in international law would have to maintain such equality. However, the creation of an easily-met threshold for humanitarian intervention or the responsibility to protect inherently results in the creation of a hierarchical system in which the ideological and political beliefs of one nation are considered superior to that of another State. As subsequent chapters will argue, the imposition of force on other States under the guise of 'humanitarian

[46] The case concerned the seeking of compensation for damage caused by revolutionary Venezuelan forces in an unsuccessful insurgency, *Sambiaggio Case* (*Italy v Venezuela*) (1903) 10 RIAA 499.
[47] ibid 523.
[48] ibid 502.
[49] ibid 524.
[50] *Jurisdictional Immunities of the State* (*Germany v Italy: Greece Intervening*) (Judgment) [2012] ICJ Rep 1, 24 [57].

objectives' enables one State to superimpose its political and ideological beliefs on another.

Article 2(4): The Prohibition on the Use of Force

The general prohibition of force lies not only against the use of force in territorial terms, with a State invading the territory of another, or the use of weaponry against the territory of another State, but also the threat or use of force against the political independence of a State. The definition of force however, as Randelzhoffer discerns, is not clearly indicated within Article 2(4).[51] In the General Assembly's Declaration on the Principles of International Law Concerning Friendly Relations and Cooperation among States (Declaration), force is referred to only in terms of military force.[52] However, the Declaration goes on to note the international obligation not to intervene in matters which are considered to be within the domestic jurisdiction of a State.[53] Randelzhoffer suggests that, by referring to the use of force only in military terms and then referring to an obligation of non-intervention, the Declaration delineates between the Article 2(4) prohibition which relates to force and the general international principle of non-intervention relating to interference in internal State matters.[54] The definition of force as 'armed force' is further buttressed by reference to Article 44 of the Charter, which also uses the term force in a manner which, as Virally observes, could only be interpreted as meaning armed force.[55] The

[51] B Simma (ed.), *The Charter of the United Nations: A Commentary Volume I* (2nd edn, OUP 2002) (Simma Charter), 118 [17].
[52] UNGA Resolution 2625 (XXV) (24 October 1970) UN Doc A/RES/2625 (XXV) (UNSC 2625).
[53] ibid.
[54] Simma Charter (n 51), [19].
[55] M Virally, 'Art 2 § 4' in JP Cot and A Pellet (eds), *La Charte des Nations Unies* (2nd edn, Economica 1985) 122.

Declaration also notes that 'no State may use or encourage the use of economic political or any other type of measure to coerce another State'.[56] Similarly, General Assembly Resolution 42/22 included indirect force within the Article 2(4) definition of force, stating that States should refrain from

> organizing, instigating, or assisting or participating in paramilitary, terrorist or subversive acts, including acts of mercenaries, in other States' and have a duty to 'abstain from armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements.[57]

In *Military and Paramilitary Activities in and against Nicaragua*, the International Court of Justice found that not all acts which could be broadly interpreted to be 'encouraging', 'assisting', or 'participating', would fall under a violation of the prohibition of the use of force.[58] The Court found that the provision of arms and the training of contra forces was a violation of the prohibition of the use of force, while funding them, though an intervention in Nicaragua's internal affairs, was not.[59] As a consequence, there is no prohibition upon the use of economic sanctions, or a State's refusal to participate in any form of relations with a State. This is because such actions are not specifically intended to interfere with the personality of the State and are simply the State exercising its prerogative as a sovereign State.

[56] UNSC 2625 (n 52).
[57] UNGA Res 42/22 Annex Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, Articles 6 and 7.
[58] *Nicaragua* (n 7), 119 [228].
[59] ibid.

There are three main exceptions to the general prohibition of the use of force: Chapter VII-authorised intervention;[60] individual or collective self-defence under Article 51; and consent to intervention by the State in which the intervention will take place.[61] The Article 51 exception to the use of force and the exception where the intervening State has obtained the consent of the State in which the intervention is taking place, are not relevant to this thesis. This is because both scenarios relate to a distinctly different set of circumstances than those pertaining to humanitarian intervention and the responsibility to protect. Thus, this chapter, and indeed thesis, focusses solely on the exception contained in Chapter VII. Proponents of humanitarian intervention and the responsibility to protect have suggested that the circumstances under which such principles would work result in a fourth exception.[62] Conscious of this, the possibility of the creation of a fourth exception will be dealt with in Chapters Three and Five.

Articles 41 and 42 of the Charter allow for the authorisation of various measures to 'maintain or restore international peace and security' where the Security Council determines 'the existence of any threat to the peace, breach of the peace, or act of aggression'.[63] It is the requirement of Security Council authorisation that allows Chapter VII to protect the basic principle of non-intervention whilst also protecting both the rights of other States and the rights of individuals within

[60] Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, Article 40, 41 and 42.
[61] International Law Commission, 'Articles on the Responsibility of States for Internationally Wrongful Acts', in Report of the International Law Commission on the Work of its 53rd Session, UN Doc A/56/10 Chap. IV (2001) GAOR 56th Session Supp 10, Article 20.
[62] Simma, for example, argues for a fourth exception to exist 'involving terrible dilemmas in which imperative political and moral considerations leave no choice but to act outside the law', B Simma, 'NATO, the UN and the Use of Force: Legal Aspects' [1999] 10 European Journal of International Law 1, 1.
[63] Charter (n 60), Article 39.

States. Before action may be taken under Chapter VII, the Security Council must satisfy several requirements.

First, the Security Council must find that there has either been a threat or breach to the peace, or an act of aggression.[64] As in the case of the prohibition of the threat or use of force, the terms 'threat or breach of the peace' and 'act of aggression' are not defined within Article 39. Krisch and Frowein suggest that peace should be interpreted as an 'absence of organised use of force', as any broader interpretation would result in the 'blurring [of] the contours of the concept'.[65] Although the Security Council accepted that 'the absence of war and military conflicts amongst States does not in itself ensure international peace and security',[66] it went on to note that instability due to economic, social, and ecological problems must be solved by 'working through the appropriate bodies'.[67] Therefore, it seems that there may only be a breach of the peace, or threat of breach of the peace, where armed conflict has occurred or is threatened to occur. Article 39 places a further hurdle, requiring that the Security Council will only decide to take measures where it is necessary to 'maintain or restore *international* peace and security'.[68] The inclusion of the term 'international' is important, because it has caused debate as to whether an internal armed conflict may constitute a breach of the peace which would require the Security Council to act in order to maintain or restore peace.[69] This is because, as noted by Österdahl,

[64] ibid.
[65] Simma Charter (n 51), 720 [6].
[66] UNSC 'Note by the President of the Security Council' (31 January 1992) UN Doc S/23500, 3.
[67] ibid.
[68] Charter (n 60), Article 39 (emphasis added).
[69] J Frowein and N Krisch, 'Article 39' in B Simma (ed.), *The Charter of the United Nations: A Commentary Volume I* (2nd edn, OUP 2002) (Frowein and Krisch) 720 [7].

the original task of the Security Council was to prevent the recurrence of inter-state wars.[70] It can thus be assumed that Article 39 was to be used in circumstances of inter-state conflict given: the inclusion of 'international' in the wording of Article 39; the original purpose of the Security Council; and the fact that Article 2(4) does not prohibit the threat or use of force internally. However, Security Council practice suggests that a threat to peace is willing to be found where internal conflict would resultantly place the international order under threat, thus showing a slow development in the Security Council towards recognising the effects of internal conflict on the international plain.[71] As Chesterman notes, after the Cold War the Security Council began to use a much wider interpretation of Article 39 in assessing where there was a threat to international peace.[72] This can be seen in the Yugoslav War of 1991, when the Security Council determined that the internal fighting which was 'causing a heavy loss of human life and material damage' constituted a threat to international peace and security; accordingly it authorised Chapter VII action in the form of a general embargo on weapons.[73] The same can be seen with regard to the crisis in Liberia in 1992, when the Security Council determined that the deterioration of the internal situation therein and the violation of the Yamoussoukro IV Peace Agreement constituted a threat to international peace and security, thereby implementing the first arms embargo on

[70] I Österdahl, *Threat to the Peace* (Iustus 1998) 18.
[71] J Sorel, 'L'élargissement de la notion de manace contra le paix' in R Pedone, *Le chapitre VII de la Charte des Nations Unies* (Société Française poir le Droit International 1995) 27.
[72] S Chesterman, *Just War or Just Peace? Humanitarian Intervention in International Law* (OUP 2001) 130.
[73] UNSC Resolution 713 (1991) (25 September 1991) UN Doc S/RES/713 (1991).

Liberia under Chapter VII.[74] Indeed, throughout the 1990s, the Security Council continued to find that internal conflicts threatened international peace and security. Through so doing it can be seen to have created a precedent in which the parameters of Article 39 were broadened.[75]

The second requirement is that the Security Council must determine which measures (if any) 'not involving the use of armed force' would be able to give effect to its decision regarding the maintenance or restoration of international peace and security.[76] Such a determination must be made before any Article 42 measures are considered, for Article 42 clearly states that 'should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land as may be necessary'.[77] There is, therefore, a prerequisite that the Security Council consider all measures 'not involving the use of armed forces' before considering greater measures.[78] Such a requirement, in theory, would ensure that the Security Council only exercises its power to authorise measures involving armed force where it is a measure of 'last resort' and no other 'non-military option for the

[74] UNSC Resolution 788 (1992) (19 November 1992) UN Doc S/RES/788 (1992); M Wenzel and S Faltas, 'Tightening the Screws in West Africa' in M Brzoska and G Lopez, *Putting Teeth in the Tiger: Improving the Effectiveness of Arms Embargoes* (Emerald Group Publishing 2009) 106.
[75] Angola 1993, UNSC Resolution 864 (15 September 1993) UN Doc S/RES/864 (1993); Rwanda 1994, UNSC Resolution 918 (1994) (17 May 1994) UN Doc S/RES/918 (1994); Zaire 1996, UNSC Resolution 1078 (9 November 1996) UN Doc S/RES/1078 (1996); Sierra Leone 1997, UNSC Resolution 1132 (1997) (8 October 1997) UN Doc S/RES/1132 (1997); and East Timor 1999, UNSC Resolution 1264 (1999) (15 September 1999) UN Doc S/RES/1264 (1999).
[76] Charter (n 60), Article 41.
[77] ibid Article 42.
[78] ibid Article 41.

prevention or peaceful resolution of [a] crisis' is capable of ending the threat to or breach of international peace and security.[79]

Article 2(7): Non-UN Intervention in Essentially Domestic Matters

Article 2(7), unlike the Articles referenced above, specifically codifies the principle of non-intervention in relation to the United Nations itself. It does so by preventing the United Nations from 'interven[ing] in matters which are essentially within the domestic jurisdiction of any State'.[80] In addition, it clarifies not only that the United Nations must refrain from intervening in essentially domestic matters, but also that States must refrain from referring matters to the United Nations for settlement where they are domestic in nature.[81] The only exception to the limitation set out in Article 2(7) is contained within it and refers to Chapter VII authorisation.[82] Thus, while Article 2(7) protects States from United Nations intervention in domestic matters, the Article does provide that such a protection does not remove the ability of the United Nations to authorise measures under Chapter VII where the matter is a threat to international peace and security.[83] The United Nations has frequently invoked Chapter VII where it has deemed that a conflict, whether inter-state or internal, has posed a threat to international peace and security, as could be seen in the Security Council response to the Somali civil war in 1992.[84] In this case the Security Council deemed that the 'magnitude of the human tragedy caused by the conflict … constitute[d] a threat to international

[79] International Commission on Intervention and State Sovereignty, 'The Responsibility to Protect' (International Development Research Centre, 2001) XIII.
[80] Charter (n 60), Article 2(7).
[81] ibid Article 2(7).
[82] Charter (n 60), Article 2(7) states 'this principle shall not prejudice the application of enforcement measures under Chapter VII'.
[83] ibid Articles 39-42.
[84] Frowein and Krisch (n 69), 704 [8].

peace and security, although the civil war was undoubtedly domestic in nature.[85] Therefore, as noted by Nolte, since then, even internal conflicts are not deemed to be protected by the Article 2(7) prohibition on interference in domestic affairs.[86]

The inclusion of a specific provision removing the ability of the United Nations to intervene in domestic matters shows a deliberate fortification of the non-intervention principle, manifest not only in relation to State-to-State interaction, but also State-to-organisation interactions. As Shen observes, this is evidenced by the fact that, unlike the League of Nations Covenant, which stated that the Council would make recommendations regarding matters 'solely within the domestic jurisdiction' of a State,[87] the United Nations Charter extends this, disallowing United Nations intervention in matters 'essentially within the domestic jurisdiction'.[88] This therefore means that the United Nations has 'further developed'[89] the principle of non-intervention, resulting in its becoming 'one of the seven basic principles of the United Nations and indeed the entire international community'.[90]

Kınacıoğlu comments that, although the Charter fails to provide any concrete definitions for the terms 'not to intervene'[91] and 'matters which are essentially

[85] UNSC Resolution 794 (1992) (3 December 1992) UN Doc S/RES 794 (1992); further examples include: Angola in 1993, UNSC Resolution 864 (1993) (15 September 1993) UN Doc S/RES/864 (1993); Rwanda in 1994, UNSC Resolution 929 (1994) (22 June 1994) UN Doc S/RES/929 (1994); and Albania in 1997, UNSC Resolution 1101 (1997) (28 March 1997) UN Doc S/RES/1101 (1997).
[86] G Nolte, 'Article 2(7)' in B Simma (ed.), *The Charter of the United Nations: A Commentary Volume I* (2nd edn, OUP 2002), 164 [51].
[87] League of Nations Covenant (n 31), Article 15.
[88] Charter (n 60), Article 2(7).
[89] Shen (n 30) 3.
[90] ibid.
[91] Charter (n 60), Article 2(7).

within the domestic jurisdiction',[92] Article 2(7) can, under a strict interpretation, protect States from unwarranted and unnecessary violations of the principle of non-intervention.[93] This is done whilst still permitting the United Nations to maintain power to authorise measures where circumstances fulfil the Chapter VII test.[94] However, as Schachter and Higgins note, the failure to establish concrete definition of intervention or essentially domestic matters has resulted in a flexibility which was, arguably, never intended.[95] Accordingly, United Nations organs have 'a good deal of leeway in applying [the] terms to particular cases'.[96] Regardless of whether a proper interpretation of Article 2(7) has been made regularly by various bodies, the Article provides a tangible sign of the importance of ensuring that the sovereignty of States is maintained through the non-intervention of either other States or international organisations.

The Purpose behind the Principle

Having considered the creation of the principle of non-intervention and the manner in which it became a clear and codified custom, two basic rationalisations for its existence can be seen: the creation and continuance of peace on an international plane; and the removal of imperial designs against weaker States. While it is by no means contended that non-intervention alone can create and sustain peace on an international level, it is argued that maintaining the

[92] ibid Article 2(7).
[93] M Kınacıoğlu, 'The Principle of Non-Intervention at the United Nations: The Charter Framework and the Legal Debate' [2005] X(2) Perceptions Journal of International Affairs 15 (Kınacıoğlu), 23.
[94] ibid.
[95] O Schachter, 'The United Nations and Internal Conflict' in J Moore, *Law and Civil War in the Modern World* (Johns Hopkins University Press 1974), 402; R Higgins, *The Development of International Law through the Political Organs of the United Nations* (OUP 1963), 70.
[96] Kınacıoğlu (n 93), 24.

independence and sovereignty of States enables interaction without fear of imminent intervention in domestic policy. As Shen notes, exceptions to the principle of non-intervention (outside Chapter VII authorisation) allows 'for powerful States to continue their dominance over the world politically, militarily and otherwise'.[97]

The importance of the non-intervention principle in ensuring that international peace and security are maintained was specifically, and consistently, referred to in the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States (the 'Friendly Relations Declaration').[98] The Friendly Relations Declaration noted 'the importance of maintaining and strengthening international peace founded upon freedom, equality [and] justice' and reaffirmed that the 'purpose of the United Nations can be implemented only if States enjoy sovereign equality and comply fully with the requirements of this principle'.[99] More importantly, at three different points, the Friendly Relations Declaration specifically records the importance of: observing States' 'obligation not to intervene in the affairs of any other States'; 'refrain[ing] in their international relations from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State'; and 'refrain[ing] in their international relations from the threat or use of force'.[100] In marking the importance of allowing States to act independently and without fear of unwarranted intrusion, the Friendly Relations Declaration also

[97] Shen (n 30) 16.
[98] UNSC 2625 (n 52).
[99] ibid.
[100] UNSC 2625 (n 52).

indicates the direct correlation between the continuance of peaceful relations between States and adherence to the non-intervention principle.[101] Non-intervention as a principle also protects smaller, weaker countries from the imperialist intentions of larger countries seeking to gain control of other countries for political or economic gain.[102] The principle of non-intervention has, through time, developed into a custom which not only forms the basis of international legal principles but also affords the continuance of international peace and security. Through the formation of the League of Nations in 1919,[103] the principle of non-intervention had become a customary norm in international law. In 1949 the International Court of Justice found in the *Corfu Channel Case* that 'respect for territorial sovereignty is an essential foundation of international relations'.[104] The same sentiment was expressed in 1986 in *Military and Paramilitary Activities in and against Nicaragua*, where the Court noted that 'the fundamental principle of State sovereignty [is that] on which the whole of international law rests'.[105] The independent opinion of Judge Sette-Camara further supported the statement, for he suggested that 'the non-use of force as well as non-intervention … are not only cardinal principles of customary international law but could in addition be recognised as peremptory rules of customary international law which impose obligations on all States'.[106] The principle of non-intervention was confirmed in *Armed Activities on the Territory of the Congo*, where the Court noted that

[101] ibid.
[102] Shen, 16.
[103] League of Nations Covenant (n 31).
[104] *Corfu Channel Case* (*United Kingdom of Great Britain and Northern Ireland v Albania*) (Merits) [1949] ICJ Rep 35, 106 [202].
[105] *Nicaragua* (n 7), 123 [263].
[106] *Nicaragua* (n 7), (Separate Opinion of Judge Sette-Camara) 194.

intervention in another State violated the principle of non-intervention.[107] Therefore, if any argument for the use of humanitarian intervention can be made, it must consider whether there is the scope and ability to override such a fundamental tenet of international law in the name of protecting civilians and bringing to an end internal conflicts that are seen to jeopardise the human rights of individuals.

[107] *Armed Activities on the Territory of the Congo* (*Democratic Republic of the Congo v Uganda*) (Judgment) [2005] ICJ Rep 168, 227 [163] – [164].

Chapter Three:

The Theory of Humanitarian Intervention

Introduction

Chapter Two considered the three main exceptions to the Article 2(4) restriction on the threat or use of force: Chapter VII Security Council authorisation;[1] collective or individual self-defence under Article 51[2] of the Charter; and consent to the threat or use of force within a State's territory.[3] Each exception exists within the Charter, providing legitimate circumstances where the prohibition of force may be disregarded, and was formed within a "State-centred system". It was only after the Second World War that international law began to turn from a State-centric system to one which placed greater importance on the rights of individuals. With that change in focus, a possible fourth exception emerged in the form of humanitarian intervention.[4] As Peters notes, 'with the codification of international human rights after the Holocaust and World War II', the international legal system placed increased reliance on the importance of protecting human rights and 'State sovereignty and human rights [were not] approached in a balancing process … but ... tackled on the basis of a presumption in favour of humanity'.[5] However, regardless of the greater legal focus on individual rights, humanitarian intervention has no clear standing within the

[1] Charter of the United Nations (adopted 26 June 1945, entry into force 24 October 1945) 1 UNTS XVI, Article 39.
[2] ibid, Article 51.
[3] International Law Commission, 'Articles on the Responsibility of States for Internationally Wrongful Acts', in Report of the International Law Commission on the Work of its 53rd Session, UN Doc A/56/10 Chap. IV (2001) GAOR 56th Session Supp 10, Article 20.
[4] A Peters, 'Humanity as the A and Ω of Sovereignty' [2009] 20(3) European Journal of International Law 513 (Peters), 514.
[5] ibid, 513.

Charter. Benjamin comments that 'since the inception of the [Charter] humanitarian intervention has been considered illegal, although the Charter does not explicitly ban it'.[6] The reason for unilateral humanitarian intervention often being labelled as 'illegal'[7] or 'illegitimate'[8] comes from the position that humanitarian intervention need not exist under the pre-existing exception of Chapter VII authorisation. Instead it is proposed to exist under a wholly separate exception: one which has little basis under the Charter other than under the auspices of maintaining international peace and security, according to some proponents of humanitarian intervention.[9] Due to a continued lack of Security Council pre-authorisation and oversight in unilateral humanitarian intervention, many academics[10] argue that 'the cost of the potential abuse of pretextual interventions … outweigh[s] any benefit derived from altruistic interventions'.[11] Thus, failures to obtain any form of UN approval prior to so-called humanitarian interventions have led to them becoming the '*bête noire* of the international law system'.[12] Further, such failure has resulted in the Report of the International Commission on Intervention and State Sovereignty recommending the creation of

[6] B Benjamin, 'Unilateral Humanitarian Intervention: Legalizing the Use of Force to Prevent Human Rights Atrocities' [1993] 16 Fordham International Law Journal 120 (Benjamin), 121.
[7] ibid, 122.
[8] M Karoubi, 'Unilateral Use of Armed Force and the Challenge of Humanitarian Intervention in International Law' [2002] 10 Asian Yearbook of International Law 95 (Karoubi), 99.
[9] F Tesón, 'The Liberal Case for Humanitarian Intervention' in J Holzgrefe and R Keohane (eds), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (CUP 2003) (Tesón Liberal Case) 93.
[10] I Brownlie, 'Humanitarian Intervention' in J Moore (ed.), *Law and Civil War in the Modern World* (1974) 217; V Kartashkin, 'Human Rights and Humanitarian Intervention' in L Damrosch and D Scheffer (eds), *Law and Force in the New International Order* (1991) 202; F Jhablava, 'Unilateral Humanitarian Intervention and International Law' [1981] 21 International Journal of International Law 208, 210; J Shen, 'The Non-Intervention Principle and Humanitarian Interventions under International Law' [2001] 7 International Legal Theory 1 (Shen), 2.
[11] Benjamin (n 6), 122.
[12] A O'Donoghue, 'Humanitarian Intervention Revisited' [2005] 1 Harvard Law Review 165 (O'Donoghue), 165.

a similar principle, the responsibility to protect, based and placed within the Chapter VII exception.[13]

In order to determine the legal acceptability of any form of exception to the prohibition on force based on humanitarian principles, the background and development of the original concept of humanitarian intervention must be understood. It was noted in Chapter One that this thesis seeks only to discuss non-consensual trans-boundary military interventions by a single State or group of States, which are justified on the basis of ending or preventing grave and widespread violations of fundamental human rights of individuals who are not nationals of the intervening State, and for which the acting States have not received prior Security Council Chapter VII authorisation. First, this chapter will address the theoretical foundations upon which humanitarian interventions lie, looking at the principles and justifications for the use of force in other States. Secondly, the moral and legal arguments that humanitarian interventionists advance to justify the creation of a new legal norm will be analysed critically. Thirdly, this chapter discusses the authority upon which humanitarian intervention is based, the reasoning behind the lack of Security Council authorisation in humanitarian interventions, and the possibility of abuse in humanitarian intervention. In so doing this chapter does not expressly consider interventions themselves; rather, an analysis of possible humanitarian interventions will be undertaken in Chapter Four so as to allow a comprehensive study of interventions both before and after 1990.

[13] ICISS, *The Responsibility to Protect* (International Development Research Centre 2005).

Foundations of Humanitarian Interventions

Humanitarian interventionists argue that while States maintain sovereignty, such sovereignty is inherently tied to the ability of the State to 'secure the fundamental rights of its citizens' and that 'sovereignty exists only to the extent that [the State] facilitates that function'.[14] Accordingly, Franck suggests that 'governments derive their power from the consent of those they govern',[15] for without the existence of individuals within the State there would be nothing to govern.[16] Indeed, the State itself would fail to exist – for mere territory does not encompass statehood, as is noted in the permanent population criterion of the Montevideo Convention.[17] Eckert observes that, in return for the power afforded to the government of a State by its people, the former must accept that the citizens of the State have fundamental rights which must be afforded, protected, and allowed by the latter.[18]

The 'social contract'[19] between the State and its people is what gives rise to the State's implicit promise to 'respect those rights and the limitations they place on sovereign power'.[20] Where the 'contract' is broken, there is a consequent loss of State rights, such as the right to non-intervention.[21] Thus, Nardin asserts that 'a government that commits great crimes against its own people or some portion of

[14] M De Sousa, 'Humanitarian Intervention and the Responsibility to Protect: Bridging the Moral/Legal Divide' [2010] 16 University College of London Jurisprudence Review 51 (De Sousa), 55-56.
[15] T Franck, 'The Emerging Right to Democratic Governance' [1992] 86 American Journal of International Law 46 (Franck), 46.
[16] A Eckert, 'The Non-Intervention Principle and International Humanitarian Interventions' [2001] 7 International Legal Theory 48 (Eckert), 50.
[17] Montevideo Convention on the Rights and Duties of States (adopted 26 December 1933, entered into force 26 December 1934) 165 LNTS 19, Article 1.
[18] Eckert (n 16), 52.
[19] Franck (n 15), 46.
[20] Eckert (n 16), 51.
[21] As Téson notes, 'tyranny and anarchy cause the … collapse of sovereignty': Tesón Liberal Case (n 9) 93.

them cannot be said to represent them … [such] misconduct undermines [the State's] claim to sovereignty'.[22] It follows, therefore, that sovereignty as a concept 'encompasses both rights and responsibilities'[23] with human rights being its 'guiding principle'[24] and 'sovereignty and independence becom[ing] conditional'.[25] However, the responsibility to 'guard the rights of [the State's] own citizens'[26] extends not only to the State itself but also to the international community as a whole. This means that where the international community is aware that a State is either 'unwilling or unable to protect'[27] its citizens, other States must assist 'those oppressed subjects'.[28] Such a theory is derived from the teachings of Grotius, who posited that, where a tyrant practised atrocities against his citizens, it was not fathomable that foreign States had no ability to fight on behalf of the oppressed citizens – thus, some form of intervention must be allowed on purely moral grounds.[29]

Moral and Legal Arguments

Arguments for humanitarian intervention can be broadly categorised into two different types: moral and legal. This section first critically analyses the moral arguments advanced in defence of humanitarian intervention and thereafter analyses the legal arguments used to suggest that humanitarian interventions do

[22] T Nardin, 'From Right to Intervene to Duty to Protect: Michael Walzer on Humanitarian Intervention' [2013] 24(1) European Journal of International Law 67, 69.
[23] Eckert (n 16), 50.
[24] N Tsagourias, 'Humanitarian Intervention and Legal Principles' [2001] 7 International Legal Theory 83 (Tsagourias), 83.
[25] ibid, 83.
[26] De Sousa (n 14), 56.
[27] ibid, 56.
[28] Benjamin (n 6), 127.
[29] J van der Vyver, 'Statehood in International Law' [1991] 5 Emory International Law Review 9, 76 and H Grotius, *De Jure Belli Esti Pacis* (W Whewell tr, CUP 1853).

not violate the principle of non-intervention enshrined in the United Nations Charter. It was suggested by Tesón that there are three main moral assumptions for humanitarian intervention: 'We all have (1) the obligation to *respect* [human] rights; (2) the obligation to *promote* such respect for all persons; (3) depending on the circumstances, the obligation to *rescue* victims of tyranny or anarchy'.[30] If these three moral assumptions are accepted, then it follows that there is a general duty upon all people to ensure that all rights are respected.[31] Sherman extends this argument, claiming that where people are deprived of their basic human rights, the rest of the international community has a duty to rescue the abused from their abusers.[32] Thus, a common thread of such arguments is that humanitarian intervention is 'morally permissible' to end injustices perpetrated against others, even when they occur within a sovereign State.[33] However, beyond the moral basis of protecting those who cannot protect themselves, there is a general lack of clear justification for the creation of an obligation for all persons to rescue those whose rights have been violated. Indeed, national law suggests that there is no general duty to act in aid of other citizens; though there may be a personal moral impetus to help those being harmed, there is usually the requirement of a special relationship to exist before a failure to act can be considered an offence.[34]

[30] Tesón Liberal Case (n 9) 93.
[31] T Pogge, 'Cosmopolitanism and Sovereignty' in C Brown (ed.), *Political Restructuring in Europe: Ethical Perspectives* (Routledge 1994) 89.
[32] N Sherman, 'Empathy, Respect, and Humanitarian Intervention' [1998] 12(1) Ethics and International Affairs 103, 105.
[33] Tesón Liberal Case (n 9) 94.
[34] This can be in the form of accepting a duty of care, as in the relationship between doctor and patient, or where a duty of care merely exists, as in the case of mother and child; *R v Miller* [1983] 2 AC 161; *R v Gibbons and Proctor* [1918] 13 Cr App R 134; *R v Sheppard* [1862] Le & Ca 147; *R v Smith* [1979] Crim LR 251.

Chesterman maintains that a central tenet of moral arguments in favour of humanitarian intervention is that there exists a choice between either doing something, such as military intervention, or doing nothing, which would be morally abhorrent.[35] The presentation of such an "either/or" theory was made by the then-Prime Minister of the United Kingdom, Tony Blair, in commenting upon the NATO intervention in Kosovo,[36] when he suggested that the international community had either the choice to stand by and do nothing to help the plight of Albanian Kosovars, or to act in the form of military intervention involving the use of 'B-52s, cluster bombs and depleted uranium ordnance'.[37] That it is difficult morally to refrain from action while innocent people are subjected to horrendous violence does not equate to a legal justification for intervention.[38] Chesterman contends that the oversimplification of the humanitarian intervention into an "either/or" question both refuses to recognise the possibility of alternative measures aimed at peacefully bringing a crisis to an end, and creates a dichotomy that is 'false, misleading, and dangerous'.[39]

Tesón asserts that the use of moral justifications, in addition to legal justifications, is necessary on the basis that, in other areas of law, there is a direct connection between law and morality.[40] Accordingly, he suggests that the tradition of staying

[35] S Chesterman, *Just War or Just Peace: Humanitarian Intervention and International Law* (OUP 2001) (Chesterman Just War) 236.
[36] R Sylvester, 'The Blair Doctrine: This is an Ethical Fight' *Independent* (28 March 1999) <http://www.independent.co.uk/life-style/war-in-europe-the-blair-doctrine-this-is-an-ethical-fight-1083648.html> accessed 23 September 2013.
[37] Chesterman Just War (35), 221.
[38] A Cassese, 'Ex iniuria ius oritur: Are We Moving towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community?' [1999] 10 European Journal of International Law 23, 25.
[39] Chesterman Just War (35), 236.
[40] F Tesón, *Humanitarian Intervention: An Inquiry into Law and Morality* (Transnational Publishers 1997) (Tesón Humanitarian Intervention) 7; also supported by R Dworkin, *Taking*

away from purely moral arguments in international law should be departed from, in preference to focussing on a theoretical framework.[41] Tesón maintains that humanitarian intervention can exist legally under international law on the basis that there exists a moral requirement to act.[42] However, Austin argued that there is a clear distinction between the law as it is and the law as it ought to be.[43] Thus, regardless of any moral objections one might have regarding a particular law, the law still continues to exist; moral disdain does not remove the existence of law – it stands by itself.[44] Hart concurred, suggesting that while morality and the law may intersect at times, the law is still separate.[45] Therefore, while the creation of law may be influenced by moral standards, moral standards themselves cannot create law. Moreover, even if it were accepted that morals could create law, the inclusion of a broad moral philosophy fails to acknowledge that international ideological and cultural beliefs are too diverse to apply to a single principle.[46] Moral justifications, or situations of excusable breach, are by their very nature part of 'the pattern of the Grotian just war logic'[47] and come 'from the world of political science or philosophy [rather] than from international law'.[48] Thus it is advanced that whilst the inclusion of moral principles in international law is not

---

Rights Seriously (Harvard University Press 1978), 81; and R Dworkin, *Law's Empire* (Hart Publishing 1986) 97.

[41] Tesón Humanitarian Intervention (n 40), 7.

[42] ibid.

[43] J Austin, *The Province of Jurisprudence Determined* (John Murray 1832) 184.

[44] ibid 185.

[45] H Hart, 'Positivism and the Separation of Law and Morals' [1957] 71 Harvard Law Review 593 (Hart), 598.

[46] B Parekh, 'Rethinking Humanitarian Intervention' [1997] 18 International Political Science Review 49, 54.

[47] P Valek, 'Is Unilateral Humanitarian Intervention Compatible with the UN Charter' [2005] 26 Michigan Journal of International Law 1223 (Valek), 1229.

[48] ibid 1230.

objectionable *per se*, the sole use of moral justifications to argue for the creation of a norm lacks the necessary framework inherent in international principles.[49]

Finally, the concept of a morally acceptable exception being able to become legally satisfactory stems from the theory of 'just war',[50] which, as Bothe notes, related to where a war 'was lawful when fought for a just purpose by just means'.[51] The just war principle itself was developed both 'at the time of some of Europe's most savage religious wars'[52] and when 'war was considered a legitimate means to conduct international relations'.[53] As such, Grotius explained the purpose behind just war was punishment,[54] which was 'necessary to preserve order in a society lacking any higher tribunal to resolve disputes'.[55] However, as Akehurst has noted, 'the use of force as a sanction for a breach of an international obligation may do more harm than the breach of the international obligation; the cure is often worse than the disease'.[56] Indeed, the use of force in an already volatile environment may be counter-productive,[57] creating greater violence within a State, as was seen in the intervention in Kosovo where ethnic cleansing was used as a tool of retaliation against NATO forces.[58] Resultantly, 'international

[49] ibid 1230.
[50] ibid 1224.
[51] M Bothe, 'Terrorism and the Legality of Pre-emptive Force' [2003] 14 European Journal of International Law 227 (Bothe), 237.
[52] Chesterman Just War (35), 11.
[53] N Krylov, 'Humanitarian Intervention Pros and Cons' [1995] 17 Loyola of Los Angeles International and Comparative Law Review 365 (Krylov), 368.
[54] H Grotius, *De Jure Belli ac Pacis Libri Tres* (first published 1625, Clarendon Press 1925) II(i), §2.
[55] J Eppstein, *The Catholic Tradition of the Law of Nations* (Burns Oates & Washbourne 1935) 97.
[56] M Akehurst, 'Humanitarian Intervention' in H Bull (ed.), *Intervention in World Politics* (Clarendon Press 1984) 111.
[57] Shen (n 10), 10.
[58] Text to (n 159) in Chapter Four.

legal literature abandoned the "just war doctrine"'[59] due to the inherent problem that under this doctrine it was 'impossible to determine in any particular case whose case was just and whose not'.[60] Consequently, it is doubtful whether a theory which relies upon principles of punishment, framed when war was considered a normal method of State interaction, and when moral justifications were acceptable as legal justifications, could be supported in light of the express prohibition in Article 2(4) of the Charter and the move towards a 'severance of morality from the law'.[61]

The most significant impediment to a claim that unilateral humanitarian intervention is a legal norm is the Article 2(4) prohibition on the threat or use of force.[62] However, humanitarian interventionists claim that Article 2(4) does not prohibit all threats or uses of force; rather, it only prohibits force used 'against [the] territorial integrity or political independence of any State'.[63] In supporting this, Tesón argues that, had the intention of the drafters been to prohibit all uses of force, they would have done so expressly by refraining from including a qualifying phrase.[64] Accordingly, scholars such as Stone suggest that humanitarian intervention falls outside the Article 2(4) prohibition on the basis that the former is consistent with the purposes of the United Nations because the protection of human rights is necessary to promote international peace and

[59] Valek (n 47), 1224.
[60] Bothe (n 51), 238.
[61] T Franck, 'Interpretation and Change in the Law of Humanitarian Intervention' in J Holzgrefe and R Keohane (eds), *Humanitarian Intervention: Ethnic, Legal and Political Dilemmas* (CUP 2003) 208.
[62] Text to (n 104) in Chapter Two.
[63] A D'Amato, *International Law: Process and Prospect* (Transnational 1987) 57; Tesón Humanitarian Intervention (n 40), 150; J Stone, *Aggression and World Order* (University of California Press 1958) (Stone) 95; R Lillich, 'Forcible Self-Help by States to Protect Human Rights' [1967] 53 Iowa Law Review 325, 336.
[64] Tesón Humanitarian Intervention (n 40), 151.

security.[65] In advancing this view, Tesón further contends that interventions in tyrannical or anarchical States are in accordance with the Charter on the basis that they promote human rights.[66] Therefore, given that the promotion of human rights is a purpose of the Charter, to prohibit the use of force under that purpose is claimed to be a distortion of Article 2(4).[67] However, as Chesterman observes, the *travaux préparatoires* clarified that the intention was not to create a limited prohibition on the use of force,[68] but instead a broad prohibition in line with the purpose of the United Nations to 'save succeeding generations from the scourge of war'.[69] During the United Nations Conference on International Organization, in 1945, the United States declared that 'the intention of the authors of the original text was to state in the broadest terms an absolute all-inclusive prohibition; the phrase 'or in any other manner' was designed to ensure that there should be no loop-holes'.[70] Furthermore, as Brownlie asserts,[71] the inclusion of 'territorial integrity or political independence of any State' in the wording of Article 2(4) strengthens rather than restricts the prohibition of the use of force.[72] This is a proposition supported by Massa, who observes that the phrase was 'inserted as a guarantee for small States to reinforce the impermissible character of recourses to

[65] Stone (n 63), 95.
[66] Tesón Liberal Case (n 9) 93.
[67] W Reisman, 'Humanitarian Intervention to Protect the Ibos' in R Lillich (ed.), *Humanitarian Intervention and the United Nations* (Procedural Aspects of International Law Institute 1973) 177.
[68] Chesterman Just War (35), 49.
[69] Charter (n 1), Preamble.
[70] UNCIO 'Summary Report of Eleventh Meeting of Committee I/1' (4 June 1945) 6 UNCIO 334, 335.
[71] Brownlie's view is generally supported by D Nincic, *The Problem of Sovereignty in the Charter and in the Practice of the United Nations* (Martinus Nijhoff 1970) 72; E Aréchaga, 'International Law in the Part Third of a Century' [1978] 159 Recueil des cours de l'académie de droit international 1, 89; A Randelzhofer, 'Article 2(4)' in B Simma (ed.), *The Charter of the United Nations: A Commentary* (OUP 1994) 117 -118; M Akehurst and P Malanczuk (ed.), *A Modern Introduction to International Law* (7th edn, Routledge 1997) 310.
[72] I Brownlie, *International Law and the Use of Force by States* (OUP 1963) (Brownlie International Law) 267.

force against a State'.[73] The narrow interpretation of Article 2(4) is therefore an attempt to apply the Charter in a manner that provides some legal basis for the principle of humanitarian intervention. However, any interpretation of Article 2(4) that suggests military intervention is not a violation of the territorial or political integrity of a State is, as Schachter posits, only conceivable if using 'an Orwellian construction of those terms'.[74]

This thesis consequently proposes that both the moral and legal arguments for humanitarian interventions fail to support the creation of a legal norm. The contention that all people have an obligation to rescue others from situations of grave dangers lacks legal justification. Indeed, national law specifically moves away from any legal obligation to rescue others.[75] Furthermore, the general reliance humanitarian interventionists place on moral arguments fails to recognise that international law exists separately from moral theory.[76] Moreover, the existence of a moral argument, however persuasive, does not result in the creation of law – though it may influence later developments in law. On this basis, the moral arguments put forward, while valid on a philosophical level, fail to create the necessary foundation for the argument that humanitarian intervention exists as an international norm. It is therefore proposed that the legal argument that humanitarian intervention is permissible under Article 2(4) is tenuous at best and directly contradicts the intentions made clear in the drafting of the Charter. Thus,

[73] A Massa, 'Does Humanitarian Intervention Serve Human Rights? The Case of Kosovo' [2009] 1(2) Amsterdam Law Forum 52, 52.
[74] O Schachter, 'The Legality of Pro-Democratic Invasion' [1984] 78 American Journal of International Law 645, 649.
[75] *Miller* (n 34); *Gibbons and Proctor* (n 34); *Sheppard* (n 34); *Smith* (n 34).
[76] Hart (n 45), 598.

there exist no moral or legal justifications which would result in the creation of an international norm of humanitarian intervention.

Authority in Humanitarian Intervention and the Possibility of Abuse

Under Chapter VII of the Charter, the Security Council may authorise the use of force where there is a threat to international peace and security; such authorisation provides any resultant intervention with a legal basis.[77] Yet, humanitarian interventionists propose that an exception – outside the pre-existing exceptions to the prohibition on the use of force – should be created and which would encompass humanitarian intervention.[78] Such an exception would allow States, independent of oversight, to determine if and when a humanitarian intervention was appropriate, with little to stop larger, more powerful States from 'manipulat[ing] humanitarian concerns and attempt[ing] to use the doctrine as a weapon against weaker States'.[79] It is for this reason that, even where academics agree morally that humanitarian disasters which 'shock the conscience of mankind' must be stopped, the theory's failure to require Chapter VII

[77] Charter (n 1), Articles 39-42.
[78] Eckert (n 16), 56; Tesón Humanitarian Intervention (n 40), 315; A Buchanan, 'Reforming the International Law of Humanitarian Intervention' in J Holzgrefe and R Keohane (eds), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (CUP 2003) 131; R Higgins, 'International Law and the Avoidance, Containment and Resolution of Disputes' [1991] 9 Recueil des Cours de l'Académie de Droit International 230, 313; C Burke, *An Equitable Framework for Humanitarian Intervention* (Hart Publishing 2013) 5; D Luban, 'Just War and Human Rights' [1980] 9 Philosophy and Public Affairs 160, 162; J Moore, *Law and Civil War in the Modern World* (Johns Hopkins Press 1974) 24.
[79] De Sousa (n 14), 56.

authorisation has resulted in a rejection of the humanitarian intervention principle.[80]

The collective argument for allowing unauthorised humanitarian interventions does not wholly lack merit; under Article 27(3) of the Charter, the permanent members of the Security Council hold the ability to veto substantive resolutions with which they disagree on moral, political, or economic grounds.[81] Nakhjavani asserts that, accordingly, the Security Council can be, and has been, 'render[ed] … ineffective' due to its highly politicised nature, resulting in an inability to act swiftly or at all.[82] Such failure to respond adequately due to political issues was evident during the Rwandan genocide, when the plan to deploy 5,500 troops to Kigali[83] was resisted by the United States partly due to 'public reactions to the debacle in Somalia and the aborted mission to Haiti'[84] and as a consequence of Presidential Decision Directive 25,[85] which noted that peace operations were not to be the 'centrepiece of US foreign policy'[86] unless in 'American interests'.[87]

---

[80] J Rytter, 'Humanitarian Intervention without the Security Council: From San Francisco to Kosovo and Beyond' [2001] 70 Nordic Journal of International Law 121 (Rytter), 123.
[81] Charter (n 1), Article 27(3).
[82] A Nakhjavani, 'To What Extent Does a Norm of Humanitarian Intervention Undermine the Theoretical Foundations upon which the International Legal Order was Built?' [2004] XVII Windsor Review of Legal and Social Issues 35 (Nakhjavani), 38.
[83] The plan to deploy 5,500 troops to Kigali was first advocated by Secretary-General Boutros Boutrous-Ghali in the Special Report of the Secretary-General on the United Nations Assistance Mission for Rwanda and further advocated the provision of further troops in his letter dated 29 April 1994; UNSC 'Special Report of the Secretary-General on the United Nations Assistance Mission for Rwanda' (1994) UN Doc S/1994/470 [13-14]; UNSC 'Letter Dated 29 April 1994 from the Secretary-General Addressed to the President of the Security Council' (1994) UN Doc S/1994/518.
[84] T Weiss and D Hubert, 'Interventions After the Cold War' in ICISS, *The Responsibility to Protect: Research, Bibliography, Background* (International Development Research Centre 2001) (Weiss and Hubert) 98.
[85] WJ Clinton, 'Presidential Decision Directive NSC-25' (3 May 1994) available at <http://www.clintonlibrary.gov/_previous/Documents/2010%20FOIA/Presidential%20Directives/PDD-25.pdf> accessed 12 August 2013 (Clinton).
[86] Office of the Press Secretary, 'Statement by the Press Secretary: President Clinton Signs New Peacekeeping Policy' (5 May 1994) available at < http://www.fas.org/irp/offdocs/pdd25.htm> accessed 12 August 2013.

Further, as Tesón and Gourevitch comment, many States failed to refer to the massacre in Rwanda as 'genocide' in Security Council meetings in order to avoid the political ramifications of their policies of inaction.[88] Indeed, only after the Report of the Secretary-General on the Situation in Rwanda was published, did Security Council resolutions finally refer to 'genocide' in Rwanda.[89] The refusal of States to acknowledge that the crisis in Rwanda had escalated to genocide, when evidence of that fact was apparent,[90] was based on attempts to avoid the political fallout of inaction. Additionally, it delayed real attempts to bring the crisis to an end, resulting in thousands of deaths.[91] Rwanda is not, however, the only instance where the Security Council failed to act due to a political deadlock. For example, despite the Liberian representative's repeated calls to add the crisis in Liberia to the Security Council agenda,[92] it was never added, with the United States insisting that 'the resolution of [the Liberian] civil war is a Liberian responsibility'.[93] Moreover, during the crisis in Kosovo, Russia and China used

---

[87] Clinton (n 85), 1.
[88] Tesón Humanitarian Intervention (n 40), 260; P Gourevitch, *We Wish to Inform You that Tomorrow We Will Be Killed with Our Families* (Picador 1999) 152.
[89] The first mention of the massacre in Rwanda being a massacre was in Security Council Resolution 925 (1994) on 8 June 1994, by which point the estimated death toll was between 250,000 and 500,000 UNSC Res 925 (1994), UN Doc S/1994/925.
[90] The United Nations Force Commander in Rwanda, Romeo Dallaire, sent a cable in January 1994 notifying the military adviser to the Secretary-General that an informant suspected that the hoarding of weapons and military training of men was to facilitate the 'extermination' of the Tutsi people; the same informant noted that Interhamwe troops could kill 1,000 Tutsis in 20 minutes; see Appendix 4 in R Bagudu, *Judging Annan* (Author House 2007). It is estimated that by 17 April 1994, in Kibuye Prefecture alone, 36,799 Tutsis were killed as victims of genocide; P Verwimp, 'Death and Survival During the 1994 Genocide in Rwanda' [2004] 58(2) Population Studies 233, 240.
[91] A Kuperman, *The Limits of Humanitarian Intervention: Genocide in Rwanda* (Brookings Institution Press 2001), 100.
[92] M Barton, 'ECOWAS and West African Security: The New Regionalism' [2000] 4 DePaul International Law Journal 79, 95; D Wippman, 'Enforcing the Peace: ECOWAS and the Liberian Civil War' in L Damrosch (ed.), *Enforcing Restraint: Collective Intervention in Internal Conflicts* (Council on Foreign Relations 1991) 225.
[93] Though it should be noted that the United States did make the effort to evacuate its nationals in August of 1990; J Levitt, 'Humanitarian Intervention by Regional Actors in Internal Conflicts: The

the threat of veto to ensure that Resolution 1203 (1998) did not authorise the use of force,[94] which, humanitarian interventionists argue, was the catalyst for NATO involvement.[95]

Given the effects that both politics and the veto power have had within the Security Council, humanitarian interventionists such as Eckert maintain that there must be a legal ability for States to exert 'the unilateral use of force to achieve a humanitarian purpose'.[96] However, due to political stonewalling in the period shortly after the Cold War, the determination that a bypass to the system of Security Council authorisation should exist simply trades an undesirable situation for an even less desirable set of circumstances. The lack of Security Council authorisation, as noted by Rytter, results in humanitarian intervention lacking an 'explicit legal basis'.[97] Indeed, without a solid legal foundation, humanitarian intervention is legitimised only by the argument that there exists a 'positive moral duty'[98] or 'moral imperative'[99] which can be invoked in order to protect the innocent, or that, in exigent circumstances, humanitarian intervention may fall under an 'excusable breach'.[100] Without any form of oversight from the international community before intervention takes place, 'humanitarian

---

Cases of ECOWAS in Liberia and Sierra Leone' [1998] 12(3) Temple International and Comparative Law Journal 333, 345.

[94] It should be noted that regardless of a distinct lack of authorisation of the use of force in Resolution 1203 (1998) the United States declared that the NATO allies 'had the authority' to use force in Kosovo; UNSC Res 1203 (1998) UN Doc S/1994/1203; UNSC Verbatim Record (24 October 1998) UN Doc S/PV.3937, 15.

[95] F Tesón, 'Kosovo: A Powerful Precedent for the Doctrine of Humanitarian Intervention' [2009] 1 Amsterdam Law Forum 42, 43.

[96] Eckert (n 16), 58.

[97] Rytter (n 80), 123.

[98] De Sousa (n 14), 56.

[99] Karoubi (n 8), 111.

[100] Y Dinstein, 'Comments on War' [2004] 27 Harvard Journal of Law and Public Policy 877, 881.

intervention [becomes] prone to abuse',[101] for 'experience has shown how readily more powerful states have used the pretext of a higher good to impose their will and values on weaker states'.[102] Indeed, the risk of abuse is made greater by the fact that the principle of humanitarian intervention lacks a 'coherent legal regime',[103] which allows States to use vague moral concepts to hide their true intentions.[104] States have utilised vague humanitarian grounds to justify intervention with the intention of colonisation before;[105] however, in response to such previous abuses, nothing has been done to remove the prospect of similar abuse in its formulation.[106] Accordingly, the creation of a humanitarian intervention exception would risk the creation of a hierarchical State system similar to that in colonial times, in which "civilised" States, viewed as the protectors of human rights, would intervene in "less civilised" States for the latter's own protection.[107] The likelihood of such a humanitarian intervention principle being abused is further supported by the fact that States have abused the right of intervention in well-structured legal principles such as self-defence. As will be noted in Chapter Four, the United States 1965 intervention in the Dominican Republic[108] and 1983 intervention in Grenada, which were justified as operations for the protection of nationals abroad, but were actually based on the

[101] De Sousa (n 14), 56.
[102] F Hassan, 'Realpolitik in International Law: After Tanzanian-Ugandan Conflict "Humanitarian Intervention" Re-examined' [1981] 17 Willamette Law Review 859, 860.
[103] Chesterman Just War (35), 231. Arguments for humanitarian intervention range from interventions in any tyrannical or anarchical regime to only in cases where there is the commission of war crimes or large scale systematic killing; Tesón Liberal Case (n 9) 93; T Weiss, *Humanitarian Intervention* (Polity Press 2012) (Weiss) 69.
[104] R Falk, *Legal Order in a Violent World* (Princeton University Press 1968) 161.
[105] Weiss (n 103), 12.
[106] M Marcus, 'Humanitarian Intervention without Borders: Belligerent Occupation or Colonization?' [2003] 25 Houston Journal of International Law 99, 136.
[107] Weiss (n 103), 134.
[108] Text to (n 33) in Chapter Four.

United States hoping to be able to influence the States' political structures.[109] Thus, as Chesterman notes, providing further opportunities for intervention with little legal structure would only result in the creation of a dangerous norm.[110]

Brownlie's assertion that 'no genuine case of humanitarian intervention has occurred, with the possible exception of the occupation of Syria in 1860 and 1861'[111] may sound exaggerated; yet, the reality of how open to abuse humanitarian intervention is must be confronted, for 'the fact that the use of force for humanitarian purposes is susceptible to abuse and may lead to casualties is too important to ignore'.[112] While humanitarian interventionists may argue that every norm is prone to abuse, and that States could just as easily abuse the right to self-defence or other justifications for the use of force, it must be considered, as Hipold notes, that the 'the problem [of abuse] is particularly pressing in cases where a satisfactory control mechanism is lacking'.[113] The lack of Security Council authorisation for humanitarian intervention means that there is a definitive absence of any form of control mechanism; thus, while the Security Council may, at times, work ineffectively, it at least provides a 'safety net' of supervision that humanitarian intervention does not. The more pragmatic response to concerns over Security Council ineffectiveness would surely be to address the factors which result in delays, such as those seen during the Rwandan genocide

[109] Text to (n 87) in Chapter Four.
[110] Chesterman Just War (35), 231.
[111] Brownlie (n 72), 370.
[112] Krylov (n 53), 403.
[113] P Hipold, 'Humanitarian Intervention: Is There a Need for a Legal Reappraisal?' [2001] 12 European Journal of International Law 437, 455.

and the crisis in Kosovo, and to create a system to limit the effects of over-politicisation and veto power.[114]

Conclusion

At the end of the Second World War the international community was in a state of shock.[115] Years of war had left economies in ruins, the populations of nations scarred, and infrastructure devastated.[116] It was on this basis that international law began to become more centred on the individual,[117] particularly with the inception of the Charter, which ushered in greater respect for fundamental rights and freedoms.[118] Moreover, the Charter emphasised the importance of maintaining international peace and security universally.[119] As a consequence, humanitarian interventionists found that individuals could be placed at the centre of sovereignty; with sovereignty being 'limited by human rights' and 'from the outset determined and qualified by humanity'.[120] Upon this basis States gain not only their sovereignty from the individual but also rights and responsibilities.[121] Only where a State fulfils its responsibilities to its people can it maintain its rights to non-intervention and protection from the use of force;[122] when States fail to afford citizens their fundamental rights or fail to protect them, their rights to non-

[114] O'Donoghue (n 12), 173; Peters (n 4), 539; Valek (n 47), 1251.
[115] Peters (n 4), 514.
[116] RP Dockerill, 'Local Government Reform, Urban Expansion and Identity: Nottingham and Derby 1945-1968' (PhD thesis, University of Leicester 2013) 60.
[117] Eckert (n 16), 50.
[118] Charter (n 1), Preamble.
[119] ibid, Article 1.
[120] Peters (n 4), 514.
[121] De Sousa (n 14), 55.
[122] Franck (n 15), 46.

intervention disappear.[123] It is at this point, where theoretically a State's rights are withdrawn, that humanitarian interventions may occur.[124] On the basis that the State no longer has a right to non-intervention, there is no need for intervention to be authorised by the Security Council for the State has failed in its duties. Furthermore, authorisation is disregarded due to the presumed weaknesses and past failures of the Security Council to remain effective.[125] Past failures to prevent over-politicisation[126] and misuse of the veto power[127] are used as reasons for avoiding the possible prolonging of humanitarian crises and Security Council authorisation is ignored completely. However, the failure to obtain Security Council authorisation provides greater opportunities for long-term damage to occur through the abuse of the humanitarian intervention principle. Moreover, a lack of oversight and vigorous debate results in the ability for States to take unilateral action under the guise of humanitarian grounds while using humanitarian intervention as a 'high-sounding and convenient tool for maintaining, and yet concealing, their dominance and their supremacy'.[128] It is upon this understanding of humanitarian intervention that Chapter Four analyses various proposed humanitarian interventions, their premises and their legal justifications.

[123] Tsagourias (n 24), 83.
[124] Tesón Liberal Case (n 9), 93.
[125] Nakhjavani (n 82), 38.
[126] UNSC 'Provisional Verbatim Record of the Three Thousand and Forty-Sixth Meeting of the Security Council' (January 31 1992) UN Doc s/PV.3046, 93.
[127] Weiss and Hubert (n 84), 112.
[128] Shen (n 10), 10.

Chapter Four:

Humanitarian Intervention in Practice

Introduction

Academics suggest that between the creation of the United Nations Charter in 1945 and 2001, when the principle of the responsibility to protect was first proposed, various humanitarian interventions occurred which created the necessary State practice to result in humanitarian intervention becoming custom.[1] In order for any form of custom to have developed, there must have been both 'extensive and virtually uniform' State practice, and evidence of *opinio juris*.[2] However, what can be seen from the interventions which have taken place is that State practice has been far from extensive, with only two or three possible humanitarian interventions taking place in that time. Additionally, State practice varied drastically between interventions, in both method and reason for intervention.[3] States have assiduously refrained from naming humanitarian intervention as the legal justification for their intervention;[4] instead, States have relied mainly upon the justification of self-defence, indicating that they understood that humanitarian intervention as a political, not legal, concept and

[1] P Hipold, 'Humanitarian Intervention: Is There a Need for a Legal Reappraisal?' [2001] 12 European Journal of International Law 437 (Hipold), 443; A O'Donoghue, 'Humanitarian Intervention Revisited' [2005] 1 Harvard Law Review 165, 167; P Valek, 'Is Unilateral Humanitarian Intervention Compatible with the UN Charter? [2005] 26 Michigan Journal of International Law 1223, 1243.
[2] *North Sea Continental Shelf Case (Federal Republic of Germany/Netherlands)* (Judgment) [1969] ICJ Rep 3 (*North Sea*), 43 [74].
[3] S Chesterman, *Just War or Just Peace: Humanitarian Intervention in International Law* (OUP 2001) (Chesterman Just War) 86.
[4] ibid 87.

therefore inadmissible as a legitimate justification for intervention.[5] Furthermore, while States did cite, mostly in political terms, humanitarian aims among the reasons for such interventions, at no point was humanitarian intervention used as the sole reason for action. It follows that no custom of humanitarian intervention could have been created and, therefore, humanitarian intervention as a concept is only a moral theory based upon no law.

Of all the interventions which took place, it is proposed that only two, Iraq and Kosovo, qualify for what may be considered humanitarian intervention. Both circumstances, however, 'lack the necessary *opinio juris* that might transform the exception into the rule'.[6] While custom can develop over a short period of time, as in the case of space exploration, there is still a requirement that there is consistency across the States participating and the existence of *opinio juris.*[7] This chapter will review the various suggested humanitarian interventions in two sections; first, interventions during the Cold War and before 1990, and secondly those between 1990 and 2001. In examining the interventions of the latter half of the twentieth century, this thesis will determine whether any custom in relation to humanitarian intervention could have been formed through State practice and *opinio juris.*

[5] OECS, 'Press Release' (21 October 1983) cited in W Gilmore, *The Grenada Intervention: Analysis and Documentation* (Facts on File Publications 1984) (Gilmore) 92.
[6] Chesterman Just War (n 3), 87.
[7] *North Sea* (n 2), 43 [74]. In relation to space exploration, as noted by Vereshchetin and Danilenko, the period during which custom was formed was dominated by the participating States entering into various treaties regulating space exploration – this indicated the uniform nature of the custom and showed the requisite *opinio juris*; V Vereshchetin and G Danilenko, 'Custom as a Source of International Law of Outer Space' [1985] 13 Journal of Space Law 22, 22.

Humanitarian Interventions prior to 1990

Belgian Interventions in the Congo

During the 1960s, Belgium intervened in the Congo on two separate occasions: the first, in 1960, was shortly after the Congo declared independence;[8] and the second intervention was undertaken with the United States, in 1964.[9] Military discontent, caused by racial tensions, came to a head shortly after the Congo declared independence from Belgium[10] with the mutiny of the Force Publique.[11] Within days the country was in chaos and both European and Congolese citizens were the victims of murder, assault and rape.[12] In response to the mutiny and violence, Europeans began to panic and flee to Elizabethtown and Stanleyville.[13] On 10th July 1960, Belgian forces already stationed within the country were ordered to take control of cities in an attempt to halt the progress of violence and, in addition, further Belgian troops were sent to continue to ensure order.[14] The Congolese reaction to the Belgian intervention was far from positive; the Congolese government sought assistance from the United Nations in relation to what it termed 'an act of aggression'.[15] Following debate at the 873rd meeting of the Security Council on 13th July 1960, a unanimous resolution was passed,

[8] E Lefever, *Crisis in the Congo* (Brookings Institution 1965) (Lefever) 6.
[9] Hipold (n 1), 444.
[10] 30th June 1960; W Rosenberger and H Tobin (eds), *Keesing's Contemporary Archives* (Keesing's Publications 1960) 17639.
[11] The military mutinied just four days after independence was declared; L Vanderstaeten, *De la Force Publique à l'Armée nationale congolaise: histoire d'une mutinerie* (Académie royale de Belgique 1993) 467.
[12] Lefever (n 8), 11.
[13] O Lanotte, 'Chronology of the Democratic Republic of Congo/Zaire (1960-1997)' *Encyclopaedia of Mass Violence* (6 April 2010) < http://www.massviolence.org/Chronology-of-the-Democratic-Republic-of-Congo-Zaire-1960-1997> accessed 14 August 2013.
[14] G Vanthemsche, *Belgium and the Congo 1885-1980* (CUP 2012) 210.
[15] UNSC, 'Cable from the President of the Republic of the Congo and Supreme Commander of the National Army and the Prime Minister and Minister of National Defence Addressed to the Secretary-General of the United Nations' UN Doc S/4382.

calling upon Belgium to withdraw its troops and authorising United Nations military assistance.[16] Although Belgium did note in the Security Council debate that it had intervened in the Congolese crisis in the hope of 'protecting human lives in general', it repeatedly stated that the primary purpose for the intervention was 'to ensur[e] the safety of European and other members of the public'[17] and that troops 'intervened to the extent necessary to fulfil our sacred duty to protect the lives and honour of our nationals'.[18] It is the continued reference to the protection of nationals that resulted in the intervention not being categorised as constituting a humanitarian intervention.[19]

The second Belgian intervention in the Congo followed four years of unrest after the intervention in the 1960 crisis. A 'government of reconciliation' was established with Moise Tshombe, the leader of an attempted secessionist movement in the 1960 crisis, being appointed Prime Minister.[20] Responses to Tshombe's appointment were poor, with rebel forces loyal to former Prime Minister Patrice Lumumba advancing throughout the Congo.[21] Tshombe, in an attempt to control the fast-spreading rebel forces, employed white mercenaries to quash the rebel movement.[22] With defeat impending, rebel forces notified the Secretary-General that 500 white hostages would be executed in the event of the

[16] UNSC Resolution 143 (1960) (14 July 1960) UN Doc S/4387.
[17] UNSC Verbatim Record (13 July 1960) UN Doc S/PV.873 (UNSC VR 873), [183].
[18] UNSC Verbatim Record (20-21 July 1960) UN Doc S/PV.877, 22-23.
[19] C Gray, *International Law and the Use of Force* (OUP 2000) 108.
[20] T Weiss and D Hubert, 'Interventions Before 1990' in ICISS, *The Responsibility to Protect: Research, Bibliography, Background* (International Development Research Centre 2001) (Weiss and Hubert) 51.
[21] P Schraeder, *United States Foreign Policy Toward Africa: Incrementalism, Crisis and Change* (CUP 1994) 70.
[22] J Le Bailly, *Une poignée de mercenaires* (Presses de la Cité 1967) 242.

continued use of mercenary power.[23] The United States and Belgium received authorisation from Tshombe to undertake a hostage rescue operation within the Congo in 1964,[24] and on 24th November 1964 Belgian paratroopers commenced the operation, and notice of Tshombe's request was lodged with the Security Council.[25] Though the intervention was authorised by the Congolese government, many African States interpreted the intervention as a further colonial assault against the newly-independent African country.[26] While the rescue of approximately 2,000 foreign nationals was humanitarian in nature, the intervention itself was one of self-defence and consent.[27] That an intervention is based on self-defence or consent does not preclude the possibility that humanitarian objectives may be gained; what should be considered, however, is the legal basis upon which the State commenced its intervention.[28] That consent was given by Tshombe means that, factually, a humanitarian intervention, as an exception to Article 2(4), could not have occurred.[29]

[23] The message to the Secretary-General was confirmed shortly after by United States military intelligence; F Wagoner, *Dragon Rouge: The Rescue of Hostages in the Congo* (National Defense University 1981), 44.
[24] A Tanca, *Foreign Armed Intervention in Internal Conflict* (Martinus Nijhoff Publishers 1993) (Tanca) 158.
[25] UNSC 'Letter from the Permanent Representative of the United States of America Addressed to the President of the Security Council' (24 November 1964) UN Doc S/6062; UNSC 'Letter from the Permanent Representative of Belgium Addressed to the President of the Security Council' (24 November 1964) UN Doc S/6063.
[26] States such as the Sudan (30), Guinea (6), Mali (14) and Algeria all labelled the intervention as an act of aggression; UNSC Verbatim Record (10 December 1964) UN Doc S/PV.1171; UNSC Verbatim Record (10 December 1964) UN Doc S/PV.1172, 3.
[27] T Odom, 'Dragon Operations: Hostage Rescues in the Congo 1964-1965' [1988] 14 Leavenworth Papers 1, foreword.
[28] Chesterman Just War (n 3), 86.
[29] Tanca (n 24), 158.

United States Intervention in the Dominican Republic

Following several years of political instability and discontent in the Dominican Republic, the junta leader at the time, Donald Reid, attempted to foil a plotted *coup* by arresting the officers responsible on 24th April 1965.[30] However, instead of preventing the *coup*, a revolt ensued, which led the Dominican Republic's descent into civil war. Seeing the violent clashes between the military factions, the United States declared its intention to 'put the necessary American troops ashore in order to give protection to hundreds of Americans who are still in the Dominican'.[31] On 28th April 1965, troops were deployed to the Dominican Republic with the claimed intent of rescuing American nationals from possible harm. If the purpose of the intervention was to rescue nationals, then the United States' action would not constitute an example of a successful humanitarian intervention as the rescue of nationals abroad does not fall within the auspices of humanitarian intervention; rather it is part of the concept of self-defence.[32] However, later statements made by Johnson suggest that the purpose of the intervention was not solely that of rescuing nationals; four days after troops landed in the Dominican Republic President Johnson stated 'the American nations cannot, must not, and will not permit the establishment of another Communist government'.[33] Were the intervention to have been aimed at ensuring the removal of a possible Communist regime, then the United States' intervention provides an excellent example of a State claiming "humanitarian purposes" (rescuing

[30] S Gomez, 'The US Invasion of the Dominican Republic' [1997] I(2) Sincronia <http://fuentes.csh.udg.mx/CUCSH/Sincronia/num_anteriores.html> accessed 14 August 2013.
[31] LB Johnson, 'Statement by the President upon Ordering Troops into the Dominican Republic' (28 April 1965) in National Archives and Records Service, *Public Papers of the Presidents of the United States: Lyndon B Johnson 1965* (Government Printing Office 1966).
[32] Text to (n 32) in Chapter One.
[33] LB Johnson, 'Statement of 2 May 1965' [1965] 1 Johnson Papers 465, 472.

nationals) when intending to implement internal change through intervention. Regardless of whether the intervention was based on rescuing nationals or implementing internal change, it does not provide a basis for a norm of humanitarian intervention to develop. Therefore, the United States intervention in the Dominican Republic cannot be considered an example of emerging state practice of humanitarian interventions.[34]

Indian Intervention in East Pakistan

Intervention in East Pakistan was precipitated by the Pakistani government's systematic and 'brutal military crackdown'[35] during which the Pakistani army 'attempt[ed] to exterminate or drive out of the country a large part of the Hindu population' and participated in the 'raping of women, the destruction of villages and towns, and the looting of property'[36] following the Awami League majority election in the National Assembly elections of 1970.[37] The resultant flow of 'approximately nine to ten million Bengali refugees'[38] across India's border and repeated 'border incidents'[39] between Pakistan and India served only to create greater tensions between the two countries. Following the Pakistani bombing of 'an Indian air base located miles within the Indian border', India sent troops into East Pakistan and, within just a few days, forced the surrender of the Pakistani

[34] C Fenwick, 'The Dominican Republic: Intervention or Collective Self-Defense' [1966] 60 American Journal of International Law 64, 68.
[35] R Mahalingam, 'The Compatibility of the Principle of Nonintervention with the Right of Humanitarian Intervention' [1997] 1 UCLA Journal of International Law & Foreign Affairs 221 (Mahalingam), 241.
[36] International Commission of Jurists Secretariat, *The Events in East Pakistan* (International Commission of Jurists 1972) 26-27.
[37] The Awami League was a 'pro-independence' party advocating the secession of East Pakistan; Mahalingam (n 35), 241.
[38] B Benjamin, 'Unilateral Humanitarian Intervention: Legalising the Use of Force to Prevent Human Rights Atrocities [1993] 16 Fordham International Law Journal 120 (Benjamin), 132.
[39] W Rosenberger and S Tobin eds., *Keesing's Contemporary Archives* (Keesing's Publications 1972) 24995.

army.[40] Upon forcible Indian entry into Pakistan an immediate session of the Security Council was convened, with what was termed by Mahalingam as a 'firestorm' of condemnation.[41] In justification, India claimed that the intervention was in accordance with their 'right to take … all appropriate and necessary measures to safeguard [their] security and defence against aggression from Pakistan'.[42] However, it was India's recurring reference to Pakistan's human rights abuses which has caused many academics to suggest that India's intervention in East Pakistan was a 'prime example of humanitarian intervention'.[43] Having already justified the Indian intervention into Pakistan on the grounds of self-defence, the Indian representative thereafter noted that 'we have on this particular occasion absolutely nothing but the purest of motives and the purest of intentions: to rescue the people of East Bengal from what they are suffering'.[44]

In direct contradiction of the theory that India based a second justification of its intervention on the right to humanitarian intervention is that, at no point, did India state that it relied upon the principle of humanitarian intervention. Instead, the Indian representative repeatedly asserted that '[India] will not tolerate intrusion, aggression in our territory by the Pakistan Army';[45] 'Pakistan … start[ed] military

[40] Benjamin (n 38), 132-133.
[41] Mahalingam (n 35), 242.
[42] UNSC Verbatim Record (6 December 1971) UN Doc S/PV.1606 (UNSC VR 1606), 32.
[43] A O'Donoghue, 'Humanitarian Intervention Revisited' [2005] 1 Harvard Law Review 165 (O'Donoghue), 167; T Farer, 'An Inquiry into the Legitimacy of Humanitarian Intervention' in L Damrosch and D Scheffer (eds), *Law and Force in the New International Order* (Westview Press 1991) 193; M Akehurst, 'Humanitarian Intervention' in H Bull (ed.), *Intervention in World Politics* (OUP 1988) 96; Mahalingam (n 35), 242; O Schachter, 'Just War and Human Rights' [1989] 1 Pace Yearbook of International Law, 191.
[44] UNSC VR 1606 (n 42), 17-18.
[45] UNSC Verbatim Record (5 December 1971) UN Doc S/PV.1607, [171].

aggression against India on 3 December';[46] and that 'Pakistan carried out a premeditated and massive aggression against India'.[47] Each statement served to clarify the Indian position – that they had acted in self-defence in response to an attack by the Pakistani Army – rather than for reasons of humanitarian altruism.

However, had India attempted to justify the intervention further as being humanitarian, the response from the international community clearly indicated that such a justification would have had no foundation in law. Throughout the Security Council debates, and General Assembly Meetings, States referred to the importance of the non-intervention principle,[48] and thus failed to agree that India had acted within the rights of humanitarian intervention. Moreover, several States maintained that, 'no matter how grave has been the situation in Pakistan with regard to the humanitarian question of the refugees, nothing can justify armed action against the territorial integrity of a Member State'.[49] The consideration of what India claimed to be justification for their intervention is important in order to determine whether the requisite *opinio juris* for the creation of a humanitarian intervention norm was present.[50] Given that India never advanced a justification of humanitarian intervention (and that even if India had done so, such a justification would have been rejected by the international community), the Indian intervention in East Pakistan is not an example of the successful use of

[46] UNSC Verbatim Record (13 December 1971) UN Doc S/PV.1613, [219].
[47] UNSC Verbatim Record (12 December 1971) UN Doc S/PV.1611, [89].
[48] During the 2002nd meeting of the General Assembly Ghana [68], Argentina [53], Indonesia [78], and Turkey [82] referred to the importance of 'respect for sovereignty and territorial integrity' (Turkey [82]), while in the 2003rd meeting of the General Assembly Algeria [15], Lebanon [53], Sudan [87], Togo [201], Tanzania [243], and Madagascar [230] all also stated there existed 'no right to interfere in the internal affairs of a Member State' (Madagascar [230]); GAOR, 2002nd Meeting (7 December 1971) UN Doc A/PV.2002; GAOR, 2003rd Meeting (7 December 1971) UN Doc A/PV.2003 (GAOR 2003).
[49] GAOR 2003 (n48), [57].
[50] D Bederman, *International Law Frameworks* (Foundation Press 2001) 15-16.

humanitarian intervention for a justification of the use of force. Therefore, the intervention cannot be said to form part of the requisite State practice and *opinio juris* needed for the formation of customary international law.

Vietnamese Intervention in Cambodia

As noted by O'Donoghue, the actions of the Khmer Rouge resulted in 'scenes of some of the most atrocious carnages of the 20th century';[51] the regime maintained rule through repression, victimisation, the systematic violation of human rights, and murder, with academics estimating that between 750,000[52] and 2 million people[53] died as a result of Khmer Rouge rule. The crisis commenced as tensions mounted between Cambodia and Vietnam, eventually resulting in fighting along the Cambodian and Vietnamese borders in April 1977.[54] Throughout 1977 and 1978 skirmishes between the States continued, escalating in nature and the mutual exchange of blame for such uses of force until, in December 1978, Vietnam invaded Cambodia. It claimed that it had acted in self-defence after the Khmer Rouge 'had violated Vietnamese territory when the Khmer regime had been overthrown by the Cambodian resistance'.[55] In further justification, Vietnam referred to the continual Khmer Rouge use of force along the border 'between Vietnam and Kampuchea', referring to it as a 'border war'.[56] Vietnam denied any participation in the defeat of the Pol Pot regime, maintaining that it had acted only

[51] O'Donoghue (n 43), 168.
[52] M Vickery, *Cambodia, 1975 to 1982* (Silk Worm Books 1984) 187.
[53] N Ronzitti, *Rescuing Nationals Abroad through Military Coercion and Intervention on Grounds of Humanity* (Brill Academic Publishers 1985) 98.
[54] S Morris, *Why Vietnam Invaded Cambodia: Political Culture and Causes of War* (Stanford University Press 1999) (Morris) 98.
[55] Hipold (n 1), 444.
[56] UNSC Verbatim Record (11 January 1979) UN Doc S/PV.2108, 12. Democratic Kampuchea was the name of Cambodia under the Khmer Rouge.

in defence of its borders while the defeat of the Khmer Rouge regime was the result of the 'revolutionary war of the Kampuchean people.[57] Regardless of Vietnam's denial of involvement in the defeat of Pol Pot's regime, Vietnam played an important role in removing the Khmer Rouge and is internationally recognised as having done so.[58] Humanitarian intervention was never used as a justification for the intervention; instead, Vietnam resolutely claimed it had never invaded Cambodia.[59] Instead, discussion of the viability of humanitarian intervention in relation to the Vietnamese intervention was conducted by States in the resultant Security Council debates.[60] The response to discussions of the viability of humanitarian intervention was a resounding rejection of the principle of humanitarian intervention; France noted 'the notion that because a regime is detestable foreign intervention is justified and forcible overthrow is legitimate is extremely dangerous',[61] while Portugal unequivocally stated 'there are no nor can there be any socio-political considerations that would justify the invasion of the territory of a sovereign State by the forces of another State'.[62] In agreement, Australia,[63] the United Kingdom,[64] the United States,[65] New Zealand,[66] Japan,[67] and the Association of Southeast Asian Nations[68] stated that humanitarian intervention was in no way acceptable under international law as 'no other

[57] Morris (n 54), 12.
[58] T Weiss, *Humanitarian Intervention* (Polity Press 2012) 41.
[59] UNSC Verbatim Record (13 January 1979) UN Doc S/PV.2110 (UNSC VR 2110), 9.
[60] ibid.
[61] UNSC Verbatim Record (12 January 1979) UN Doc S/PV.2109, 4.
[62] UNSC VR 2110 (n 59), 3.
[63] UNSC Verbatim Record (15 January 1979) UN Doc S/PV.2111 (UNSC VR 2111), 3.
[64] UNSC VR 2110 (n 59), 6.
[65] ibid 7.
[66] ibid 6.
[67] UNSC VR 2111 (n 63), 2 – 3.
[68] Indonesia, ibid, 7; Malaysia, UNSC VR 2110 (n 59), 4; Philippines, UNSC VR 2111 (n 63), 9; Thailand, UNSC VR 2111 (n 63), 4-5.

country has a right to topple the Government of Democratic Kampuchea, however badly that Government may have treated its people'.[69] Consequently, a General Assembly resolution was adopted, calling for both the immediate withdrawal of all foreign forces from the region and the cessation of foreign intervention in South-East Asian States.[70] Barring Soviet influence,[71] the international community wholly agreed that humanitarian intervention was not a justifiable defence under international law; therefore, it is suggested that the Vietnamese intervention in Cambodia explicitly serves to show that humanitarian intervention is not legal.

United States Intervention in Grenada

In October 1983, the then-Prime Minister of Grenada, Maurice Bishop, and several of his cabinet members were overthrown and placed under house arrest.[72] Protests against the house arrest of Bishop and his cabinet facilitated an attempted escape;[73] however, the escape failed and Bishop, along with several members of his cabinet and others aiding the escape, were killed.[74] Following this, a four-day, shoot-on-sight curfew was imposed.[75] The Organization of Eastern Caribbean States (OECS) determined a need for American assistance,[76] and on 25th October

[69] Singapore, UNSC VR 2110 (n 59), 5.
[70] UNGA Resolution 34/22 (1979) (14 November 1979) UN Doc A/RES/34/22 (1979).
[71] Vietnam had, in November 1978, signed a Treaty of Friendship and Cooperation with the Soviet Union; thus, it is logical why the Soviet Union (and those within its sphere of influence) supported the intervention perpetrated by Vietnam, N Khoo, *Collateral Damage: Sino-Soviet Rivalry and the Termination of the Sino-Vietnamese Alliance* (Columbia University Press 2011) 127.
[72] R East (ed.), *Keesing's Contemporary Archives* (Longmans 1985) (East) 32614.
[73] G Williams, 'Prelude to an Intervention: Grenada' [1997] 29 Journal of Latin American Studies 131, 159.
[74] ibid 162.
[75] East (n 72), 32615.
[76] B Woodward, *Veil* (Simon & Schuster Paperbacks 1987) (Woodward) 290.

United States troops landed on Grenadian soil.[77] At the same time as the intervention, the involved OECS States made representations regarding the foundations and justifications of the intervention; these were based on both humanitarian[78] and defensive grounds.[79] While the United States initially argued to the Security Council that humanitarian intervention could be a valid legal justification,[80] such claims were later retracted by the United States, whereby it maintained '[w]e did not assert a broad new doctrine of "humanitarian intervention". We relied instead on the narrowest, well-established ground of protection of US nationals'.[81]

International responses to the justification of humanitarian intervention rejected the principle,[82] labelling the intervention as not 'compatible with the basic principles of the Charter of the United Nations',[83] and confirming that 'there are no circumstances according to the Charter and international law governing inter-State relations in which military intervention in or invasion of another State is permitted'.[84] The United States' second justification of the protection of nationals abroad was similarly rejected, with the international community 'condemning the

[77] BBC, '1983: US Troops Invade Grenada' (*BBC News*) available at <http://news.bbc.co.uk/onthisday/hi/dates/stories/october/25/newsid_3207000/3207509.stm> accessed 17 August 2013.
[78] The intervention was partly justified on the basis of the threat of 'further loss of life' and the possibility of the new regime 'further supress[ing] the population of Grenada', cited in Gilmore (n 5), 97-98.
[79] Further justifications rested on the premise that the *coup* in Grenada posed a threat to the security of the OECS countries, which justified a 'pre-emptive defensive strike' based upon an invitation to intervene by the Governor-General; G Nolte, 'Intervention by Invitation' in R Wolfrum (ed.), *Max Planck Encyclopaedia of Public International Law* (Max Planck Institute for Comparative Public Law and International Law 2011) 2.
[80] UNSC Verbatim Record (27 October 1983) UN Doc S/PV.2491 (UNSC VR 2491), 6.
[81] Quoted in D Forsythe, *The Politics of International Law* (Lynne Rienner 1990) (Forsythe) 71.
[82] Ecuador (5); Malta (9); Egypt, (11); UNSC VR 2491 (n 80).
[83] ibid, 33.
[84] Zimbabwe, UNSC VR 2491 (n 80), 5.

invasion'.[85] As a result, a Security Council resolution denouncing the invasion as illegitimate and a violation of international law failed only due to the United States' power of veto.[86]

While the United States' initial justification for the Grenadian intervention was humanitarian-based, both the fact the United States abandoned the justification, instead relying on the justification of the protection of nationals abroad, and the international response denying the existence of a right to humanitarian intervention, suggest that while humanitarian intervention may be legitimate morally, its legal basis is not substantiated. More importantly, the American intervention in Grenada shows the ease with which humanitarian intervention justifications can be abused. As Woodward notes, the United States saw the political unrest within Grenada as an 'opportunity to influence the authority structure in Grenada, rather than as a desperate situation'.[87]

Humanitarian Interventions Post-1990

Liberia

In 1989 civil war broke out in Liberia after 'decades of tribal animosities … conflicts and the recurring abuse of power by ruling elites',[88] when Charles Taylor, and the National Patriotic Front of Liberia (NPFL) took control of much of Liberia, with then-President Samuel Doe in control of only small parts of the

[85] S Simon, 'The Contemporary Legality of Unilateral Humanitarian Intervention' [1994] 24 California Western International Law Journal 117, 145.
[86] J Davidson, *Grenada: A Study in Politics and the Limits of International Law* (Gower 1987) 145.
[87] Woodward (n 76), 289.
[88] J Brockman, 'Liberia: The Case for Changing UN Processes for Humanitarian Interventions' [2005] 22(3) Wisconsin International Law Journal 711 (Brockman), 713.

capital.[89] The fighting between government forces and Taylor's NPFL continued throughout the rest of 1989 and into 1990, with 'all sides commit[ing] human atrocities'.[90] As NPFL forces continued to gain control, Doe appealed to the United Nations, the United States, and the Economic Community of West African States (ECOWAS) to introduce a 'peace-keeping force into Liberia to forestall increasing terror and tension'.[91] The appeals to the Security Council were ignored due to a regional disinclination to bring the matter before the Council,[92] while the United States refused to become involved in what it deemed to be an 'internal affair'.[93] In response to Doe's requests, ECOWAS established the ECOWAS Cease-fire Monitoring Group (ECOMOG) to intervene in Liberia and establish a cease-fire, interim government and the ability to hold fair and free elections.[94] In accordance with its mandate, ECOMOG forces 'landed in Liberia', coming under immediate attack,[95] and were forced to retaliate through the use of 'mortars, artillery and automatic weapons'.[96]

---

[89] M Huband, *The Liberian Civil War* (Cass 1998) 15.
[90] Brockman (n 88), 714.
[91] S Doe, 'Letter to the Chairman and Members of the Ministerial Meeting of the ECOWAS Standing Mediation Committee' (July 14 1990) cited in M Hakimi, 'To Condone or Condemn? Regional Enforcement Actions in the Absence of Security Council Authorisation' [2007] 40 Vanderbilt Journal of Transnational Law 643, 667 (n132).
[92] Bringing the matter before the Security Council was opposed because Zaire wished to limit Security Council action within the African continent and Cote d'Ivoire and Burkina Faso allegedly supported the NPFL in their attempts at revolution, M Barton, 'ECOWAS and West African Security: The New Regionalism' [2000] 4 DePaul International Law Journal 79, 95.
[93] US House of Representatives, 'Statement of Hon. Herman J Cohen, Assistant Secretary of State, Bureau of African Affairs' (19 June 1990) 104 United States Statutes at Large 3.
[94] ECOWAS Standing Mediation Committee (7 August 1990) Decision A/DEC.1/8/90; J Levitt, 'Humanitarian Intervention by Regional Actors in Internal Conflicts: the Cases of ECOWAS in Liberia and Sierra Leone' [1998] 12(2) Temple International and Comparative Law Journal 333 (Levitt), 343.
[95] Levitt (n 94), 343.
[96] BBC Monitoring Report 'Report: ECOMOG Force Lands' (27 August 1990) in M Weller (ed.), *Regional Peace-Keeping and International Enforcement: The Liberian Crisis* (Cambridge International Documents Series 1994) 87.

Levitt comments that, at no point, did the 'decision or resolution of the ECOWAS Standing Mediation Committee mak[e] mention of Doe's letter', suggesting that the failure to refer explicitly to the letter shows that the invitation was considered unimportant.[97] However, the collective self-defence exception is merely 'triggered' by an invitation and authorisation of intervention; there is no requirement for there to be express recognition of that invitation or reference to it.[98] However, Article 53(1) does require Security Council authorisation prior to regional involvement, which the ECOMOG force lacked.[99] Accordingly, the intervention lacked the appropriate legal prerequisite. Regardless of the intervention's failure to obtain legal authorisation, the Security Council President commended the efforts made by ECOMOG to 'promote peace and normalcy in Liberia'.[100] The post-intervention commendation of the ECOMOG intervention has been taken by some to signal the creation of a humanitarian intervention principle within international law.[101] However, it should be noted that, in commending ECOMOG's action, the Security Council neither mentioned the creation of a new humanitarian intervention norm, nor stated that the requirement for pre-intervention authorisation for regional action was no longer legally binding. The single feature which suggests that there still existed some legality in the ECOWAS intervention is the invitation and authorisation of the use of force by Doe, which formed official consent to ECOMOG intervention.

[97] Levitt (n 94), 350.
[98] Brockman (n 88), 715.
[99] J Gagnon, 'ECOWAS'S Right to Intervene in Côte d'Ivoire to Install Alassane Ouattara as President-Elect' [2013] 1(1) Notre Dame Journal of International Comparative Human Rights Law 51 (Gagnon), 62.
[100] UN Verbatim Record (22 January 1990) UN Doc.S/PV.2974, 9.
[101] Gagnon (n 99), 63; Levitt (n 94), 350.

While the ECOWAS intervention in Liberia may suggest that an erosion of the Article 53 requirement of pre-intervention Security Council authorisation took place, the intervention, due to its consensual nature, cannot provide state practice for the theory of humanitarian intervention. Moreover, while a new precedent of *ex post facto* authorisation may have developed, the intervention in Liberia fails to provide clear evidence that humanitarian interventions, without the consent of the State government, were developing into a norm. Therefore, humanitarian intervention remains lacking in the requisite state practice and *opinio juris*.

Northern Iraq

Following Iraq's defeat in the Gulf War of 1991, Kurdish groups living in Northern Iraq rebelled against the State, seeking independence.[102] In retaliation, by March 1991 President Saddam Hussein's regime had attacked Kurdish villages with the use of combat helicopters.[103] 'An estimated one million refugees attempted to flee to Turkey,[104] with 'hundreds of thousands of peaceful inhabitants, including women, the elderly and children, barefoot and hungry … fleeing … along snow-covered mountain paths under artillery fire and bombardments'.[105]

In response to growing fears that instability in the region and mass refugee populations would threaten international peace and security, and the escalation of

[102] Mahalingam (n 35), 253.
[103] P Malanczuk, 'Kurdish Crisis and Allied Intervention in the Aftermath of the Second Gulf War' [1991] 2(2) European Journal of International Law 114 (Malanczuk), 118.
[104] UNSC Verbatim Record (5 April 1991) UN Doc S/PV.2982, 6.
[105] ibid, 59-60.

tensions between Iraq and Iran,[106] the Security Council adopted Resolution 688. The Resolution condemned Iraqi violence against the Kurdish population,[107] demanded the immediate 'end [of] this repression',[108] and insisted upon the Iraqi government and army allowing humanitarian organisations 'immediate access … to all those in need of assistance'.[109] As Gordon notes, Resolution 688 was narrow in its scope by 'not authoris[ing] the Security Council to use force to protect human rights … contain[ed] no reference to Chapter VII' and 'fail[ed] to mention collective enforcement measures'.[110] Such failures can only be regarded as deliberate given that the Security Council had been willing to authorise intervention under Chapter VII only shortly before. Moreover, during Security Council meetings, the inclusion of broader terms supporting intervention, as advocated by France, was strongly opposed by China and the Soviet Union, with China threatening the use of its veto power.[111] Regardless of such machinations, by the end of April 1991 troops from the United States, the United Kingdom, France, and the Netherlands had landed in Northern Iraq to enforce the provision of humanitarian aid and to protect newly set-up 'safe havens'.[112] The same

[106] R Gordon, 'Humanitarian Intervention by the United Nations: Iraq, Somali and Haiti' [1996] 31 Texas International Law Journal 43 (Gordon), 49.
[107] UNSC Res 688 (1991) (5 April 1991) UN Doc S/RES/688 (1991).
[108] ibid.
[109] ibid.
[110] Gordon (n 106), 49.
[111] Malanczuk (n 103), 119.
[112] Weiss and Hubert (n 20), 88.

coalition had already established a no-fly zone[113] on the basis that Resolution 688 gave them legitimate power to do so.[114]

There was little condemnation of the intervention of the United States and its coalition forces in Iraq.[115] This has led some humanitarian interventionists to suggest that the intervention in Iraq could be considered a positive development towards the establishment of a humanitarian intervention doctrine.[116] However, as Malanczuk observes, the failure of the Security Council to condemn the actions taken by the United States and its coalition 'is not determinative because the veto can effectively block censure'.[117]

While it is possible that the use of humanitarian justifications for the intervention in Iraq may have weakened the principle of non-intervention. However, the intervention in Kosovo would suggest that the principle of non-intervention did remain intact as the intervening States specifically noted that the intervention in Kosovo 'was a unique situation *sui generis* in the region of the Balkans',[118] which should not be interpreted as constituting a precedent.[119] The response to Kosovo would thus indicate that the prohibition against the threat or use of force was still intact at the time of the intervention in Kosovo, eight years later. Consequentially,

---

[113] D Vesel, 'The Lonely Pragmatist: Humanitarian Intervention in an Imperfect World' [2004] 18 Brigham Young University Journal of Public Law 1 (Vesel), 39.
[114] G H W Bush, 'Remarks on Assistance for Iraqi Refugees and a News Conference' (16 April 1991) in *Public Papers of the Presidents of the United States: George H W Bush Book I* (United States Government Printing Office 1992) 397.
[115] Gordon (n106), 50.
[116] O'Donoghue (n 43), 169.
[117] P Malanczuk, *Humanitarian Intervention and the Legitimacy of the Use of Force* (Het Spinhuis 1993).
[118] US State Department, 'Press Conference with Russian Foreign Minister Igor Ivanov' (26 July 1999) <http://secretary.state.gov/www/statements/1999/990726b.html> accessed 24 September 2013 (USSD).
[119] Foreign Minister Klaus Kinkel, cited in M Byers and S Chesterman, 'Changing the Rules about Rules?' in J Holzgrefe and R Keohane (eds), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (CUP 2003) (Byers and Chesterman) 199.

if the principle of non-intervention was intact in 1999, the intervention in Iraq failed to weaken the principle of non-intervention through an implicit recognition of humanitarian intervention.

Sierra Leone

Prior to 1997, Sierra Leone had faced multiple internal disturbances, leading to instability. Finally, in 1996, Sierra Leone held elections, resulting in Ahmad Kabbah being elected President;[120] however, warring continued until, with the help of ECOWAS, the United Nations and various individual States, the Abidjan Accord was signed in November 1996.[121] Peace was short-lived; at the end of May 1997, Revolutionary United Front (RUF) forces led by Johnny Paul Koromah, 'took over government buildings and prisons in the capital' in a *coup* against Kabbah.[122] Shortly before fleeing to Guinea, Kabbah appealed both to Nigeria (whose peacekeeping troops were already within Sierra Leone as a result of the civil war),[123] and ECOWAS to intervene, to end the violence being perpetrated by RUF forces and to restore his government.[124]

Two days after the initial *coup*, and in accordance with Status of Forces Agreement (SOFA) obligations as well as in response to Kabbah's appeal, Nigeria deployed further troops 'to restore law and order'.[125] After two months of fighting, Nigerian forces were joined by the Economic Community of West

[120] D Hecht, 'Sierra Leone Changes Power without Coup, Despite Ongoing War' *Christian Science Monitor* (1 April 1996) available at <http://www.csmonitor.com/1996/0401/01061.html> accessed 18 August 2013.
[121] Levitt (n 94), 365.
[122] P Jenkins, 'The Economic Community of West African States and the Regional Use of Force' [2007] 35 Denver Journal of International Law and Policy 333 (Jenkins), 346.
[123] Jenkins (n 122), 347.
[124] E Lumsden, 'An Uneasy Peace: Multilateral Military Intervention in Civil Wars' [2003] 35 NYU Journal of International Legal Policy 795 (Lumsden), 824.
[125] Levitt (n 94), 366.

African States Monitoring Group (ECOMOG) forces following ECOWAS 'officially mandat[ing] ECOMOG to enforce sanctions against the junta and restore law and order'.[126] Shortly after ECOWAS's imposition of sanctions and authorisation of ECOMOG implementation, the Security Council enforced its own embargoes and, in Resolution 1132, under Chapter VIII powers, authorised ECOWAS to be the enforcing agent.[127] It was not until February1998 that ECOWAS authorised ECOMOG to use direct force against rebels.[128] Throughout ECOMOG's involvement in the intervention in Sierra Leone, the international community praised its role, with Security Council Resolution 1162 commending ECOMOG for 'the important role they are playing in support of the objectives related to the restoration of peace and security'.[129]

As in the case of Liberia, humanitarian interventionists claim ECOMOG's actions and the commendation from the Security Council show direct support for humanitarian intervention.[130] However, the interventions (both the initial Nigerian intervention and that of ECOMOG) find their legality not in humanitarian intervention but in consent, regional action, and treaty obligations. Nigeria's intervention at the beginning of the conflict in Sierra Leone was prompted by their treaty obligations under SOFA Article 21(1)(1), which states 'Nigerian Forces Assistance Group (NIFAG) shall have the right to apply force in the sustenance of

[126] ibid, 366; 'Tougher Measures against Junta in Freetown' *Pan African News Agency* (2 September 1997).
[127] UNSC Res 1132 (1997) (8 October 1997) UN Doc S/RES/1132 (1997) [8].
[128] Economic Community of West African States (Ministers of Foreign Affairs of the Community of Five on Sierra Leone) 'Final Communiqué' (6 February 1998).
[129] UNSC Res 1162 (1998) (17 April 1998) UN Doc S/RES/1162 (1998) (UNSC 1162) [2].
[130] L Berger, 'State Practice Evidence of the Humanitarian Intervention Doctrine: The ECOWAS Intervention in Sierra Leone' [2001] 11 Indiana International and Comparative Law Review 605. 626; Vesel (n 113), 30; Levitt (n 94), 369; O'Donoghue (n 43), 171.

the sovereignty and territorial integrity of the Republic of Sierra Leone'.[131] Thus, as noted by Levitt, due the illegality of the *coup*, Nigeria was both obligated and justified in its intervention.[132] Moreover, under the ECOWAS Revised Treaty 1993, Nigeria was legally justified in intervening, as Article 58 provides that Member States 'undertake to … co-operate with the Community in establishing and strengthening appropriate mechanisms for the timely prevention and resolution of intra-State … conflict'.[133] Accordingly, though it may have resulted in the accomplishment of humanitarian objectives, the Nigerian intervention was not justified on humanitarian grounds but rather wholly upon legal grounds.

In a similar vein, the ECOMOG intervention also finds justification in the consent given by Kabbah for it, and the legal ability for regional action. As noted by Österdahl, 'foreign intervention by the ECOMOG had been invited by the democratically elected President of Sierra Leone and was thereby not without legal foundation'.[134] In addition, as discussed in Chapter Two, consent is one of the three current exceptions to the prohibition on force.[135] Further, in Security Council Resolution 1162 (1998) there was, as in the case of Liberia, no mention of an acceptance of the emergence of a humanitarian intervention principle; instead there was merely a commendation of the role which had ECOMOG

[131] The Status of Forces Agreement between the Government of the Federal Republic of Nigeria and the Republic of Sierra Leone 1997, cited in A Musah and J Kavode Favemi (eds), *Mercenaries: An African Security Dilemma* (Pluto Press 200) 93, Article 21(1)(1).
[132] Levitt (n 94), 368.
[133] Treaty of the Economic Community of West African States 1993 (adopted 24 July 1993) 1010 UNTS 17, Article 58.
[134] I Österdahl, 'Preach What You Practice. The Security Council and the Legalisation *ex post facto* of the Unilateral Use of Force' [2005] 74 Nordic Journal of International Law 231 (Österdahl), 239.
[135] Text to (n 111) in Chapter Two.

played.[136] Indeed, the commendation may have served as an *ex post facto* authorisation of ECOMOG activity and would thus be more appropriately viewed as a means by which to justify the emergence of a principle of post-intervention authorisation in cases of regional action. Such a conclusion echoes the views previously espoused by both Österdahl[137] and the Report of the International Commission on Intervention and State Sovereignty.[138]

Kosovo

As Vesel notes, 'violence in Kosovo dates back over six hundred years'.[139] However, conflict between Kosovar Albanians and Serbs accelerated in 1989, when President Milošević[140] encouraged tensions by lobbying for a single Serbian State,[141] and removing Kosovo's right to self-government.[142] Years of repression, the failure of 'non-violent measures to try to achieve their independence',[143] and omission from the Dayton Peace Accords,[144] encouraged the formation of Kosovar guerrilla force, the Kosovo Liberation Army (KLA).[145] In February 1998, tensions boiled over when Serbian police began a military campaign against Albanian Kosovars, resulting in an armed response from the KLA.[146] The Serbian campaign against Albanians 'made no distinction between armed guerrillas and unarmed citizens', attacking 'whole villages' and leaving a 'quarter of a million

[136] UNSC 1162 (n 129), [2].
[137] Österdahl (n 134), 240.
[138] ICISS, *The Responsibility to Protect* (International Development Research Centre 2001) 48.
[139] Vesel (n 113), 41.
[140] President of the Federal Republic of Yugoslavia.
[141] T Judah, *Kosovo: War and Revenge* (Yale University Press 2002) (Judah) 38.
[142] Lumsden (n 124), 828.
[143] N Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (OUP 2000) 257-258.
[144] R Holbrooke, *To End a War* (Random House 1998) 357.
[145] Weiss and Hubert (n 20), 110.
[146] L Kaplan, 'International Diplomacy and the Crisis in Kosovo' [1998] 74(4) International Affairs 745, 745.

people … refugees'.[147] In March 1998, the Security Council responded to the impending crisis with Resolution 1160. It condemned the attacks from both Serbian police and the KLA, implemented an arms embargo, and supported the conclusion of an agreement which afforded greater independence for Kosovo while maintaining the 'territorial integrity of the Federal Republic of Yugoslavia' (FRY).[148] However, fighting continued, and in September 1998, the Security Council adopted Resolution 1199, which formally 'affirm[ed] that the deterioration of the situation in Kosovo constitutes a threat to peace and security in the region', as well as demanding that 'all parties, groups and individuals immediately cease hostilities and maintain a ceasefire' under Chapter VII.[149]

Milošević's resolve in continuing attacks against Albanian Kosovars, irrespective of continued Security Council calls for the respect of human rights, resulted in NATO suggesting more forceful measures to end the conflict.[150] In addition, the United States Secretary of State Madeleine Albright referred to NATO's willingness, if necessary, to engage in the use of force against the FRY.[151] Five days later, NATO authorised ''limited air strikes and a phased air campaign', a decision taken on the basis that 'Yugoslavia ha[d] still not complied fully with UNSCR 1199'.[152] The NATO threat to carry out air strikes worked and soon 'diplomatic efforts to resolve the Kosovo crisis intensified', resulting in the FRY's

[147] HC Deb 19 October 1998, vol 317, col 953.
[148] UNSC Res 1160 (1998) (31 March 1998) UN Doc S/RES/1160 (1998), [5].
[149] UNSC Res 1199 (1998) (23 September 1998) UN Doc S/RES/1199 (1998), 2.
[150] S Wheatley, 'The NATO Action against the Federal Republic of Yugoslavia: Humanitarian Intervention in the Post-Cold War Era' [1999] 50 Northern Irish Legal Quarterly 478 (Wheatley), 480.
[151] M Albright, 'Press Conference by US Secretary of State Albright' (8 October 1998).
[152] Secretary General NATO, 'Statement to the Press Following Decision on the ACTORD' (13 October 1998) available at <http://www.nato.int/docu/speech/1998/s981013a.htm> accessed 28 August 2013.

agreement to both an air and ground Verification Mission to ensure compliance with Resolution 1199.[153] The Security Council subsequently endorsed the agreements in Resolution 1203 and demanded that the FRY 'cooperate fully with the OSCE Verification Mission in Kosovo and the NATO Air Verification Mission over Kosovo'.[154] However, by January 1999, violence within Kosovo had resumed, with the slaughter of Albanian Kosovars in Račak.[155]

In a final attempt to reach a peace agreement, the Rambouillet conference was held in France in February and March 1999. However, as noted by Vesel, the introduction of non-negotiable terms which provided for NATO free access in the FRY seemed 'designed to ensure that no agreement would be reached'.[156] This is supported by the fact that an aide to the United States Secretary of State Madeleine Albright stated the negotiations in Rambouillet 'had only one purpose: to get the war started with the Europeans locked in'.[157] Milošević refused to sign the accord, paving the way for NATO, on 24th March 1999, to determine that 'all efforts to achieve a negotiated, political solution to the Kosovo crisis ha[d] failed', leaving no alternative 'but to take military action'.[158]

NATO's unilateral decision to undertake air strikes against the FRY was met with mixed reactions; China, Russia, Belarus, and India strongly opposed NATO's intervention, labelling it 'a blatant violation of the United Nations Charter' which

[153] Wheatley (n 150), 480.
[154] UNSC Res 1203 (1998) (24 October 1998) UN Doc S/RES/1203 (1998), [3].
[155] Judah (n 141), 186.
[156] Vesel (n 113), 44.
[157] W Hyland, *Clinton's World: Remaking American Foreign Policy* (Praeger 1999) 21.
[158] NATO Secretary General Solana, 'Press Statement' (23 March 1999).

'seriously exacerbat[ed] the situation in the Balkan region'.[159] Though the BRIC[160] nations subsequently attempted to pass a condemnatory resolution, it failed. This was unsurprising given that three of the five permanent members were part of NATO, with only two States, the United Kingdom and the Netherlands,[161] proposing that the air strikes were legal due to humanitarian necessity.[162] Unlike Liberia and Sierra Leone, justification for the intervention could not be based upon the consent to, or a request for, action from the government of the State. In addition, the Security Council, while stopping a resolution condemning the intervention, failed to commend the intervention as it had previously done for the action taken by ECOMOG.

Though the United Kingdom's Foreign Affairs Select Committee found that several of the Security Council's actions could 'properly be interpreted as supportive of the NATO allies' position', there was no outright commendation.[163] Thus, the argument that NATO's actions were authorised *ex post facto* cannot succeed.[164] However, both the United States and France, along with NATO Secretary General Solana,[165] advanced legal justifications for the intervention on the basis that the NATO intervention had been given implied authorisation

[159] UNSC Verbatim Record (24 March 1999) UN Doc S/PV.3988 (UNSC VR 3988), 12.
[160] Brazil, Russia, India and China.
[161] Not a permanent member of the Security Council.
[162] UNSC VR 3988 (n 159), 12.
[163] House of Commons' Foreign Affairs Select Committee, 'Fourth Report on Kosovo: HC 28 – I/II' (2000) available at <http://www.publications.parliament.uk/pa/cm199900/cmselect/cmfaff/28/2813.htm> accessed 28 August 2013 (Fourth Report), [127].
[164] Österdahl (n 134), 243.
[165] Letter from Secretary General Solana to the Permanent Representative to the North Atlantic Council (9 October 1998) cited in B Simma, 'NATO, the UN and the Use of Force: Legal Aspects' [1999] 10 EJIL 1, 7.

through the adoption of Resolutions 1160 and 1199.[166] Such justification suggests that, at the very least, two of the States involved in the NATO action lacked the necessary *opinio juris* when it came to the possibility of humanitarian intervention.[167] While the United Kingdom relied upon humanitarian intervention as a justification for the intervention, the Foreign Affairs Select Committee accepted 'that no right of humanitarian intervention was contained in the Charter',[168] stating that '*Operation Allied Force* was contrary to the specific terms of what might be termed the basic law of the international community'.[169] Moreover, while 'most other non-NATO members recognised the moral legitimacy of the action, [they] regretted the resort to unauthorised use of force',[170] the German Foreign Minister noted the intervention was 'only justified in this special situation, [and] must not set a precedent for weakening the UN Security Council's monopoly on authorising the use of legal international force'.[171]

The Rio Group[172] also expressed concern, noting that it 'regret[ted] the recourse to the use of force in the Balkan region in contravention of the provisions of … the Charter of the United Nations' and called for 'respect for … the territorial integrity of States'.[173] States' general reluctance to afford any legality to the

[166] D Joyner, 'The Kosovo Intervention: Legal Analysis and a More Persuasive Paradigm' [2002] 13 EJIL 597, 602.
[167] Vesel (n 113), 49.
[168] S Wheatley, 'The Foreign Affairs Select Committee Report on Kosovo: NATO Action and Humanitarian Intervention' [2000] 5 Journal of Conflict Security Law 261, 266.
[169] Fourth Report (n 163), [128].
[170] J Rytter, 'Humanitarian Intervention without the Security Council: From San Francisco to Kosovo and Beyond' [2001] 70 Nordic Journal of International Law 121 (Rytter), 155.
[171] UNGA Verbatim Record (22 September 1999) UN Doc A/54/PV.8, 12.
[172] Permanent Mechanism for Consultation and Concerted Political Action in Latin America.
[173] UNGA 'Letter from the Permanent Representative of Mexico to the United Nations Addressed to the Secretary-General' (26 March 1999) UN Doc A/53/884 (UNGA 884), 2.

intervention thus resulted in there being 'no signs of an emerging *opinio juris* … in the aftermath of NATO's war that unauthorised humanitarian intervention is under certain circumstances lawful'.[174] It is for these reasons that 'NATO's bombing campaign has been widely stamped, by independent commissions as well as distinguished legal scholars, as a violation of international law'.[175]

Conclusion

In order for custom to be created both 'extensive and virtually uniform' State practice and evidence of *opinio juris* must be present.[176] What is apparent from examining interventions both before and after 1990 is that there is neither extensive nor uniform State practice. Furthermore, States exhibit a clear lack of *opinio juris* in relation to humanitarian intervention, frequently citing other, more conventional customary justifications. The interventions between the inception of the United Nations Charter in 1945 and the end of the Cold War in 1990 were generally single-State and unilateral. Most States justified their actions on the self-defence right to protect nationals abroad, such as in the Belgian intervention in Congo,[177] the United States intervention in the Dominican Republic,[178] and the United States intervention in Grenada.[179] It is acknowledged that, in all these instances, attention was drawn to humanitarian crises or human rights violations

[174] Rytter (n 170), 157.
[175] Danish Institute of International Affairs, *Humanitarian Intervention: Legal and Political Aspects* (Copenhagen 1999) 92; Rytter (n 170), 157; The Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned* (OUP 2000) Chapter 6; Advisory Council on International Affairs/Advisory Committee on Issues of Public Law, *Humanitarian Intervention* (The Hague, 2000) 18.
[176] *North Sea* (n 2), 43.
[177] UNSC VR 873 (n 17), [183].
[178] LB Johnson, 'Statement on US Policy' [1965] LIII (1358) Department of State Bulletin 1, 20.
[179] Forsythe (n 81), 71.

within the State. However, while an intervention based on the legal grounds of the protection of nationals abroad is justifiable as self-defence, that does preclude the intervention also having the subsidiary aim of improving humanitarian conditions within the State. It is evident, therefore, from State practice before 1990, that States made every effort not to rely on humanitarian grounds for intervention, even going so far as to use dubious legal grounds, such as those put forward by Vietnam, for justification in order to avoid such a reliance.[180] The refusal to provide humanitarian grounds as legal justification shows that States did not believe that there was any legal basis for humanitarian interventions. Thus, there is 'very little evidence to support assertions that a new principle of customary law legitimating humanitarian intervention … crystallised' during the period between 1945 and 1990.[181]

Interventions after 1990 similarly fail to demonstrate cohesive State practice. However, unlike the interventions that occurred before 1990, those which took place thereafter were characterised by being coalitions of the willing or regional bodies. As a result, different justifications for the interventions were advanced. In both ECOMOG cases, consent from the affected State's government had been obtained prior to intervention and intervention was taken in the form of regional action. A failure to obtain Security Council authorisation prior to intervention, and the subsequent commendation of interventions by the Security Council, led to the

[180] Vietnam went so far as to deny completely their involvement, in any form, of the overthrow of the Khmer Rouge regime regardless of there being clear evidence that the intervention went further than a mere border dispute.
[181] I Brownlie, 'Appendix 2 - Memorandum submitted by Professor Ian Brownlie CBE, QC' (28 July 1999) <http://www.publications.parliament.uk/pa/cm199900/cmselect/cmfaff/28/28ap03.htm> accessed 29 August 2013 [80].

possibility that a new custom relating to implied or *ex post facto* regional intervention had been created.[182] Irrespective of whether procedural changes became custom, humanitarian intervention still failed to find support amongst States when justifying intervention. Indeed, with regard to both Northern Iraq and Kosovo, States chose to rely on extending the meaning of Security Council resolutions, which obviously did not authorise intervention, rather than on humanitarian grounds.

Finally, while the intervention in Kosovo is the most likely of all the interventions to suggest that humanitarian intervention was gaining recognition as a legal principle, the reality is that States, while accepting the legitimacy of the intervention on moral grounds,[183] refused to accept that it was legal, referring to their deep concerns that it was carried out without Security Council authorisation.[184] Indeed, even States which supported the intervention recognised that it was of an exceptional nature,[185] and thus not to be considered as creating precedent. The repeated comments by intervening States that Kosovo was a 'unique situation'[186] suggests that they recognised that (despite the intervention) the prohibition on the threat and use of force remained a peremptory norm.[187] Moreover, even after the intervention in Kosovo, there was a 'lack of broad international consensus' concerning humanitarian intervention, which 'shows that

[182] Österdahl (n 134),, 238.
[183] Rytter (n 170), 157.
[184] UNGA 884 (n 173), 2.
[185] HC Deb 26 April 1999, vol 330, col 30.
[186] USSD (n 118).
[187] Byers and Chesterman (n 119), 199.

Kosovo did not meet the State practice requirement, and weakens any claims that the Kosovo situation be used as precedent for legalising future interventions'.[188]

[188] Vesel (n 113), 49.

Chapter Five:

The Responsibility to Protect

Introduction

Throughout the interventions of the latter half of the twentieth century, there was a general lack of 'state practice … sufficient to conclude … that the right to use force for humanitarian reasons has become part of customary international law'.[1] However, the crisis in Kosovo illustrated that, while States were not willing to accept a right of unilateral intervention on humanitarian grounds, they did accept that in certain extreme situations there existed some form of moral imperative to attempt to avoid humanitarian crises.[2] It was upon this basis that Kofi Annan, United Nations Secretary-General at the time of the Kosovo crisis, asked, 'if intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica?'.[3] Annan did not, however, refute that sovereignty was an important principle in international law, stating 'the principles of sovereignty and non-interference offer vital protection to small and weak states'.[4] Rather, he highlighted that there was a conflict between what a morally conscious society should do in the face of genocide within the bounds of

[1] C Chinkin, 'Appendix 18 – Memorandum submitted by Ms Christine Chinkin, University of Michigan Law School' in House of Commons' Foreign Affairs Select Committee, 'Fourth Report on Kosovo: HC 28 – I/II' (2000) <http://www.publications.parliament.uk/pa/cm199900/cmselect/cmfaff/28/2813.htm> accessed 15 September 2013.
[2] J Rytter, 'Humanitarian Intervention without the Security Council: From San Francisco to Kosovo and Beyond [2001] 70 Nordic Journal of International Law 121, 157.
[3] K Annan, *We the Peoples: The Role of the United Nations in the 21st Century, Millennium Report of the Secretary-General of the United Nations* (United Nations 2000) 48.
[4] ibid.

protecting sovereignty.[5] Recognising that the problem of how to respond to mass atrocities was one that needed a comprehensive answer, the Canadian Government established the International Commission on Intervention and State Sovereignty (ICISS). After international consultation the ICISS published the Responsibility to Protect Report which catalogued both the history and problems of the concept of humanitarian intervention and provided a suggested alternative.

This chapter will examine the responsibility to protect and the initial international reaction in response to the responsibility to protect doctrine. In so doing the chapter first will analyse the six principles of the responsibility to protect in order to determine the framework within which interventions should take place. Thereafter, the foundations, which rely on a responsibility as opposed to a right of intervention, will be examined. Finally, the consequent international reception of the principle will be analysed, with specific reference to the 2005 World Summit and subsequent declarations of agreement or inclusion of the principle in policy.

Principles of the Responsibility to Protect

In creating the responsibility to protect, the ICISS developed six principles to be considered before the implementation of any form of military intervention.[6] The principles have been mooted by academics with regard to humanitarian intervention,[7] and hitherto with regard ,to the just war theory.[8] The principles have

[5] ibid.
[6] ICISS, *The Responsibility to Protect* (International Development Research Centre 2001) (ICISS) [4.18] – [4.42].
[7] F Abiew, 'Humanitarian Intervention and the Responsibility to Protect: Redefining a Role for "Kind-hearted Gunmen"' [2010] 29(2) Criminal Justice Ethics 93 (Abiew), 95.
[8] J Brunnée and S Toope, 'Slouching Towards New "Just" Wars: International Law and the Use of Force after September 11th' [2004] LI (III) Netherlands International Law Review 363, 372.

been used in the past to create frameworks for humanitarian interventions with little international success.[9] However, as the responsibility to protect depends on Security Council authorisation, the framework is more able to be implemented through oversight. The successful adoption of the six principles is contingent upon their being adopted as a whole, as each principle relies upon the other to ensure interventions were both legal and legitimate; reliance upon the principles as a whole would further remove the common concerns relating to humanitarian intervention of abuse, lack of clear thresholds and oversight.[10]

Just Cause Threshold

The "just cause threshold"[11] was developed by the ICISS to limit the occasions on which military intervention could be used to only the most serious humanitarian crises. Originally, under the ICISS principle, military intervention was allowable only where action was necessary to prevent or stop

> large scale loss of life, actual or apprehended, with genocidal intent or not … [or] large scale "ethnic cleansing", actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.[12]

The threshold, however, was amended at the 2005 World Summit, when States unanimously agreed the threshold should be limited to 'only four specified crimes and violations: genocide, war crimes, ethnic cleansing and crimes against

[9] M Bothe, 'Terrorism and the Legality of Pre-emptive Force' [2003] 14 European Journal Of International Law 227, 238.
[10] D Berman and C Michaelson, 'Intervention in Libya: Another Nail in the Coffin for the Responsibility-to-Protect?' [2012] 14 International Community Law Review 337, 344.
[11] Also referred to as the 'seriousness of threat' threshold; J Brunnée and S Toope, 'Norms, Institutions and the UN Reform: The Responsibility to Protect' [2006] 2 Journal of International Law and International Relations 121 (Brunnée and Toope Norms), 125.
[12] ICISS (n 6), [4.19].

humanity'.[13] A high just cause threshold was set in an attempt to prevent the responsibility to protect being used for situations which might have fallen under the broad concept of humanitarian intervention, such as 'intervention[s] to restore democracy, or to end human rights violations … [or] the overthrow of oppressive governments'.[14] Maintaining distance from the 'old' concept of humanitarian intervention was important for weaker States which remembered 'the long pattern of abuse by Western colonial powers in the nineteenth and early twentieth centuries, and by both sides during the Cold War'[15] and were concerned that such practices would be adopted again.[16] The four crimes are based on 'relatively well-defined standards', allowing States to be held accountable when either action is proposed in a circumstance which does not meet the criteria, or when action is rejected in circumstances clearly meeting the criteria.[17] Thus, the threshold provides smaller States with greater assurances that the responsibility to protect will not be abused.[18] In addition, the responsibility to protect falls in line with the general international consensus after the crisis in Kosovo, which was that military force should only be used in the most 'extreme cases of major harm to civilians'.[19]

[13] UNGA 'Implementing the Responsibility to Protect: Report of the Secretary General' (12 January 2009) UN Doc A/63/677, [10].
[14] Abiew (n 7), 95.
[15] T Franck and N Rodley, 'After Bangladesh: The Law of Humanitarian Intervention by Military Force' [1973] 67 American Journal of International Law 275, 276.
[16] J Eaton, 'An Emerging Norm? Determining the Meaning and Legal Status of the Responsibility to Protect' [2011] 32 Michigan Journal of International Law 765 (Eaton), 781.
[17] ibid 781. The four crimes are also the only four crimes which fall under the jurisdiction of the International Criminal Court; Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90.
[18] N Wheeler, 'A Victory for Common Humanity? The Responsibility to Protect after the 2005 World Summit' [2005] Journal of International Law and International Relations 95 (Wheeler), 102.
[19] E McClean, 'The Responsibility to Protect: The Role of International Human Rights Law' [2008] 13 Journal of Conflict Security Law 123 (McClean), 129.

In order to find that the just cause threshold for military intervention has been met, reliable evidence must be provided to the Security Council to validate a claim that one of the four crimes is or is about to be committed (genocide, war crimes, ethnic cleansing and crimes against humanity).[20] Evidence of the commission of least one of the four crimes helps both to prevent States embarking upon interventions based 'essentially [upon] matter[s] of interests, power and dominance'[21] and to reduce the possibility of protracted debates in the Security Council aimed at determining, with very little proof, whether circumstances qualify as one of the four proscribed crimes.[22] The ICISS Report suggested evidence could take the form of reports gathered by 'universally respected and impartial non-government source[s]', such as the International Committee for the Red Cross or pre-existing human rights bodies, such as the United Nations High Commissioner for Refugees, which have greater capacities to track events within States.[23] Apart from the use of these two bodies, the Secretary-General could utilise his powers to despatch independent fact-finding missions or seek evidence from alternative sources.[24] The broad range of sources for evidence enables a more comprehensive ability to determine the type of hostilities being perpetrated in a State, consequently providing assurances for States wary of abuse. As noted

[20] UNGA 'Early Warning, Assessment and the Responsibility to Protect – Report of the Secretary-General' (14 July 2010) UN Doc A/64/864, [11].
[21] J Shen, 'The Non-Intervention Principle and Humanitarian Interventions under International Law' [2001] 7 International Legal Theory 1, 10.
[22] Brunnée and Toope note that both the inclusion of specific criteria and the need for evidence, espoused by the ICISS, could 'maximise the possibility of achieving Security Council consensus', J Brunnée and S Toope, 'The Responsibility to Protect and the Use of Force: Building Legality' [2010] 2 Global Responsibility to Protect 191, 196; as Kofi Annan notes, this would also 'add transparency to [Security Council] deliberations and make its decisions more likely to be respected, by both Governments and world public opinion', UNGA 'In Larger Freedom: Towards Development, Security and Human Rights for All – Report of the Secretary-General' (21 March 2005) UN Doc A/59/2005 (In Larger Freedom), [126].
[23] ICISS (n 6), [4.31].
[24] ICISS (n 6), [4.31].

by the Secretary-General in his report Responsibility to Protect: Timely and Decisive Response, the inclusion 'of a narrow but deep' approach to the responsibility to protect allows for safety in the restrictive interpretation of the threshold for military action. Further, it would encourage the use of a variety of 'Charter-based tools' in both identifying and responding to crises.[25] Moreover, the requirement for 'fair and accurate information'[26] to be obtained and provided for Security Council debate encourages interventions only where there is the 'right intention'.[27]

Right Intention

Arend and Beck claim that the concern that 'powerful states will abuse … a doctrine'[28] of humanitarian intervention has been confirmed, with examples of States suggesting a humanitarian aim only to intervene subsequently, based on their own interests.[29] In addressing such apprehensions, the ICISS required that States which seek to intervene must demonstrate the intention to alleviate the suffering of those who are subjected to one of the four previously mentioned crimes.[30] Determining the true intentions of a State before intervention is

[25] UNGA, 'Responsibility to Protect: Timely and Decisive Response – Report of the Secretary-General' (25 July 2012) UN Doc A/66/874, [9].
[26] ICISS (n 6), [4.28].
[27] Abiew (n 7), 95. The 'right intention' is also entitled the 'principle of proper purpose' in the Report of the Secretary-General's High-Level Panel, 'A More Secure World: Our Shared Responsibility – Report of the High-Level Panel on Threats, Challenges and Change' (United Nations Department of Public Information 2004) (A More Secure World) [207] – [208].
[28] C Joyner, 'The Responsibility to Protect: Humanitarian Concern and the Lawfulness of Armed Intervention' [2007] 47 Virginia Journal of International Law 693 (Joyner), 700.
[29] A Arend and R Beck, *International Law and the Use of Force: Beyond the UN Charter Paradigm* (Routledge 1993) 112.
[30] ICISS (n 6), [4.33]. The concern of States not intervening with at least a primary purpose of alleviating human can be seen in the NATO intervention in Kosovo where the US-NATO Commanding General stated that the NATO operation was 'not designed as a means of blocking Serb ethnic cleansing'; given the expected nature of Serbian action, once NATO forces intervened a failure to include preventing ethnic cleansing as a purpose of the intervention resulted in NATO forces not being prepared to stop the ensuing violence; cited in N Chomsky, 'In Retrospect: A

extremely difficult; usually a State's ulterior motives may become obvious only after intervention has taken place.[31] As a result, the ICISS suggested ensuring that the right intention is present in two distinct ways. First, the ICISS recommends ensuring that military interventions 'always tak[e] place on a collective or multilateral rather than single-country basis'.[32] Secondly, the right intention can be more likely if it is clear that the collective body of the Security Council is 'the sole arbiter of military interventions for human protection purposes'.[33]

That humanitarian purposes will not always be the sole motivation behind encouraging or participating in an intervention has therefore been recognised by the ICISS.[34] By using the Security Council as the sole authority for regulating intervention on this basis, it becomes more likely that intervention will predominantly focus on humanitarian objectives.[35] The use of the Security Council, and the collective debates which are inherent in Security Council deliberations, mean that, in the event humanitarian purposes are only a subsidiary purpose of the proposed intervention, the intervention will be abandoned.[36] Instead, it will be replaced with 'equally plausible but different solutions' which

---

Review of NATO's War over Kosovo, Part II' [2001] 5 Z Magazine <http://www.zcommunications.org/in-retrospect-by-noam-chomsky-1.html> accessed 23 September 2013.

[31] Abiew (n 7), 96.

[32] ICISS (n 6) [4.34].

[33] McClean (n 19), 130.

[34] ICISS (n 6), [4.35].

[35] Abiew (n 7), 96.

[36] C Focarelli, 'The Responsibility to Protect Doctrine and Humanitarian Intervention: Too Many Ambiguities for a Working Doctrine' [2008] 13 Journal of Conflict Security Law 191 (Focarelli), 197.

obtain humanitarian objectives, while disallowing access upon intervention on purely self-interested grounds.[37]

Last Resort

The ICISS acknowledged that military intervention can only be considered when it is the last resort possible to end an atrocity or prevent one that is impending.[38] The ICISS, and subsequently both the Secretary-General[39] and the High-Level Panel on Threats, Challenges and Change,[40] emphasised the importance of 'every diplomatic and non-military avenue for the prevention or peaceful resolution of the humanitarian crisis … be[ing] explored' before military intervention takes place.[41] Moreover, even where diplomatic measures fail, first recourse should be made to more peaceful, and less inflammatory, methods, such as the use of ceasefires, international monitoring agreements, UN peacekeeping forces, observers and the provision of humanitarian assistance.[42] Although, as Abiew notes, there is no expectation that in every situation all 'option[s] must literally have been exhausted'. [43] Instead, there is an understanding that it would only be acceptable to assess the probable success of more peaceable measures where 'the threat is massive and the situation is rapidly deteriorating'.[44] The importance of the principle of last resort can be seen when applied to Kosovo. As was noted in the previous chapter, at the time of intervention, ethnic cleansing within Kosovo

[37] ibid.
[38] ICISS (n 6), [4.37].
[39] Kofi Annan noted that 'no task is more fundamental to the United Nations than the prevention and resolution of deadly conflict. Prevention, in particular, must be central to all our efforts', In Larger Freedom (n 22), [106].
[40] The High-Level Panel noted that the UN's 'principal aim should be to prevent threats from emerging', A More Secure World (n 27), viii.
[41] ICISS (n 6), [4.37].
[42] ibid [4.38].
[43] Abiew (n 7), 96.
[44] ibid.

had not begun[45] and killings within the State, while numerous, had not yet reached horrific proportions.[46] Given that the violence within Kosovo had not yet reached, nor was expected imminently, the level of humanitarian catastrophe, negotiations at Rambouillet could have continued with the NATO and Organization for Security and Co-operation in Europe Verification Missions[47] monitoring violence levels.[48] Instead, negotiation attempts were abandoned for the use of force, which ultimately resulted in further killing on a larger scale.[49]

Proportional Means and Reasonable Prospects

The proportionality of any authorised intervention is the key to ensuring that the responsibility to protect remains legitimate.[50] Proportionality does not allow either the annihilation of State infrastructure, as occurred in both Kosovo[51] and Iraq,[52] or

[45] The ethnic cleansing of the Albanian Kosovar population began during the March to June period of 1999, after the NATO intervention which arguably created the internal environment for such an operation to begin, F Tesón, 'Kosovo: A Powerful Precedent for the Doctrine of Humanitarian Intervention' [2009] 1 Amsterdam Law Forum 42, 42; Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned* (OUP 2000) (Kosovo Report) 88-89.

[46] The Independent International Commission on Kosovo found that in the period between February 1998 and March 1999 the number of civilians casualties was approximately 1,000 people, compared to the number of deaths between 24 March 1999 and 19 June 1999, which was approximately 10,000; 'Executive Summary' in Kosovo Report (n 45), 1.

[47] Both air and ground.

[48] Such a plan of action would have been preferable given that the NATO Supreme Commander stated 'military authorities fully anticipated the vicious approach that Milošević would adopt, as well as the terrible efficiency with which he would carry it out', *Newsweek* (12 April 1999) cited in S Shalom, 'Reflections on NATO and Kosovo' [1999] 7(3) New Politics 27 (Shalom), 30-31.

[49] 'Executive Summary' in Kosovo Report (n 45), 1; T Weiss, *Humanitarian Intervention* (2nd edn, Polity Press 2012) 97.

[50] L Jubilut, 'Has the "Responsibility to Protect" Been a Real Change in Humanitarian Intervention? An Analysis from the Crisis in Libya' [2012] 14 International Community Law Review 309, 320.

[51] As noted by Funnell the use of a purely air campaign involving the constant dropping of bombs from 15,000 feet resulted in 'an inordinate amount of damage [being] inflicted on Yugoslavia's infrastructure', A Schnabel and R Thakur (eds), *Kosovo and the Challenge of Humanitarian Intervention: Selective Indignation, Collective Action, and International Citizenship* (United Nations University Press 2000) 444.

[52] Mowla notes that in the 1991 intervention in Iraq the United States used 'over 90,000 tons of bombs, intentionally destroying civilian infrastructure, including 18 of 20 electricity-generating plants and the water-pumping and sanitation systems' K Mowla, *The Judgement against*

the use of force greater than that necessary to prevent or end an humanitarian crisis. In international law the principle of proportionality 'relates to the size, duration and target' of the use of force where the aim 'should be to halt or repel an attack'.[53] The principle is also codified in the Geneva Conventions 1949: Protocol I of the Geneva Conventions 1949 relating to the Protection of Victims of International Armed Conflicts 1977 prohibits

> an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.[54]

Conventions I,[55] II,[56] and IV[57] define 'extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly' as grave breaches.[58] In applying proportionality to self-defence, the International Court of Justice found in *Military and Paramilitary Activities in and against Nicaragua* that a use of force is proportionate where the action is

---

Imperialism, Fascism and Racism against Caliphate and Islam, Volume II (Author House 2008) 310.

[53] C Gray, *International Law and the Use of Force* (OUP 2004) 150.

[54] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3; T Meron et al., 'Customary Law and Additional Protocol I to the Geneva Conventions for Protection of War Victims: Future Directions in Light of the US Decision not to Ratify' [1987] 81 American Society of International Law Proceedings 26, 30.

[55] Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31, Article 50.

[56] Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 85, Article 51.

[57] Convention (IV) relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287, Article 147.

[58] Further provisions relating to proportionality can be found in Geneva Convention IV Article 53; Additional Protocol I Article 57(2)(b), Article 85(3)(b); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609, Article 3(3)(c) and 3(8)(c).

proportionate to the threat posed.[59] Further, in *Oil Platforms*, the Court found that, when determining whether an action is proportionate, the nature of the target must be considered,[60] as well as the scale of the whole operation.[61] The purpose of including the principle of proportionality is to ensure that where military interventions take place the 'least onerous measure'[62] with the 'minimum necessary' amount of force for attaining the 'humanitarian objective in question'[63] is utilised.

Similar to the principle of proportionality prior to intervention, there must be a reasonable prospect of the intervention succeeding in its humanitarian objective.[64] Thus, the intervention would be approved only where the means would not do greater harm than is necessary to attain the legitimate objective. This results in the ICISS conclusion that, in certain 'case[s] … some human beings simply cannot be rescued except at unacceptable cost[s]'.[65] In applying this principle to the conflict in Kosovo it is likely that greater emphasis would have been given to the use of peaceful methods of resolution. This is supported by the fact that NATO forces were aware that Milošević's forces were likely to undertake the retaliatory

[59] *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v United States of America*) (Merits) [1986] ICJ Rep 14, [287].
[60] *Oil Platforms* (*Islamic Republic of Iran v United States of America*) (Judgment) [2003] ICJ Rep 161, [74].
[61] ibid [77].
[62] E Crawford, 'Proportionality' [2011] Max Planck Encyclopaedia of Public International Law <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1459?rskey=gfKQXd&result=1&q=proportionality&prd=EPIL> accessed 23/08/2013, [2].
[63] ICISS (n 6), [4.39].
[64] ICISS (n 6), [4.41].
[65] ibid [4.41].

measure of ethnic cleansing, which resulted in a sharp increase in casualties in the Kosovo conflict.[66]

Right Authority

The ICISS recognised that there are very few exceptions to the general prohibition of the threat or use of force under Article 2(4).[67] In light of this, the Report did not expand the limits on the use of force, citing the existing power of the Security Council, under Chapter VII, to authorise military intervention and the exception under Article 51.[68] Consequentially, the ICISS accepted that only when actions are taken through the United Nations can they gain both legality and legitimacy under international law, as such action will have been 'duly authorised by a representative international body'.[69] In support of Security Council authorisation the report reaffirmed that the United Nations, as an institution, reminds States of their obligations to refrain from certain actions.[70] However, the report also acknowledged concerns over the ability of both the United Nations and the Security Council to fulfil their positions properly as an international collective security system.[71] Accepting that there have been problems with the United Nations working as an effective body due to problems of political will, veto power, uneven representation, and performance, the report further stated that, regardless of past inconsistencies, the United Nations,[72] and the Security Council

[66] *Newsweek* (12 April 1999) cited in Shalom (n 48), 30-31.
[67] Charter of the United Nations (adopted 26 June 1945, entry into force 24 October 1945) 1 UNTS XVI (Charter), Article 2(4).
[68] ICISS (n 6), [6.7].
[69] ICISS (n 6), [6.9].
[70] ibid [6.10].
[71] ibid [6.13].
[72] Joyner (n 28), 715.

in particular, is the best and most appropriate international body to cope with humanitarian-based military interventions.[73]

The ICISS suggested three ways in which the impediments to effective Security Council actions could be surmounted, as well as possible alternatives where the Security Council,[74] for whatever reason, failed to act.[75] The first proposal submitted that the five permanent members agree to a 'code of conduct' regarding the use of their veto power in circumstances relating to actions to prevent or halt humanitarian crises.[76] A code of conduct would establish that permanent members would not utilise their veto power (or threaten its use)[77] where a majority resolution would otherwise be obtained.[78] However, as noted by Payandeh, the likelihood of any form of restriction on the use of the veto power by permanent members is limited;[79] this is supported by the fact that in the period between 1966 and 2007 the United States and the United Kingdom vetoed more resolutions than China, France and Russia combined.[80]

Secondly, the ICISS proposed using the pre-existing 'Uniting for Peace' procedures.[81] Under Uniting for Peace, where the

---

[73] McClean (n 19), 130.
[74] Wheeler (n 18), 96.
[75] H Hannum, 'The Responsibility to Protect: Paradigm or Pastiche' [2009] 60 Northern Irish Legal Quarterly 135 (Hannum), 136.
[76] ICISS (n 6), [6.21].
[77] S Sharma, 'Toward a Global Responsibility to Protect: Setbacks on the Path to Implementation' [2010] 16 Global Governance 121 (Sharma), 131.
[78] A Peters, 'The Security Council's Responsibility to Protect' [2011] 8 International Organizations Law Review 15, 40.
[79] M Payandeh, 'With Great Power Comes Great Responsibility? The Concept of the Responsibility to Protect within the Process of International Lawmaking' [2010] 35 Yale Journal of International Law 469, 500.
[80] Global Policy Forum, 'Changing Patterns in the Use of the Veto in the Security Council' (2008) <http://www.globalpolicy.org/component/content/article/102/32810.html> accessed 24 September 2013 (Global Policy Forum).
[81] ICISS (n 6), [6.29].

> Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression…[82]

the matter may be considered by the General Assembly.[83] While the General Assembly has no legal power to authorise action, Schorlemer advocates that the General Assembly adopting a resolution in favour of action would 'accurately reflect the will of the international community', thus giving any resultant action legitimacy.[84] Certainly, as Schorlemer argues, a General Assembly resolution passed with at least a two thirds majority[85] could be considered more representative of international opinion than the veto of a Security Council resolution on the basis of a single vote.[86] Though the use of Uniting for Peace would still ensure that any possible action would have received some form of approval from the United Nations, any resultant intervention would not fulfil the legal requirement of Security Council authorisation. Furthermore, it is difficult to see how the implementation and monitoring of any subsequent intervention would occur if "authorised" through the General Assembly.

The final proposal recommended that collective intervention could be executed by regional organisations such as ECOWAS.[87] The role of regional organisations in the maintenance of international peace and security is recognised under Article 52

[82] UNGA Res 377(V) A (3 November 1950) UN Doc A/RES/377 (V) A, [1].
[83] If not in session then in an Emergency Special Session.
[84] S Schorlemer, 'The Responsibility to Protect as an Element of Peace: Recommendations for its Operationalisation – Policy Paper 28' (Development and Peace Foundation 2007) (Schorlemer) 8.
[85] In order to adopt a resolution regarding 'recommendations with respect to the maintenance of international peace and security', a two thirds majority is required; Charter (n 67), Article 18.
[86] Schorlemer (n 84), 8.
[87] ICISS (n 6), [6.31].

of the Charter.[88] Furthermore, regional organisations have previously been suggested to be the best 'equipped to deal with inter-state conflicts', as they have a greater understanding of the unique 'economic, political, and resource-related concerns' of the area[89] and can undertake action 'more efficiently'.[90] In turn, some support has been given to the idea that *ex post facto* authorisation would retain the legality and legitimacy of non-Security Council authorised actions. However, given that on only two occasions has there been a clear commendation of such operations, the existence of such a principle in the form of custom is debatable, for it has not found 'wide international favour'.[91] The ICISS nevertheless states that such action is appropriate only where the action taken by a regional organisation is against a member from within its area of membership, unlike, for instance, the NATO intervention in Kosovo.[92] Where Security Council action is prevented due to deadlock, the ICISS noted that, although action taken without authorisation may 'damage … [the] international order', greater harm may be done 'if human beings are slaughtered while the Security Council stands by'.[93] However, Bellamy posits, an endorsement of guidelines providing for intervention without Security Council authorisation was highly unlikely to occur, especially given extant concerns over abuse.[94]

---

[88] Charter (n 67), Articles 52 and 53.
[89] Woodrow Wilson International Center for Scholars, *African Regional and Sub-Regional Organizations: Assessing their Contributions to Economic Integration and Conflict Management* (Woodrow Wilson International Center for Scholars 2008) 9- 10.
[90] A Orford, 'Moral Internationalism and the Responsibility to Protect' [2013] 24 European Journal of International Law 83, 101.
[91] G Evans and M Sahnoun, 'The Responsibility to Protect' [2002] 81(6) Foreign Affairs 99 (Evans and Sahnoun), 107.
[92] ICISS (n 6), [6.34].
[93] ibid [6.37].
[94] A Bellamy, *Global Politics and the Responsibility to Protect: From Words to Deeds* (Routledge 2011) 167.

Thus, while alternatives to Security Council authorised action are provided by the ICISS, there is also an acceptance that finding a general consensus on action taken without Security Council authorisation would be difficult.[95] Further, Evans and Sahnoun observed that, regardless of the success of any subsequent mission, the failure of the Security Council to authorise and provide a response to the humanitarian crisis would 'have enduringly serious consequences for the stature of the UN itself'; thus, the 'UN cannot afford to drop the ball too many times on that scale'.[96]

Foundation of the Responsibility to Protect

Like the foundation of humanitarian intervention, the responsibility to protect is founded on the basic principle that citizens provide a State with its sovereignty in return for the State's acceptance of certain responsibilities.[97] As in humanitarian intervention, the responsibility to protect acknowledges that States have the responsibility of ensuring that their citizens are safe, and protected 'from genocide, war crimes, ethnic cleansing, and crimes against humanity'.[98] However, unlike humanitarian intervention, there is no "loss" of sovereignty in the event that a State fails to protect citizens from, or wilfully subjects them to, large-scale loss of life or ethnic cleansing.[99] Accordingly, instead of States losing their right to non-intervention and the international community gaining the right to

[95] ICISS (n 6), [6.37].
[96] Evans and Sahnoun (n 91), 108.
[97] M De Sousa, 'Humanitarian Intervention and the Responsibility to Protect: Bridging the Moral Legal Divide' [2010] 16 University College London Jurisprudence Review 51, 69.
[98] J Welsh and M Banda, 'International Law and the Responsibility to Protect: Clarifying of Expanding States' Responsibilities' [2010] 2 Global Responsibility to Protect 213 (Welsh and Banda), 215.
[99] Abiew (n 7), 93.

intervene, the responsibility to protect advocates all States having responsibilities, first to their citizens, and secondly (in the event of a State failing in those responsibilities) to the citizens of other States.[100] The removal of the concept of States "losing" their sovereignty means that there is more of an emphasis on 'help[ing] States fulfil the[ir] responsibilities' than on simply using force to rectify the situation.[101] This is because the international community no longer gains a 'right to intervene'; this removes both the 'intrinsically more confrontational'[102] language and the focus upon one State, usually 'large and powerful ones … throw[ing] their weight around militarily'.[103] Instead, States are encouraged to use a 'wide spectrum of proactive measures and assistance to local government in discharging their responsibility'[104] by 'us[ing] appropriate diplomatic, humanitarian and other peaceful means … to help protect populations'.[105] The focus on assisting States where they fail in their responsibilities is encompassed in the inclusion not only of a responsibility to protect but also a responsibility to prevent atrocities from occurring in the first place and rebuild States where interventions have taken place. By doing so the strict 'focus on military force' is removed and extended to 'other tools for protection'.[106]

---

[100] ibid.
[101] Welsh and Banda (n 98), 215.
[102] ICISS (n 6), 17.
[103] G Evans, 'Public Lecture: Responding to Mass Atrocity Crimes: The Responsibility to Protect (R2P) After Libya' *Global Centre for the Responsibility to Protect* (24 October 2012) <http://www.gevans.org/speeches/speech496.html > accessed 18 September 2013.
[104] Brunnée and Toope Norms (n 11), 123.
[105] UNGA, '2005 World Summit Outcome' (15 September 2005) UN Doc A/RES/60/1 (World Summit Outcome), [139].
[106] M Barnett, 'On Gareth Evans: The Responsibility to Protect – Ending Mass Atrocity Crimes Once and For All' [2010] 2 Global Responsibility to Protect 307, 308.

The move towards responsibilities had previously taken place in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) which enunciated the duty States have to prevent and punish genocide.[107] The extent of the responsibility was confirmed in the *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide*.[108] The International Court of Justice found that Article 1 of the Genocide Convention required any State which 'learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed'[109] to use the means available to it to try to prevent the perpetration of the genocide, regardless of whether the intended genocide were to occur within the State's own territory or another's.[110] Further, in the Articles on Responsibility of States for Internationally Wrongful Acts, it is confirmed that the international community 'shall cooperate to bring to an end … any serious breach'.[111] Thus, where a State fails in their international obligations, it is not solely the responsibility of the failing State to attempt to end the breach, but the responsibility of the international community as a whole.

The responsibility to protect, unlike humanitarian intervention, does not create its own obligations, but builds upon pre-existing obligations within international

[107] Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into effect 12 January 1951) 78 UNTS 277, Article 1.
[108] *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*Bosnia and Herzegovina v Serbia and Montenegro*) (Judgment) [2007] ICJ Rep 43 (*Bosnia*).
[109] *Bosnia* (n 108) [431].
[110] ibid [430].
[111] International Law Commission, 'Articles on the Responsibility of States for Internationally Wrongful Acts', in Report of the International Law Commission on the Work of its 53rd Session, UN Doc A/56/10 Chap. IV (2001) GAOR 56th Session Supp 10, Article 41.

humanitarian law, international conventions, custom, and human rights.[112] Accordingly, the principle changes the manner in which States end humanitarian crises in other States by first encouraging the international community to help failing States fulfil their responsibilities, before moving to collective action, reinforcing the importance of action taken through the United Nations.[113] The responsibility to protect is therefore an enforcement doctrine of pre-existing obligations with principles to encourage implementation.[114]

International Response to the Responsibility to Protect

Initial reactions to the responsibility to protect were, predominantly, positive,[115] with many Security Council members responding favourably.[116] However, four of the five permanent members 'expressed disquiet with the idea of formalising criteria for intervention', which would, in their eyes, result in States having a greater ability to conduct interventions.[117] The 2003 invasion of Iraq did little to ameliorate existing concerns. Rather, it 'undermin[ed] global acceptance' due to the suggestion of the invasion being 'a good example of the responsibility to protect principle at work' by the intervening States, when it was largely seen as unwarranted intervention in the foreign affairs of another State.[118] Concerns over the 'blatant manipulation of a humanitarian justification in order to sanction the

[112] Schorlemer (n 84), 4; Eaton (n 16), 801.
[113] Wheeler (n 18), 98.
[114] Welsh and Banda (n 98), 215.
[115] S Martin, 'Sovereignty and the Responsibility to Protect: Mutually Exclusive or Codependent' [2011] 20(1) Griffith Law Review 153, 166.
[116] The United Kingdom (permanent member), Germany, Australia, Rwanda, Sweden and Canada; A Bellamy, 'Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit' [2006] 20 Ethics and International Affairs 143, 151.
[117] A Bellamy, 'Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq' [2006] 19(2) Ethics and International Affairs 31, 36.
[118] G Evans, 'When is it Right to Fight?' [2004] 46 Survival 59 (Evans Fight), 69.

recourse to force'[119] heightened existent fears relating to the responsibility to protect. This resulted in a chilling effect around the principle and, as Evans notes, 'almost choked R2P at its birth'.[120] Even States which had previously supported the responsibility to protect became less vigorous in their endorsements of the principle and were less willing to ask for other States to accept the range of new proposals within the ICISS report.[121] Such fears over future misuse of the responsibility to protect were, as suggested by Byers, the principal reasons for previous supporters of the responsibility to protect accepting a vastly weaker doctrine, which was neither broad in terms nor far-reaching.[122]

Though both the High-Level Panel on Threats, Challenges and Change[123] and the Secretary-General supported the adoption of the responsibility to protect with relatively few amendments to the original report, proposals by States, including the United States,[124] resulted in much of the core doctrine of the responsibility to protect being removed.[125] This included the removal of the proposal to encourage permanent members to abstain from the use of veto power and the inclusion of a collectively-determined criterion for determining when to act.[126] During the General Assembly debates, States aired concerns that the United Nations, in adopting anything other than a diluted form of the doctrine, would be heading down an 'interventionist path' with 'big and powerful States, not small and

[119] Sharma (n 77), 127.
[120] Evans Fight (n 118), 69.
[121] Sharma (n 77), 127.
[122] Brunnée and Toope Norms (n 11), 126.
[123] The High-Level Panel produced a Report which considered the responsibility to protect; A More Secure World (n 27), 199-203.
[124] More amendments to the Draft Document were suggested by China, Russia, India and Jamaica which further diluted the principle.
[125] E Strauss, 'A Bird in the Hand is Worth Two in the Bush: On the Assumed Legal Nature of the Responsibility to Protect' [2009] 1 Global Responsibility to Protect 291 (Strauss), 296-297.
[126] ibid.

weaker ones, decid[ing] where and when to intervene to protect people at risk'.[127] As Berman and Michaelson noted, the changes 'damag[ed] the legal utility of the doctrine' which did little more than 'affir[m] a restrained notion of responsibility largely devoid of normative value'.[128] Thus, while the responsibility to protect was, in theory, unanimously adopted, the 'negotiations of the provisions … related to the responsibility to protect cannot provide evidence for the exceptional intention of member states to lay down a legal provision'.[129] There is no evidence, however, that the *operational* framework of the responsibility to protect has been adopted by the international community, other than a broad responsibility to consider action on a 'case by case basis'.[130] Moreover, the international endorsement of the responsibility to protect focussed on emphasising that responsibility for the protection of citizens rests predominantly with their State, and only secondarily with the international community. [131] Therefore, despite its proclamations, the General Assembly failed 'to endorse a legally binding' doctrine.[132]

Since the 2005 World Summit there has been some international support for the responsibility to protect. The responsibility to protect was mentioned in both the Security Council and General Assembly after the 2005 Summit. However, such statements generally reiterated the same themes as in the Outcome Document,

[127] UNGA Verbatim Records (6 April 2005) UN Doc A/59/PV.86, Pakistan (5); UNGA Verbatim Records (6 April 2005) UN Doc A/59/PV.85, Chairman of the Group of African States (22).
[128] D Berman and C Michaelson, 'Intervention in Libya: Another Nail in the Coffin for the Responsibility-to-Protect?' [2012] 14 International Community Law Review 337 (Berman and Michaelson), 342.
[129] Strauss (n 125), 299.
[130] World Summit Outcome (n 105), [139].
[131] ibid.
[132] Berman and Michaelson (n 128), 344.

noting: the need to 'preven[t] the occurrence of armed conflict'; that 'the primary responsibility of States [is] to protect their own citizens'; the need for the 'United Nations to tak[e] a lead in ensuring that the perpetrators of abuses against civilians are brought to justice'; and 'the importance of a coherent, unified approach by the Council … in all … peacekeeping operations'.[133]

The responsibility to protect was referred to in the resolution prior[134] to Resolution 1769, which authorised the Hybrid Operation in Darfur (UNAMID) to use force in Darfur for protecting civilians.[135] However, while the responsibility to protect was mentioned in Resolution 1769's preamble, it did not feature in the operational part of the resolution. Moreover, alongside the reiteration of the responsibility to protect, was the confirmation of the importance of respecting the 'sovereignty, unity, independence and territorial integrity of Sudan', which implies that although the Security Council had endorsed the responsibility to protect, the importance of sovereignty was still supreme.[136] The failure to include any mention of the responsibility to protect was a notable omission in the resolution which authorised UNAMID to use force to protect civilians.[137] Consent by the Sudanese government to the provision of UNAMID forces also suggests that the role which the responsibility to protect played in any humanitarian effort

[133] The United Kingdom in UNSC Verbatim Record (28 June 2006) UN Doc S/PV.5467, 6-7; similar statements were made by Argentina (16), Denmark (21), Ghana (11), and Congo (15); UNSC Verbatim Records (9 December 2005) UN Doc S/PV.5319, the same form of remarks were made later in 2005 by Italy (12), Greece (22), Japan (23), France (7), Nepal (4), Spain (17), Rwanda (19), Slovakia (13), and the United Kingdom (9); UNGA Res 1674 (28 April 2006) UN Doc A/RES/1674 (2006).
[134] UNSC Resolution 1755 (30 April 2007) UN Doc S/RES/1755.
[135] UNSC Resolution 1769 (2007) (31 July 2007) UN Doc S/RES/1769 (2007) (UNSC 1769).
[136] ibid.
[137] Focarelli (n 36), 208 (n102).

in Darfur was limited.[138] Bellamy argues that the responsibility to protect was also implemented in the violence which erupted in Kenya following the 2007 elections.[139] It is true that the Secretary-General mentioned the responsibility to protect in addressing violence in Kenya;[140] however, the only reference to the responsibility to protect was in relation to the responsibility of the 'Government, as well as the political and religious leaders of Kenya … to protect the lives of innocent people'.[141] Such a statement does little to reinforce the responsibility of other States to protect the citizens of another State, as was proposed in the ICISS Report. Further mention of the responsibility to protect was made in regards to the escalating violence in the Côte d'Ivoire after the presidential elections of 2010.[142] However, as with Darfur, the responsibility to protect was included only in the preamble of the resolution, not the operative section.

The Security Council reaffirmed 'its strong commitment to the sovereignty, independence [and] territorial integrity … of the Côte d'Ivoire' and recalled 'the importance of the principl[e] of … non-interference'.[143] Moreover, the only mention of the responsibility to protect was in specific reference to the Côte d'Ivoire's responsibility to its own citizens, not the international community's

[138] UNSC 1769 (n 135).
[139] A Bellamy, *Global Politics and the Responsibility to Protect: From Words to Deeds* (Routledge 2011) 55.
[140] 'Spokesperson for the Secretary-General on the situation in Kenya' (2 January 2008) <http://www.un.org/sg/statements/?nid=2937> accessed 24 September 2013.
[141] ibid.
[142] UNSC Resolution 1975 (2011) (30 March 2011) UN Doc S/RES/1975 (2011) (UNSC 1975), preamble.
[143] ibid.

responsibility.[144] As such, the responsibility to protect, as in both Kenya and Darfur, played only a limited role in the resolution of violence within the State.

Overall, international responses to the responsibility to protect have been mixed. Many States still fear that the responsibility to protect can be used to continue the bid for control by large States over smaller States.[145] Additionally, the failure of many of the original suggestions in the ICISS report has resulted in the responsibility to protect becoming a vague doctrine supporting little other than the responsibility to protect one's own citizens and the need for the international community to be able to respond in cases of dire humanitarian crises.[146] The concerted efforts to strip the responsibility to protect of its proposals for the limitation of veto power, delimitation of guidelines for when intervention should be carried out, and the emphasis of a responsibility to protect nationals where their own State refuses or is incapable of doing so, has resulted in the dilution of the principle.[147] Given this, the responsibility to protect has failed to develop into a norm in international law. Rather, it remains as merely a reiteration of pre-existing concepts with little effect on international principles.

[144] ibid.
[145] Hannum (n 75), 135.
[146] Hannum (n 75), 137.
[147] McClean (n 19), 152.

Chapter Six:

Libya and Why the Responsibility to Protect Does Not Work

Introduction

In 2005, the General Assembly came together at the World Summit and, for the first time, officially endorsed the concept of the responsibility to protect.[1] While the responsibility to protect was unanimously adopted, the international response was mixed, as Chapter Five discussed. Most notably, the Non-Aligned Movement representatives expressed concern that the responsibility to protect would be 'misus[ed] to legitimize unilateral coercive measures or intervention in the internal affairs of States'.[2] Moreover, the principle that the General Assembly endorsed was not that which had been outlined in the ICISS report. Instead, the majority of the framework which had been created by the ICISS was removed, leaving only the concept of responsibility.[3] Thus, as noted by Hamilton, most of the central principles espoused by the ICISS 'were lost in the transition from document to doctrine'.[4] The Security Council's subsequent limited use of the responsibility doctrine, and the failure of States to give it their full support, have resulted in limited chances for the responsibility to protect to be rebuilt and gain

[1] UNGA, '2005 World Summit Outcome' (15 September 2005) UN Doc A/RES/60/1 (World Summit), [138] – [139].
[2] UNGA, 'Thematic Debate on the "Report of the Secretary-General on Implementing the Responsibility to Protect"' (23 July 2009) UN Doc A/63/PV.97, 5.
[3] A Orford, *International Authority and the Responsibility to Protect* (CUP 2011) 25.
[4] R Hamilton, 'The Responsibility to Protect: From Document to Doctrine – But What of Implementation?' [2006] 19 Harvard Human Rights Journal 289, 289.

greater international support.[5] The World Summit endorsement of the responsibility to protect pledged to determine cases on a 'case by case basis', thereby removing any mention of the original ICISS guidelines for military intervention.[6] This therefore negated the need for a minimum set of criteria before intervention and allowed States to be more selective.[7] Accordingly, when the Libyan crisis began to take hold in 2011, there had been only limited use of the responsibility to protect within the Security Council and limited guidelines for when and how intervention should occur. It is upon this background that this chapter's analysis of the Libyan intervention rests.

This chapter first will outline the background to the Libyan crisis and the events leading up to the Security Council resolution authorising Chapter VII measures which resulted in NATO intervening under the auspices of the protection of civilians. Secondly, the reaction of the Security Council to the Libyan crisis will be examined, looking specifically at the intentions of States in adopting Resolution 1973 (2011). Thirdly, the NATO intervention itself will be analysed, with specific regard to the role NATO played in the removal of Gaddafi and in defeating Gaddafi's troops. In concert with an analysis of NATO's intervention, the scope of Resolution 1973 (2011) will be studied to determine whether the NATO intervention in Libya ultimately exceeded its Security Council mandate. Finally, the repercussions of the Libyan intervention will be discussed with specific reference to both the effects that the Libyan intervention has had on the

[5] C Focarelli, 'The Responsibility to Protect Doctrine and Humanitarian Intervention: Too Many Ambiguities for a Working Doctrine' [2008] 13 JCSL 191, 201.
[6] A Bellamy, 'Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit' [2006] 142, 166.
[7] World Summit (n 1) [139].

principle of the responsibility to protect, and Security Council action in regard to the crisis in Syria. The chapter concludes by suggesting that the NATO intervention, having exceeded its Security Council mandate, has done long-term damage to the principle of the responsibility to protect, leading to the reticence of permanent members of the Council in allowing similar intervention in Syria. This thesis contends that, by exceeding its mandate, NATO reaffirmed the concerns highlighted at the 2005 World Summit regarding the capacity for the responsibility to protect to be abused.

Background to the Libyan Crisis

The "Arab Spring" began a revolutionary wave of protest within the Middle East beginning in December 2010, following Mohamed Bouazizi's self-immolation in Tunisia.[8] Based mostly on political unrest, corruption, human rights abuses, and media restrictions, protesters took to the streets demanding change.[9] It was against the backdrop of general civil unrest within the Middle East that the arrests of Jamal al-Hajji[10] and the human rights activist, Fatih Turbel,[11] sparked riots in Benghazi on 15th February 2011. While the riots originally related to the arrest of

[8] K Fahim, 'Slap to a Man's Pride Set off Tumult in Tunisia' *New York Times Online* (11 January 2011) <http://www.nytimes.com/2011/01/22/world/africa/22sidi.html?pagewanted=1&_r=2&src=twrhp &> accessed 5 September 2013.
[9] C Joffé, 'The Arab Spring in North Africa: Origins and Prospects' [2011] 16(4) JNAS 507, 526.
[10] A Libyan political commentator, previously arrested for his political views, called for the Libyan people to join the Middle East uprising; he was subsequently arrested on 1 February 2011 upon the charge of having hit a man with his car – Amnesty International suggested that his arrest was based on his call for protests instead of a legitimate concern he had committed a crime; Amnesty International, 'Libyan writer detained following protest call' (8 February 2011) <http://www.amnesty.org/en/news-and-updates/libyan-writer-detained-following-protest-call-2011-02-08> accessed 5 September 2013.
[11] Turbel was arrested shortly before riots began on 15 February 2011; 'Libya protests: Second city Benghazi hit by violence' *BBC News* (16 February 2011) <http://www.bbc.co.uk/news/world-africa-12477275> accessed 5 September 2013.

Turbel, they quickly became the beginning of a movement to remove Gaddafi from power.[12] By the 27th February protesters had gathered in armed opposition forces[13] against the attempts by the security forces to quell the unrest,[14] in the form of 100 to 300 separate armed forces,[15] and began their slow movement towards taking control of Libyan cities.[16]

Gaddafi's response to calls for his resignation was one of retaliation, the reinforcement of existing security forces, and a declaration that the rebels would be defeated.[17] In responding to the threat that the rebel forces posed, Gaddafi stated that such 'cockroaches'[18] would be 'hunted down door-to-door and executed',[19] and that he would go 'house to house'[20] to do so. Gaddafi's intentions became clearer with his drafting of mercenaries to engage in hostilities, the engagement of his troops in fighting with rebels, and the same forces'

[12] 'Libya: Timeline of Key Events Since February 2011' (UN Integrated Regional Information Networks: Humanitarian News and Analysis, 8 April 2011) <http://www.irinnews.org/report/92410/libya-timeline-of-key-events-since-february-2011> accessed 5 September 2013.
[13] UNHRC, 'Report of the International Commission of Inquiry to Investigate All Alleged Violations of International Human Rights Laws in the Libyan Arab Jamahiriya' (12 January 2012) UN Doc A/HRC/17/44, [28], [55].
[14] In the form of machine-gun and air power; S Lynch, 'An Invitation to Meddle: The International Community's Intervention in Libya and the Doctrine of Intervention by Invitation' [2012] 2 CICLJ 173, 177.
[15] International Crisis Group, 'Holding Libya Together: Security Challenges after Qadhafi – Middle East/North Africa Report N°115' (14 December 2011) <http://www.crisisgroup.org/~/media/Files/Middle%20East%20North%20Africa/North%20Africa/115%20Holding%20Libya%20Together%20--%20Security%20Challenges%20after%20Qadhafi.pdf> accessed 5 September 2013.
[16] K Mačák and N Zamir, 'The Applicability of International Humanitarian Law to the Conflict in Libya' [2012] 14 INCLR 403 (Mačák and Zamir), 407.
[17] S Zifcak, 'The Responsibility to Protect after Libya and Syria' [2012] 13Michigan Journal of International Law 1 (Zifcak), 2.
[18] K Fahim and D Kirkpatrick, 'Qaddafi's Grip on the Capital Tightens as Revolt Grows' *New York Times Online* (22 February 2011) <http://www.nytimes.com/2011/02/23/world/africa/23libya.html?pagewanted-all> accessed 5 September 2013 (Fahim and Kirkpatrick).
[19] ABC Radio, 'Defiant Gaddafi Issues Chilling Threat' *World Today* (23 February 2011) <http://www.abc.net.au/worldtoday/content/2011/s3146582.htm> accessed 5 September 2013.
[20] Fahim and Kirkpatrick (n18).

involvement in the 'torture, murder, rape and the use of cluster bombs against civilians'.[21] As Phillips notes, by the end of February 2011, 'an intensification of the repressive tendencies that had always sustained the regime'[22] had occurred and 'arbitrary arrests, forced disappearances [and] summary executions'[23] became commonplace.

Security Council Response to the Impending Libyan Crisis

The international community's concern about the hostilities taking place in Libya grew in response to Gaddafi's continual pledges to 'fight until the last man and woman',[24] and open encouragement of supporters to 'come out of your homes. Attack [rebels] in their dens'.[25] The Security Council unanimously adopted Resolution 1970 (2011) on 26th February. The resolution deplored the Libyan government's 'incitement to hostility and violence against the civilian population'; recalled Libya's 'responsibility to protect its population'; welcomed the condemnation of the hostilities by the Arab League, African Union and Organization of the Islamic Conference; and considered the possibility that the 'widespread and systematic attacks currently taking place … may amount to crimes against humanity'.[26] The Security Council acted further under Chapter VII

[21] P Thielbörger, 'The Status and Future of International Law after the Libyan Intervention' [2012] 4(1) GJIL 11 (Thielbörger), 17.
[22] E Phillips, 'The Libyan Intervention: Legitimacy and the Challenges of the "Responsibility to Protect" Doctrine' [2012] 25 The Denning Law Journal 39 (Phillips), 45.
[23] J Herron, 'Responsibility to Protect: Moral Triumph or Gateway to Allowing Powerful States to Invade Weaker States in Violation of the UN Charter' [2012] 26 Temple International and Comparative Law Journal 367 (Herron), 377.
[24] 'Qaddafi Vows to Fight to "Last Man and Woman" as Loyal Forces Battle Rebels' *Fox News* (2 March 2011) <http://www.foxnews.com/world/2011/03/02/diplomats-nato-eu-mulling-libyan-fly-zone/> accessed 5 September 2013.
[25] 'Responsibility to Protect: The Lessons of Libya' *Economist* (19 May 2011) <http://www.economist.com/node/18709571> accessed 5 September 2013.
[26] UNSC Resolution 1970 (2011) (26 February 2011) UN Doc S/RES/1970 (2011).

by demanding that an immediate end be brought to the violence occurring within the Libyan State;[27] urged the allowance of humanitarian assistance;[28] referred the hostilities taking place to the International Criminal Court for consideration;[29] imposed an arms embargo on Libya,[30] as well as a travel ban upon selected members of the Gaddafi government and family;[31] froze the assets of selected members of the Gaddafi government and family;[32] and established a Sanctions Committee to monitor the implementation of the authorised measures.[33]

The demands in Resolution 1970 (2011) were not adhered to by the Gaddafi government, which 'rejected the demands … and refused to permit humanitarian aid convoys into besieged towns'.[34] Indeed, in an act of defiance, the government increased the level of violence against civilians.[35] Noting Gaddafi's refusal, regional organisations began to call for further action to halt Gaddafi's attacks. The Gulf Cooperation Council called for the Security Council to 'take all necessary measures to protect civilians, including enforcing a no-fly zone over Libya',[36] and the Organization of the Islamic Conference called for the enforcement of a no-fly zone.[37] Finally, on 12th March 2011, the Arab League

[27] UNSC 1970 (n 26) [1].
[28] ibid [2].
[29] ibid [4].
[30] ibid [9].
[31] ibid [15].
[32] ibid [17].
[33] ibid [24].
[34] P Williams and A Bellamy, 'Principles, Politics and Prudence: Libya, the Responsibility to Protect and the Use of Military Force' [2012] 18 Global Governance 273 (Williams and Bellamy), 278.
[35] G Ulfstein, 'The Legality of the NATO Bombing in Libya' [2013] International and Comparative Law Quarterly 159 (Ulfstein), 160.
[36] P Williams, 'Briefing: The Road to Humanitarian War in Libya' [2011] 3 GRP 248, 252.
[37] Organization of Islamic Cooperation, 'Final Communique Issued by the Emergency Meeting of the Committee of Permanent Representatives to the Organization of the Islamic Conference on the Alarming Developments in Libyan Jamahiriya' (8 March 2011) <http://www.oic-oci.org/oicv2/topic/?t_id=5022&ref=2110&lan=en&x_key=libya> accessed 5 September 2013.

made a plea to the Security Council that a no-fly zone be implemented in order to prevent further attacks against the Libyan civilian population.[38] While the African Union condemned the actions of the Gaddafi government, it also remarked upon the 'transformation of pacific demonstrations into an armed rebellion', and thus rejected any form of foreign intervention as a violation of the unity and territorial integrity of Libya, as well as on the basis that it would only result in an escalation of violence within the State.[39] While Resolution 1973 (2011) did allow for the use of 'all necessary measures' to protect civilians and civilian-populated areas, it did so without creating a single United Nations force to implement such measures. Instead, States merely had to notify the Secretary-General that they intended to act either 'nationally or through regional organisations or arrangements'.[40] In addition, there was no requirement upon States to inform the Secretary-General of the measures intended to be taken; rather, there was only a request so to do.[41]

In response, France, Lebanon, the United Kingdom, and the United States tabled a draft resolution.[42] The draft had several purposes: it reiterated Libya's responsibility to protect its citizens,[43] though not in the operational part of the resolution but in the preamble; demanded an immediate cease-fire;[44] established a no-fly zone in Libyan airspace;[45] reiterated the existing arms embargo;[46] formed a

[38] V Nanda, 'From Paralysis in Rwanda to Bold Moves in Libya: Emergence of the "Responsibility to Protect" Norm under International Law – Is the International Community Ready for it?' [2012] 34 HJIL 1, 40.
[39] African Union Peace and Security Council 'Communique' (10 March 2011) AU Doc PSC/PR/COMM.2(CCLXV).
[40] UNSC Resolution 1973 (2011) (17 March 2011) UN Doc S/RES/1973 (2011) (UNSC 1973).
[41] ibid [4].
[42] UNSC 'France, Lebanon, United Kingdom of Great Britain and Northern Ireland and United States of America: draft resolution' (17 March 2011) UN Doc S/2011/142.
[43] UNSC 1973 (n40), preamble.
[44] ibid [1].
[45] ibid [6].

panel of experts, in addition to the Sanction Committee;[47] and authorised member States to undertake 'all necessary measures … to protect civilians and civilian populated areas under threat of attack', though foreign occupation was excluded.[48] The draft resolution was subsequently adopted as Resolution 1973 (2011), but five members of the Security Council refused to support the resolution, abstaining from the vote.[49]

While all States accepted that action had to be taken by the Security Council to address Gaddafi's increased attempts to thwart rebel forces, the five abstaining States had concerns over the implementation of military action within Libya. Germany was concerned about the resultant effects of military intervention, both on the civilian population within Libya and surrounding areas,[50] and Russia, India, and China voiced concerns over the lack of clear indication as to the manner or style of the 'measures' which could be taken and the format that the no-fly zone would take.[51] Brazil was also concerned about the inclusion of a possible military intervention when regional organisations had called only for the implementation of a no-fly zone.[52] However, the two permanent members,[53] China and Russia, chose only to abstain rather than veto the resolution. Huang suggests that such

---

[46] ibid [13].
[47] ibid [24].
[48] ibid [4].
[49] Brazil, Russian Federation, India, China and Germany; UNSC Verbatim Record (17 March 2011) UN Doc S/PV.6498.
[50] UNSC Verbatim Record (17 March 2011) UN Doc S/PV.6498 (UNSC VR 6498), 5; C Antonopoulos, '"The Legitimacy to Legitimise": The Security Council Action in Libya under Resolution 1973 (2011)' [2012] 14 International and Comparative Law Review 359 (Antonopoulos), 363.
[51] UNSC VR 6498 (n 50) India (6), Russia (8) and China (10); A Steele, 'One Nation's Humanitarian Intervention is Another's Illegal Aggression: How to Govern International Responsibility in the Face of Civilian Suffering' [2013] 35 Loyola Los Angeles International and Comparative Law Review 99, 124.
[52] UNSC VR 6498 (n 50), 6; Thielbörger (n 21), 36.
[53] The Russian Federation and China.

abstention may have been a result of other States applying the theory of 'political and moral pressure' to urge permanent members into not using their veto power for fear of humanitarian catastrophe.[54] However, statements from China and Russia 'regarding the clear unacceptability of the use of force against the civilian population'[55] and the need to 'halt acts of violence against civilians' suggest otherwise.[56] What becomes clear, as Williams and Bellamy claim, is that whilst both permanent members did not agree with the authorisation of the use of force, Gaddafi's promises to 'cleanse Libya house by house'[57] left both States with a 'lack of good alternative policy options' and the possibility of being labelled as the reason behind the Security Council's failure to act in the face of a clear 'threat of mass atrocities'.[58]

Resolution 1973 (2011) Mandate and NATO Intervention

On 18th March 2011, a warning was issued by the Obama administration that unless Gaddafi implemented a cease-fire, removed loyalist forces from Libyan cities and halted any other troops' progress, the United States would undertake a military intervention as authorised by Resolution 1973.[59] In response to continued Libyan offensive operations, the United Kingdom, France, Canada and the United States began military strikes on 19th March against Libyan 'military airfields and

[54] Y Huang, 'On the Military Intervention under the Doctrine of the Responsibility to Protect' *Chinese Society of International Law* (9 November 2011) <http://a10014931063.oinsite.cn/web/errors/404.aspx?aspxerrorpath=/_d271634455.htm> accessed 5 September 2013, 10.
[55] UNSC VR 6498 (n 50), 8.
[56] UNSC VR 6498 (n 50), 10.
[57] 'Libya Protests: Defiant Gaddafi Refuses to Quit' *BBC News* (22 February 2011) <http://www.bbc.co.uk/news/world-middle-east-12544624> accessed 5 September 2013.
[58] Williams and Bellamy (n 34), 280.
[59] 'Remarks by the President on the Situation in Libya' *Office of the Press Secretary* (18 March 2011) <http://www.whitehouse.gov/the-press-office/2011/03/18/remarks-president-situation-libya> accessed 6 September 2013.

air defence systems to establish a no-fly zone'.[60] However, soon after NATO took command of the Libyan intervention, international concerns began to arise that NATO was exceeding the mandate of Resolution 1973 (2011),[61] due in part to the change in targets by NATO from military air fields and military installations to 'oil refineries, television stations and other civilian sites'.[62] Herron argues that, by the end of the first week of NATO air strikes, the purpose of Resolution 1973 (2011) had been achieved with 'the possibility of a massacre of civilians in Benghazi … [having been] foreclosed'.[63] The original mandate of Resolution 1973 (2011) allowed for the use of 'all necessary measures … to protect civilians and civilian populated areas under threat of attack',[64] which was also clear from the Security Council debates where the drafting States proposed that the intention behind military intervention was to prevent an imminent humanitarian disaster and the continued violence within Libya.[65] The reasons given by the abstaining permanent members for their decision not to use their power of veto was that they had been assured that the intervention would not result in a 'large-scale military intervention' and that they were intent on ensuring that the civilian population would be protected.[66] The objective of protecting only civilians adhered to the principle of impartiality which, as Pippan states, is a traditional United Nations principle and requires that, where intervention takes place, forces should be

[60] Herron (n 23), 379.
[61] Ulfstein (n 35), 166.
[62] UNSC Verbatim Record (4 October 2011) UN Doc S/PV.6627, 4.
[63] Herron (n 23), 379.
[64] UNSC 1973 (n 40), [4].
[65] Antonopoulos (n 50), 362.
[66] UNSC VR 6498 (n 50), 8.

neutral in the conflict.[67] The same principle was implied in the ICISS report on the responsibility to protect, which specifically stated that objectives such as regime change were not acceptable purposes under humanitarian intervention.[68] Thus, it has been suggested, including by those who originally supported the intervention, that the actions taken by NATO forces, even within the first week of operations, went significantly further than that which was mandated in Resolution 1973 (2011).[69]

While the original enforcement of the no-fly zone by the Western coalition did conform to the conditions of the resolution, the subsequent NATO support of rebel forces exceeded the mandate, at times even contradicting the purpose of Resolution 1973 (2011). It should be noted that, upon NATO taking control of the intervention at the end of March, there still existed little communication between rebel forces and NATO command; as a result, in the first few days of the NATO intervention, rebel forces were the subjects of strikes on the basis that NATO had no knowledge of the locations of rebel forces.[70] However, NATO personnel were soon sent to Libya to communicate with the rebel forces and provide ground information to NATO command; as such, rebel forces began to collect information, identify Gaddafi installations, and provide GPS coordinates to

[67] C Pippan, 'The 2011 Libyan Uprising, Foreign Military Intervention and International Law' [2011] 2 Juridikum: *Zeitschrift für Kritik-Recht-Gesellschaft* 159, 168-169.
[68] ICISS, *Report of the International Commission on Intervention and State Sovereignty: The Responsibility to Protect* (International Development Research Centre 2001) [4.26].
[69] D Berman and C Michaelsen, 'Intervention in Libya: Another Nail in the Coffin for the Responsibility-to-Protect?' [2012] 14 International Comparative Law Review 337 (Berman and Michaelson), 349.
[70] P Walker, 'No Apology from NATO for Air Strike on Libyan Rebel Tanks' *The Guardian* (8 April 2011) <http://www.guardian.co.uk/world/2011/apr/08/nato-no-apology-libya-air-strike> accessed 6 September 2013.

NATO so that subsequent strikes could be made.[71] To further the ability of the rebels to provide accurate information, NATO created a joint operations centre where NATO and rebel forces could 'coordinate and make more effective the processing of military and tactical information back to NATO'.[72] In addition, and in response to the rebel forces' lack of training, arms and command structure,[73] several States involved in the NATO intervention provided equipment, personnel and training to the rebel forces.[74] In late April 2011, the United Kingdom notified the Secretary-General that it intended to provide protective equipment and military advisers to the National Transitional Council, while Qatar and Saudi Arabia directly intervened on the ground by sending 'hundreds of forces' into Libya.[75] In addition to the provision of training and materiel, NATO forces provided assistance to attacking rebel forces with air support, involving the use of both bombs and predator drones to fire at loyalist forces,.[76] Such NATO measures were not authorised by the Security Council and were a violation of prohibition on

[71] Arab Organisation for Human Rights, 'Report of the Independent Civil Society Fact-Finding Mission to Libya' (January 2012) [56].
[72] This has been refuted by NATO command; however, both rebel forces and the United Kingdom confirm the establishment of a joint command centre; B Waterfield, 'Libya: British military advisers set up "Joint Operations Centre" in Benghazi' *The Telegraph* (18 May 2011) <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8521977/Libya-British-military-advisers-set-up-joint-operations-centre-in-Benghazi.html> accessed 6 September 2013; M Chmaytelli and P Green, 'Libya Rebels, NATO Don't Have Joint Operations, Official Says' *Bloomberg* (16 April 2011) <http://www.bloomberg.com/news/2011-04-16/libya-rebels-nato-don-t-have-joint-operations-official-says.html> accessed 6 September 2013.
[73] R Wilhelm, 'Problèmes relatifs à la protection de la personne humaine par le droit international dans les conflits armés ne présentant pas un caractère international' [1972] 37(1) Recueil des Cours 137, 348.
[74] The United Kingdom, France, Italy, the United States, Saudi Arabia, Qatar, and the United Arab Emirates all provided a combination of training, arms and personnel; Human Rights Watch, *Death of a Dictator: Bloody Vengeance in Sirte* (Human Rights Watch 2012) (Human Rights Watch) 16; Phillips (n 22), 60.
[75] I Black, 'Qatar admits sending hundreds of troops to support Libya rebels' *Guardian* (26 October 2011) <http://www.theguardian.com/world/2011/oct/26/qatar-troops-libya-rebels-support> accessed 6 September 2013.
[76] E Schmitt, 'Surveillance and Coordination with NATO Aided Rebels' *New York Times Online* (21 August 2011) <http://www.nytimes.com/2011/08/22/world/africa/22nato.html> accessed 6 September 2013.

the use of force.[77] That NATO's intention had changed from the protection of civilians to the removal of the Gaddafi regime became obvious from statements made by NATO States shortly before command was turned over to NATO and after the change in command.[78] Four days before NATO took complete control over the intervention, President Obama stated that 'while our military mission is narrowly focused on saving lives, we continue to pursue the broader goal of a Libya that belongs not to a dictator, but to its people'.[79] The proclamation of the United States that the overarching goal of the intervention was *not* the protection of civilians but the freeing of the Libyan State from Gaddafi control indicates that already, prior to NATO command, there was a deviation from original mandate of Resolution 1973 (2011).[80] Moreover, once NATO had command control, France, the United Kingdom, and the United States stated that

> so long as Qaddafi is in power, NATO must maintain its operations so that civilians remain protected and the pressure on the regime builds [that] there is a pathway to peace … for the people of Libya – a future without Qaddafi [and that] Qaddafi must go and go for good.[81]

Paradoxically, the coalition States recognised in the same statement that Resolution 1973 (2011) did not include the removal of Gaddafi by force.[82] Accordingly, NATO's active cooperation with rebel forces and the clear

[77] Antonopoulos (n 50), 371.
[78] M Payandeh, 'The United Nations, Military Intervention, and Regime Change in Libya' [2011] 52(2) Virginia Journal of International Law 355, 397.
[79] 'Remarks by the President in Address to the Nation on Libya' *National Defense University* (28 March 2011) <http://www.whitehouse.gov/the-press-office/2011/03/28/remarks-president-address-nation-libya> accessed 6 September 2013.
[80] Berman and Michaelson (n 69), 355.
[81] D Cameron, B Obama and N Sarkozy, 'Libya's Pathway to Peace' *New York Times Online* (14 April 2011) <http://www.nytimes.com/2011/04/15/opinion/15iht-edlibya15.html?_r=0> accessed 6 September 2013.
[82] Berman and Michaelson (n 69), 355.

statements regarding the need to remove Gaddafi suggest that there was a distinct intention to participate in his removal.[83] NATO's deliberate targeting of convoys suspected to hold Gaddafi loyalists or members of the Gaddafi family is also evidence that NATO was no longer working within the Security Council mandate but directly intending to remove Gaddafi from power.[84] The targeting of convoys fleeing areas of fighting would have done little to ameliorate a threat to civilians and, in some cases, actually resulted in the death of civilians.[85]

In April 2011, South Africa suggested the implementation of a ceasefire and opening of a dialogue between rebel forces and Gaddafi.[86] NATO responded by claiming that it was 'too early' to implement a ceasefire[87] and made no attempt to support the creation of a conciliatory platform between the rebels and Gaddafi, even though Gaddafi had signalled agreement to participate in a mediation plan.[88] Given that the purpose of Resolution 1973 (2011) was to protect civilians, NATO's refusal went against such a purpose. Moreover, NATO's rejection of Italy's calls, in June 2011, for a break in air raids to allow humanitarian assistance into cities and towns in Libya affected by fighting, also suggests that the protection of civilians was no longer the most important consideration for NATO.[89] The statement by the United Kingdom's Foreign Minister supports this

[83] Berman and Michaelson (n 69), 355.
[84] Berman and Michaelson (n 69), 355.
[85] Human Rights Watch (n 74), 22.
[86] B Neild, 'Can African Union Broker a Libya Peace Plan?' *CNN* (11 April 2011) <http://edition.cnn.com/2011/WORLD/africa/04/11/libya.war.african.union/index.html> accessed 6 September 2013.
[87] ibid.
[88] 'Libya: Gaddafi Government Accepts Truce Plan, Says Zuma' *BBC News* (11 April 2011) <http://www.bbc.co.uk/news/world-africa-13029165> accessed 6 September 2011.
[89] I Black, 'UK and France dismiss Italy's call for pause in NATO bombing of Libya' *Guardian* (22 June 2011) <http://www.theguardian.com/world/2011/jun/22/libya-nato-bombing-uk-france-italy> accessed 6 September 2013.

conclusion, for he asserted that the continuation of bombing was important in putting pressure on the Gaddafi regime and that '[Gaddafi] needs to go, and go now', a sentiment echoed by France.[90] Given that the defeat of the Gaddafi military was not the purpose of Resolution 1973 (2011), it is difficult to reconcile how concerns over military regrouping could overcome the need for humanitarian assistance unless the purpose of the NATO intervention had changed from one of humanitarian protection to one of regime change. As Ulfstein notes, NATO provided close air support to the rebels in their attacks on Gaddafi-held cities and towns; where areas were already under the control of Gaddafi and contained no rebel forces fighting against loyalist forces, it is hard to see how Gaddafi's troops presented a threat to the civilian population within such cities.[91] Instead, advancing rebels who intended to engage Gaddafi's forces in fighting would logically be the threat to civilian populated areas, as their actions would turn an area not involved in fighting into a war zone.[92]

While Haász suggests that the only way to protect civilians was to remove Gaddafi from power, it is clear from both the wording of Resolution 1973 (2011) and the preceding Security Council debate regarding the resolution that the removal of Gaddafi was not part of the Resolution's mandate.[93] In their statements, both China and Russia clarified that their choice to refrain from exercising their veto was made on the basis that the States proposing the intervention had emphasised that it would not become a large-scale military

[90] ibid.
[91] Ulfstein (n 35), 169.
[92] D Akande, 'Does SC Resolution 1973 Permit Coalition Military Support for the Libyan Rebels?' *EJIL Talk* (31 March 2011).
[93] V Haász, 'The Current and Future Relevance of the "Responsibility to Protect" Doctrine – The Case of Libya' [2012] 150 Studia Iuridica Auctoritate Universitatis Pecs 71 (Haász), 79.

intervention and would be for the sole purpose of protecting innocent civilians.[94] South Africa, which voted in favour of Resolution 1973 (2011), specifically stated that they hoped that States involved in the implementation of the Resolution would do so 'in full respect for both its letter and spirit',[95] while Lebanon, which also voted in favour, stressed the importance of still working towards a 'peaceful solution to the situation in Libya', even if intervention was necessary.[96] Throughout the preceding Security Council debate, statements were made accentuating the importance of finding a peaceful resolution to the conflict and the need to restrain from the use of military force.[97] It thus becomes evident that the mandate of Resolution 1973 (2011) could not be so widely interpreted as to include, within the protection of civilians, the removal of the Gaddafi regime.[98] This is because the latter would defeat any ability to come to a peaceful resolution and violate the principles of territorial and national integrity.[99]

Repercussions of the Libyan Intervention

The crisis in Libya was the first opportunity for the international community to show its commitment to the responsibility to protect and work within its framework for the authorisation of intervention on humanitarian grounds.[100] With

[94] UNSC VR 6498 (n 50), Russia (8) and China (10).
[95] ibid 9.
[96] ibid 4.
[97] ibid, Nigeria (9), Portugal (8-9), Columbia (7).
[98] The International Court of Justice in the *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* found that 'the interpretation of Security Council resolutions also require that other factors be taken into account … the interpretation of Security Council resolutions may require the Court to analyse statements by representative of members of the Security Council made at the time of their adoption'; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* (*Advisory Opinion*) [2010] ICJ Rep 403, 442 [94].
[99] Berman and Michaelson (n 69), 354.
[100] Haász (93) 79.

two members of the Security Council having deliberately chosen to forego their veto power and allow the adoption of a Resolution authorising intervention for the protection of civilians from the threat of attack, the Council moved towards an active adoption of the responsibility to protect, with Thakur citing that it was 'the first instance of the implementation of the sharp edge of the new norm of the responsibility to protect'.[101] The inclusion in the preamble of Resolution 1973 (2011) of a reference to the Libyan government's responsibility to protect its citizens was seen by Hipold as a 'pivotal step for the further affirmation of this principle'.[102] Further, it was generally hailed by humanitarian interventionists[103] as a confirmation that the responsibility to protect had finally 'arrived'.[104] However, while supporters of the intervention saw Libya as a textbook case for the implementation of the responsibility to protect, much of the international community was less enamoured with the intervention, instead seeing it as an example of how the responsibility to protect could be manipulated by more powerful States for other means. South Africa, a former supporter of the intervention, stated that the NATO intervention had 'left a scar on the [African] continent … that will take many years to heal' and that 'developed countries with

[101] R Thakur, 'Libya and the Responsibility to Protect: Between Opportunistic Humanitarianism and Value-Free Pragmatism' [2011] 7(4) Security Challenges 13, 13.
[102] P Hipold, 'Intervening in the Name of Humanity: R2P and the Power of Ideas' [2012] 17 Journal of Conflict & Security Law 49, 78.
[103] G Cronoghue, 'Responsibility to Protect: Syria the Law, Politics, and Future of Humanitarian Intervention Post-Libya' [2012] 3 International Humanitarian Legal Studies 124 (Cronoghue), 125; T Weiss, 'RtoP Alive and Well after Libya' [2011] 25(3) Ethics & International Affairs 287, 287-292; G Evans, 'The Responsibility to Protect after Libya and Syria' (20 July 2012) <http://www.law.monash.edu.au/castancentre/conference/2012/evans-paper.pdf> accessed 20 September 2013.
[104] UN Secretary-General, 'Remarks at Breakfast Roundtable with Foreign Ministers on "The Responsibility to Protect: Responding to Imminent Threats of Mass Atrocities"' *UN News Centre* (23 September 2011) <http://www.un.org/apps/new/infocus/sgspeeches/serach_full.asp?statID=1325> accessed 10 September 2013.

their own national agendas hijacked a genuine democratic protest by the people of Libya, to further their regime change agendas'.[105] In agreement, Kenya noted that the intervention in Libya was 'at best worrisome, and at worst, deeply disconcerting'. Such statements have led to the fostering of doubts over whether the responsibility to protect could ever function without being abused.[106]

NATO's extension of the mission in Libya to aims which were not included in Resolution 1973 (2011) did much to reinforce concerns over the responsibility to protect legitimating interventions by larger States to accomplish their own objectives. It resulted in the permanent member States of Russia and China returning to utilising their veto power. Concerns regarding NATO's intervention emanated not only from concerned States but also regional organisations; the President of the African Union condemned NATO's continued use of force outside the remit of Resolution 1973 (2011)[107] while the Community of Sahel-Saharan States also denounced NATO's refusal to participate in a cease-fire, instead continuing to cooperate with rebels who refused to entertain any form of negotiation without the removal of Gaddafi.[108] Finally, even after the end of the NATO intervention, Mexico,[109] Guatemala,[110] Kenya,[111] Cuba,[112] New

[105] 'Zuma Blasts NATO'S Campaign in Libya for "Lasting Scar"' *Mail & Guardian Online* (10 December 2011) <http://mg.co.za/article/2011-12-10-zuma-blasts-natos-campaign-in-libya-for-lasting-scar> accessed 10 September 2013.
[106] 'General Assembly 65th Session: Webcast of the Interactive Dialogue' *UN News & Media* (12 July 2011) <http://www.unmiltimedia.org/tv/webcast/2011/07/general-assembly-65th-session-english.html> accessed 11 September 2013 (UNGA Webcast).
[107] 'African Union President Condemns NATO Bombing on Libya' *Mathaba News* (30 May 2011) <http://www.mathaba.net/news/?x=626964> accessed 8 September 2013.
[108] 'CEN-SAD Condemns NATO's Contempt for AU initiative on Libya' *Panapress* (9 June 2011) <http://www.panapress.com/CEN-SAD-condemns-NATO-s-contempt-for-AU-initiative-on-Libya--12-777632-29-lang2-index.html> accessed 8 September 2013.
[109] UNGA Webcast (n 106).
[110] ibid.
[111] ibid.

Zealand,[113] the Netherlands,[114] Venezuela,[115] and Pakistan[116] all specifically addressed 'what many consider the misapplication of Resolutions 1970 and 1973'.[117] Therefore, by the end of the NATO intervention, there was widespread concern that NATO had exceeded the Resolution 1973 (2011) mandate and deviated from the purely humanitarian objective of protecting citizens. Such comments also suggest that before any further use of the responsibility to protect was, or is, made, a more concrete framework should be created around the use of force.[118] While the responsibility to protect was not rejected by States after the Libyan intervention, the 'recent debates indicate growing scepticism towards accepting [the responsibility to protect] as an emerging norm … or as a workable framework for international decision making'.[119] More damaging, however, was the effect the Libyan intervention would have on any further action by Security Council permanent members in relation to other crises.

By March 2011, Syria felt the effects of the Arab Spring; national demonstrations against the undemocratic regime of President Bashar al-Assad[120] began to form and were met by the government's military forces.[121] As had occurred at the onset

---

[112] 'Interactive Dialogue of the UN General Assembly on the Role of Regional and Sub-Regional Arrangements in Implementing the Responsibility to Protect' *International Coalition for the Responsibility to Protect* (August 2011) <http://www.responsibilitytoprotect.org/ICRtoP%20Report%20on%20RIGO%20GA%20dialogue%20on%20RtoP%20FINAL%281%29.pdf> accessed 11 September 2013 (UNGA Interactive Dialogue), 3.
[113] ibid, 5.
[114] ibid.
[115] ibid, 3.
[116] ibid.
[117] UNGA Webcast (n 106).
[118] UNGA Interactive Dialogue (n 112), 3.
[119] Berman and Michaelson (n 69), 357.
[120] Cronoghue (n 103), 146.
[121] 'Syria: Death Toll Rises as Bombardment of Civilian Areas Escalates in Homs' *Amnesty International* (15 February 2012) <http://www.amnesty.org/en/bews/syria-bombardment-civlian-areas-excalates-homs-2012-02-14> accessed 11 September 2013.

of the movement in Libya, initially peaceful groups of protesters were reported as armed.[122] By September 2011, the conflict in Syria had reached similar proportions to that in Libya and the Commission of Inquiry on Syria found that the conflict 'had reached the legal threshold for a non-international armed conflict'.[123] The conflict in Syria was remarkably similar to that in Libya. Like Libya, protests which were initially peaceful began in response to the Arab Spring and targeted the Assad regime on the basis of human rights violations and its undemocratic nature[124] and were quickly responded to with force by the government.[125] Similar to Libya, groups protesting against the Assad regime became armed and the Syrian government claimed the violence used against such groups was legitimate as they represented terrorist factions within Syria.[126] Moreover, as in the crisis in Libya, both rebel forces and Syrian government forces have been believed to have taken part in acts which would constitute crimes against humanity, violations of humanitarian law and war crimes (an issue which remains active at the time of writing).[127]

[122] A Lyon, 'Syria's Assad Meets Annan, but Gives Little Ground' *Reuters* (10 March 2012) <http://www.reuters.com/article/2012/03/10/us-syria-idUSBRE8280G820120210> accessed 11 September 2013.
[123] Ulfstein (n 35), 170.
[124] S Hepinstall and E Fullerton (eds), 'Rare Political Protests Held in Syria: Witnesses' *Reuters* (15 March 2011) <http://www.reuters.com/article/2011/03/15/us-syria-protest-idUSTRE72E8DQ20110315> accessed 11 September 2013.
[125] '27 Dead in Assault on Syria Protest, Activists Say' *Jakarta Post* (3 June 2011) <http://www.thejakartapost.com/news/2011/06/03/27-dead-assault-syria-protest-activists-say.html> accessed 11 September 2013.
[126] N Narayana, 'Syria Rebels to Observe Friday as the "Day of Defiance"' *International Business Times* (6 May 2011) <http://www.ibtimes.com/syria-rebels-observe-friday-day-defiance-282533> accessed 11 September 2013.
[127] UNHRC 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic' (16 August 2012) UN Doc A/HRC/21/50.

By April 2011, all members of the Security Council expressed concern at the violence unfolding in Syria.[128] Some States specifically noted the importance of respecting the sovereignty and territorial integrity of Syria while supporting the resolution of conflicts within the State.[129] Violence within Syria continued and the Security Council authorised its President to make a statement regarding the Syrian crisis which noted the concerns Security Council members had over the increased violence within the State, their wish for all sides to the conflict to end the violence being perpetrated, and the failure of the Syrian government to implement the reforms promised or to make efforts to alleviate the humanitarian crisis within the Syrian State.[130] The same statement also referred to the importance of the conflict within Syria being solved through a peaceful process which was Syrian-led, and the Security Council's commitment to 'the sovereignty, independence and territorial integrity of Syria'.[131] The repeated references to the importance of the territorial integrity of the Syrian State give an indication of the importance that members of the Council placed upon refraining from entering into a similar situation to that which was unfolding in Libya. As Zifcak notes, 'reservations concerning the prospect of any intervention by the international community to address the Syrian crisis were being clearly expressed'.[132]

By the time of the Presidential statement in August, NATO forces were actively cooperating with rebels and had moved from targeting purely military targets to infrastructure. Once the full extent of this NATO involvement had become

[128] UNSC Verbatim Record (27 April 2011) UN Doc S/PV.6524.
[129] ibid, 10.
[130] UNSC Verbatim Record (3 August 2011) UN Doc S/PV.6598.
[131] UNSC Statement by the President of the Security Council (3 August 2011) UN Doc S/PRST/2011/16.
[132] Zifcak (n 17), 17.

clearer, resistance to any form of intervention, whether military or not, became more pronounced. In October 2011 France, Germany, Portugal, and the United Kingdom tabled a resolution which addressed the continued violence committed by both rebels and government forces in Syria.[133] The draft resolution did not include any reference to Chapter VII authorisation, instead 'reaffirming its strong commitment to the sovereignty, independence, territorial integrity and national unity of Syria'.[134] However, the affirmation of the sovereignty of Syria was not included in the operative part of the resolution, while a clause was included which expressed the intention of the Security Council to review Syrian implementation of the resolution, with the possibility of considering powers under Article 41 of the Charter should such implementation be found lacking.[135] The inclusion of the possibility of Chapter VII powers being used was taken by Russia to indicate a 'philosophy of confrontation' and constituted 'the threat of an ultimatum and sanctions against Syrian authorities'.[136] Previously, Russia had made clear that, given NATO's decision to exceed the Resolution 1973 (2011) mandate, any draft resolution worded in a manner that would allow another military intervention or would allow misinterpretation of such a resolution would be vetoed on the basis that 'a good resolution ha[d] been turned into a piece of paper that [was] used to provide cover for a meaningless military operation'.[137] Moreover, Russia, China, Brazil, Lebanon, and South Africa raised concerns over a definitive lack of condemnation of the Syrian rebels who had also been engaging in violence.

[133] UNSC Draft Resolution (4 October 2011) UN Doc S/2011/612 (UNSC DR 612).
[134] ibid.
[135] UNSC DR 612 (n 133), [11].
[136] UNSC Verbatim Record (4 October 2011) UN Doc S/PV.6627 (UNSC VR 6627), 3.
[137] 'Syria "at crossroads of pain and hope"' *The Australian* (21 June 2011) <http://www.theaustralian.com.au/news/world/syria-at-crossroads-of-pain-and-hope/story-e6frg6so-1226078784696> accessed 11 September 2013.

Whilst the draft resolution actively condemned the Syrian government's participation in violence, there was no condemnation of any possible violence perpetrated by rebels, nor was there any expression of concern regarding reports that rebel forces were being populated by extremists.[138] In Russia's statement on the proposed resolution, the Libyan intervention was mentioned several times, specifically stating that part of the decision to veto the resolution was based on both a refusal to incorporate clauses relating to the unacceptability of any form of military intervention in the resolution and the fear that the resolution would be used by States to act as they had in the case of Libya. Therefore, in the eyes of Russia, 'the situation in Syria cannot be considered in the Council separately from the Libyan experience'.[139] China similarly expressed its concern that the draft resolution acted more as a threat than a tool to implement a peaceful conclusion to the conflict in Syria.[140] South Africa averred that the resolution was merely a 'prelude to further action' and thus they were concerned that the resolution was 'part of a hidden agenda aimed at once again instituting regime change'.[141] Due to the major concerns voiced by China, Russia, Lebanon, India, South Africa, and Brazil regarding the possible misuse of the draft resolution and the general confrontational manner in which it was phrased, both China and Russia exercised their veto power.[142]

[138] UNSC VR 6627 (n 136), 3.
[139] ibid.
[140] ibid, 5.
[141] ibid, 11.
[142] Brazil, South Africa, India and Lebanon all abstained from the vote; it may be of interest to note that China and Russia were not the greatest users of the veto power between 1966 and 2007. The use of the veto power in order of the most prolific is the United States, the United Kingdom, Russia, France, and China; Global Policy Forum (n 80).

Russia and China's reluctance to stay their veto power when voting for a resolution in relation to the Syrian crisis did not diminish, though international concern regarding violence grew. In November 2011 a Human Rights Council-established, independent, international Commission of Inquiry found that serious violations of human rights had been committed by the Syrian government and that there was possible evidence of crimes against humanity.[143] In response to a resolution adopted by the Human Rights Council,[144] the Security Council again attempted to come to an agreement on the adoption of a resolution which responded to the crisis in Syria.[145] In late January 2012, the Arab League proposed a draft resolution to the Security Council, having already implemented sanctions upon Syria with little effect.[146] The draft resolution proposed that: Assad relinquish power to the Vice-President; the Syrian government immediately end all attacks and human rights violations against Syrians; all parties to violence immediately refrain from using violence; and that, if the measures not implemented within 15 days, the Security Council would consider further measures.[147] Russia and China did not accept the proposed Arab League plan, mainly due to its intention to remove Assad from power and the inclusion of an ability to consider military intervention at a later point. In response, Morocco and 18 other States proposed a draft resolution which proposed less controversial

[143] UNHRC 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic' (23 November 2011) UN Doc A/HRC/S-17/2/Add.1, [100].
[144] UNHRC Resolution S-18/1 (5 December 2011) UN Doc A/HRC/RES/S-18/1.
[145] Zifcak (n 17), 23.
[146] Y Saleh and L Noueihed, 'Arab League proposes new plan for Syrian transition' *Reuters* (22 January 2012) <http://www.reuters.com/article/2012/01/22/us-syria-idUSTRE8041A820120122> accessed 11 September 2013.
[147] ibid.

terms.[148] The draft resolution merely supported the Arab League's plan, while an express term was included in the preamble which specified that the resolution was not authorising action under Article 42 of the Charter.[149] While the draft resolution was almost wholly supported, both China and Russia did not accept the terms and exercised their power of veto.[150] Again, the concerns of both Russia and China related to proposed regime change and the inclusion of a possibility for further action, with no clear concept of what such action would be.[151] Reactions from the 13 proposing member States were acrimonious – the overall feeling of the Security Council was that the Russian and Chinese veto was directly against the purpose of the Council and therefore implicitly supported the Syrian regime in its killing of civilians.[152]

Certain members of the Security Council, such as the United States and France, suggested that Russia and China's veto decisions were based purely on politics, not on the fears they voiced regarding intervention, terming these 'disingenuous'.[153] The proposition that Russia and China were acting only in self-interest does not, however, align with their affirmative votes to adopt two resolutions[154] which supported and called for the implementation of the Six-Point Proposal of the Joint Special Envoy of the United Nations and the League of Arab

[148] UNSC Draft Resolution (4 February 2012) UN Doc S/2012/77.
[149] ibid.
[150] UNSC Verbatim Record (4 February 2012) UN Doc S/PV.6710 (UNSC VR 6710).
[151] ibid, 24-25.
[152] UNSC VR 6710 (n 150), United States (5), Germany (4), Portugal (6), India (8), and the United Kingdom (7).
[153] UNSC Verbatim Record (19 July 2012) UN Doc S/PV.6810, 4 (France) and 11 (United States).
[154] UNSC Resolution 2042 (2012) (14 April 2012) UN Doc S/RES/2042 (2012) (UNSC 2042); UNSC Resolution 2043 (2012) (21 April 2012) UN Doc S/RES/2043 (2012) (UNSC 2043).

States.[155] Russia and China's willingness not only to refrain from using their veto power but also to vote in favour of a resolution which both condemned the violence committed by Assad's regime (as well as rebel forces) and promoted a plan for a Syrian-led resolution resulting in Assad stepping down, suggests that their reticence to allow the adoption of other resolutions was not based solely on a pre-existing relationship with the Assad government.[156] Instead, what is indicated is that there still existed a tangible fear that any resolution which authorises, or infers possible future authorisation of, Chapter VII action may be abused. This was a reality that had been evidenced in the invasion of Northern Iraq and the Libyan intervention. This is supported by the fact that, although Russia, China, Pakistan, and South Africa all showed support for the Six-Point Proposal in Resolutions 2042 (2012) and 2043 (2012), the support was not reiterated when Germany, Portugal, the United Kingdom, and the United States proposed a draft resolution in July 2012. This draft resolution advocated the authorisation of Chapter VII actions, as well as a decision that, were Syrian authorities not to have complied fully with the resolution within ten days, measures under Article 41 would be taken.[157] As Pakistan noted, in the subsequent Security Council debate, the international community had come to a consensus over the Six-Point Proposal but this was 'undermined by the divergence of views on how to move forward … [which] could have been avoided had the divisive issues of Chapter VII and

[155] 'Six-Point Proposal of the Joint Special Envoy of the United Nations and the League of Arab States' annexed to ibid. The Six-Point Proposal proposed the following: all parties commit to work with the Envoy to establish a Syrian-led political process; all parties commit to a ceasefire; the assurance of the provision of humanitarian assistance; the release of arbitrarily detained persons; the respect of peaceful demonstrations; and the assurance of free movement of media.
[156] UNSC 2042 (n 154); UNSC 2043 (n 154).
[157] UNSC Draft Resolution (19 July 2012) UN Doc S/2012/538.

coercive measures been set aside'.[158] Yet again, both Russia and China declared that they were unwilling to accept a resolution involving Chapter VII measures which would ostensibly 'open the way for … external military involvement'.[159]

The crisis in Syria has become more acute at the time of writing; on 21st August 2013 an attack on a civilian area in Damascus showed signs that it could have been a chemical weapon attack using nerve agents.[160] In response, the United Nations ordered a Mission already within Syria to investigate whether a chemical attack had taken place; the Mission was not, however, mandated to determine the source of the attack, only whether or not an attack had occurred.[161] While the Mission did find that sarin gas had been used in a chemical attack, it also noted that it made no finding on who participated in the attack and that there was a prospect that evidence had been 'moved and possibly manipulated'.[162] However, before the results of the Mission's investigation could be compiled, the United Kingdom, the United States, and France argued that an intervention must take place immediately.[163] The threat of intervention by the three Western powers was

[158] UNSC Verbatim Record (19 July 2012) UN Doc S/PV.6810, 6.
[159] ibid, 8.
[160] 'Syria Chemical Attacks' *BBC News* (16 September 2013) <http://www.bbc.co.uk/news/world-middle-east-23927399> accessed 18 September 2013.
[161] I Sample, 'UN Inspectors in Syria: Under fire, in record time, sarin is confirmed' *The Guardian Online* (16 September 2013) <http://www.theguardian.com/world/2013/sep/16/un-inspectors-syria-sarin-gas> accessed 18 September 2013.
[162] 'Report on the Alleged Use of Chemical Weapons in the Ghouta Area of Damascus on 21 August 2013' *Council on Foreign Relations* (15 September 2013) <http://www.cfr.org/syria/un-report-alleged-use-chemical-weapons-ghouta-area-damascus-september-2013/p31404> accessed 18 September 2013.
[163] T Ross and B Farmer, 'Navy ready to launch first strike on Syria' *The Telegraph* (25 August 2013) <http://www.telegraph.co.uk/news/worldnews/middleeast/syria/10265765/Navy-ready-to-launch-first-strike-on-Syria.html> accessed 8 September 2013; J Miklaszewski, C Kube and E McClam, 'Military strikes on Syria "as early as Thursday" US officials say' *NBC News Online* (27 August 2013) <http://worldnews.nbcnews.com/_news/2013/08/27/20209022-military-strikes-on-syria-as-early-as-thursday-us-officials-say?lite> accessed 7 September 2013.

not well received by either Russia or China.[164] Russia responded with a vow to help the Syrian State against any illegal intervention by foreign States.[165] Russia and China's concerns are not unfounded; the United States had already suggested that it would give support to Syrian rebels through training and personnel if an intervention were to take place.[166] Indeed, the Central Intelligence Agency has acknowledged training small groups of Syrian rebels in Jordan.[167] Though Russia has negotiated a plan for the destruction of all chemical weapons by 2014 with Syria, at the time of writing there has not been a Security Council resolution implementing Chapter VII measures, nor any definitive indication of what would occur if the Assad regime failed to adhere to the negotiated plan.[168]

Conclusion

As shown through unfolding events in Syria, the Libyan intervention had serious repercussions on the international community's willingness to engage in the responsibility to protect.[169] Fears over the ease with which humanitarian

[164] 'Russia will veto military intervention in Syria at UNSC – Foreign Ministry' *RT News* (30 May 2012) <http://rt.com/politics/russia-veto-initiative-foreign-560/> accessed 16 September 2013.
[165] J Chapman, 'I'll help Syria if the US attacks, says Putin in chilling threat to Obama as G20 summit breaks up in acrimony' *Mail Online* (6 September 2013) <http://www.dailymail.co.uk/news/article-2414139/Syria-Russia-vows-help-Syria-America-carries-military-strikes-Assad-s-regime.html> accessed 16 September 2013.
[166] N Khumar, 'Syria crisis: More signs US involvement in civil war may be greater than first anticipated as Obama looks to boost rebels' *The Independent* (7 September 2013) <http://www.independent.co.uk/news/world/americas/syria-crisis-more-signs-us-involvement-in-civil-war-may-be-greater-than-first-anticipated-as-obama-looks-to-boost-rebels-8802694.html> accessed 16 September 2013 (Khumar).
[167] Khumar (n 166).
[168] J Charlton, 'Syria Crisis: "Clear and convincing evidence of sarin gas" says UN' *The Independent* (16 September 2013) <http://www.independent.co.uk/news/world/middle-east/syria-crisis-clear-and-convincing-evidence-of-sarin-gas-says-un-8817774.html> accessed 18 September 2013.
[169] S Chesterman, '"Leading from Behind": The Responsibility to Protect, the Obama Doctrine, and Humanitarian Intervention after Libya' (2011) Public Law & Legal Theory Research Paper Series Working Paper No 11-35, 11 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1855843> accessed 16 September 2013.

objectives could be abused were magnified and States traditionally against foreign intervention became more so.[170] The Libyan intervention also failed to bring to an end the violence within the region; though Gaddafi had been removed, the rebels themselves posed a threat to the civilian population. The rebel forces prior to Gaddafi's removal had a unifying goal – ending Gaddafi's regime.[171] Under the umbrella of the National Transitional Council, there were between 100 and 300 different militias, all with different command structures and beliefs as to how Libya should be governed.[172] Even with Gaddafi removed from power, human rights violations, war crimes and crimes against humanity continued to be committed;[173] as Shupak notes, 'the mere fact of opposing a tyrant does not indicate that a given rebel group values human rights'.[174] This was demonstrated with the mass killing of Gaddafi loyalists at the Mahari Hotel[175] and the abduction of Africans suspected to have been Gaddafi's mercenaries.[176] Furthermore, the prevalence of factional fighting and a lack of post-conflict rebuilding has allowed extremist organisations to take hold of some of the militias, using the post-conflict

[170] Ulfstein (n 35), 171.
[171] S Stewart, 'Libya after Gadhafi: Transitioning from Rebellion to Rule' *Security Weekly* (24 August 2011) <http://www.stratfor.com/weekly/20110824-libya-after-gadhafi-transitioning-rebellion-rule> accessed 14 September 2013.
[172] Mačák and Zamir (n 16), 408.
[173] R Al-Shaheibi, 'Fighting Continues in Libya as Rival Militias Clash' *CNS News* (13 November 2011) <http://www.cnsnews.com/news/article/fighting-continues-libya-rival-militias-clash> accessed 11 September 2013; H Fornaji, 'Plight of foreigners in Libya "worse than under Qaddafi" claims Amnesty International' *Libya Herald* (13 November 2012) <http://www.libyaherald.com/2012/11/13/plight-of-foreigners-in-libya-worse-than-under-qaddafi-claims-amnesty-international/#axzz2fGPXPzoD> accessed 14 September 2013.
[174] G Shupak, 'NATO's "Humanitarian War" on Libya: Prelude to a Humanitarian Disaster' *Global Research News* (3 September 2013) <http://www.globalresearch.ca/natos-humanitarian-war-on-libya-prelude-to-a-humanitarian-disaster/5347894> accessed 7 September 2013 (Shupak).
[175] Human Rights Watch (n 74), 34.
[176] Shupak (n 174).

State as a cover for violence.[177] Looting, bombing, random shooting in civilian areas, and clashes between fighters have resulted in a fear that Libya will descend again into civil war;[178] as such, it is understandable why States like Russia, China, and Pakistan are concerned that intervention in Syria will only result in further violence.[179]

However, arguably the worst damage that the Libyan intervention has inflicted was the consequential fear that Security Council-authorised intervention could be abused again. In abstaining from their veto power, both Russia and China stated they had chosen not to veto the resolution on the basis that they had been promised that the actions taken would not result in a large-scale intervention and would relate only to the protection of civilians.[180] The subsequent NATO mission's decision to exceed the Resolution 1973 (2011) mandate justifiably caused both permanent members to fear that resolutions allowing future interventions might also be manipulated in a similar manner.[181] While Libya may have been the first formal foreign intervention in a State following the 2005 World Summit's adoption of the responsibility to protect, it failed to exhibit any of the characteristics of the responsibility to protect, lacking clear operational principles, proportionality, and well-defined humanitarian goals. It is for these reasons that the responsibility to protect has failed to become established as an

[177] C Gillis, 'Benghazi a scene of violence year after embassy attack' *USA Today* (15 September 2013) <http://www.usatoday.com/story/news/world/2013/09/15/benghazi-libya-violence/2813297/> accessed 18 September 2013.
[178] W Wheeler, 'Violence between rebel factions hints at civil war in Libya' *Global Post* (13 September 2013
[179] B Russell, 'Putin warns Syria strike would "increase violence and unleash new wave of terrorism"' *The Express Online* (12 September 2013) <http://www.express.co.uk/news/uk/428845/Putin-warns-Syria-strike-would-increase-violence-and-unleash-new-wave-of-terrorism> accessed 14 September 2013.
[180] UNSC VR 6498 (n 50), 8.
[181] Berman and Michaelson (n 69), 357.

international norm, for, as Denisov notes, 'the establishment of an international norm presupposes that there is wide support within the international community for such a norm … [T]hat is not the case here'.[182]

[182] UNGA Verbatim Record (7 April 2005) UN Doc A/59/PV.87.

Chapter Seven:

Conclusion

Humanitarian crises such as those in Rwanda, Bosnia, Kosovo, Libya and now Syria cause the international community serious concern. Not only are the deaths in such situations tragic, but the effects of violence within a State are often far reaching, including beyond the State's own borders.[1] Preventing the recurrence of such crises is not, however, simply a decision of either doing nothing or embarking upon a humanitarian intervention, as Tesón argues.[2] The implementation of a humanitarian intervention principle in international law lacks legal foundation and is open to abuse making it an inappropriate remedy.[3] Nor is the development of a humanitarian intervention norm which does rely on Security Council authorisation, but fails to work within any form of predictable framework, an appropriate remedy, as it too has the same opportunities for abuse to arise, as was seen in Chapter Six, with regard to Libya.[4]

Humanitarian intervention relies upon the creation of an exception to the peremptory norm of Article 2(4) of the United Nations Charter. However, the creation of the prohibition on the threat or use of force was guided by a desire to ensure the maintenance of the 'territorial integrity or political independence of any

[1] Regional instability and displaced persons are just a few examples of the effects of long term violent intra-State conflict; M Brown, *The International Dimensions of Internal Conflict* (Center for Science and International Affairs 1996) 572.
[2] F Tesón, 'The Liberal Case for Humanitarian Intervention' in J Holzgrefe and R Keohane, *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (CUP 2003) 112.
[3] S Chesterman, *Just War or Just Peace? Humanitarian Intervention in International Law* (OUP 2001) (Chesterman Just War) 236.
[4] D Berman and C Michaelsen, 'Intervention in Libya: Another Nail in the Coffin for the Responsibility-to-Protect?' [2012] 14 International Comparative Law Review 337, 357.

State'[5] and to 'guarantee for small States … the impermissible character of recourses to force against a State'.[6] Arguments by humanitarian interventionists, such as Tesón and D'Amato, that Article 2(4) does not prohibit the use of force in humanitarian interventions are directly contradicted by declarations made by States during debates which took place during the United Nations Conference on International Organization.[7] During the conference, the United States 'made it clear that the intention of the authors of the original text was to state in the broadest terms an absolute all-inclusive prohibition'.[8] This confirmed statements already made by Bolivia in relation to the inclusion of the phrase 'against the territorial integrity or political independence of any State', which was designed to strengthen the existing prohibition on the use of force.[9] It was for this reason that only three very clear exceptions were created to the Article 2(4) prohibition: Chapter VII authorised intervention; individual or collective self-defence under Article 51; and consent.

The creation of a vague exception to Article 2(4) on the basis of humanitarian intervention – with no clear framework as to its implementation – weakens the construct of the prohibition on the use of force and allows States the opportunity to abuse the exception. The failure of humanitarian intervention to rely on any form of Security Council authorisation permits States to intervene without any

[5] I Brownlie, *International Law and the Use of Force by States* (Clarendon Press 1963) 267.
[6] A Massa, 'Does Humanitarian Intervention Serve Human Rights? The Case of Kosovo' [2009] 1(2) Amsterdam Law Forum 52, 52.
[7] A D'Amato, *International Law: Process and Prospect* (Transnational 1987) 57; F Tesón, *Humanitarian Intervention: An Inquiry into Law and Morality* (2nd edn, Transnational Publishers 1997) 150.
[8] UNCIO 'Summary Report of Eleventh Meeting of Committee I/1' (4 June 1945) 6 UNCIO 334.
[9] UNCIO 'Proposals of the Delegation of the Republic of Bolivia for the Organization of a System of Peace and Security' (5 May 1945) 3 UNCIO 578.

oversight as to the purpose of the intervention or the intended use of force. Such lack of oversight means that the chance for more powerful States to 'manipulate humanitarian concerns and attempt to use the doctrine as a weapon against weaker States' is greater.[10] To suggest that there is a moral necessity to use humanitarian interventions to end the suffering of innocent civilians, but that no such moral necessity exists where humanitarian interventions can themselves be abused, is a *non sequitur*. As was seen in Chapter Four, regardless of academic calls (such as those by Tesón and Eckert) for the creation of a humanitarian intervention norm, the international community has continued, throughout the twentieth century as well as more recently, to reject the principle of a norm of humanitarian intervention.[11] Indeed, even in the case of Kosovo, which was the strongest example of a possible humanitarian intervention, the international community continued to deny that any international norm of humanitarian intervention had been developed.[12] Rather, it reiterated the importance of the principle of non-intervention. Even participating States in the Kosovo intervention, such as the United States and Germany, argued that no humanitarian intervention principle had been developed, and that instead Kosovo presented an exceptional and unique set of circumstances that provided no precedent for further interventions.[13]

---

[10] M De Sousa, 'Humanitarian Intervention and the Responsibility to Protect: Bridging the Moral/Legal Divide' [2010] 16 University College London Jurisprudence Review 51, 56.
[11] A Eckert, 'The Non-Intervention Principle and International Humanitarian Interventions' [2001] 7 International Legal Theory 48, 56; F Tesón, *Humanitarian Intervention: An Inquiry into Law and Morality* (Transnational Publishers 1997) 315.
[12] Chesterman Just War (n 3) 218.
[13] US State Department, 'Press Conference with Russian Foreign Minister Igor Ivanov' (26 July 1999) <http://secretary.state.gov/www/statements/1999/990726b.html> accessed 24 September 2013; Foreign Minister Klaus Kinkel, cited in M Byers and S Chesterman, 'Changing the Rules about Rules?' in J Holzgrefe and R Keohane (eds), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (CUP 2003) 199.

Nevertheless, following the Kosovo intervention, the UN Secretary-General, Kofi Annan, noted that while non-intervention was a basic tenet of international law, the international community could not continue to be idle in the face of such terrible circumstances.[14] It was in response to this point that the International Commission on State Sovereignty developed the responsibility to protect doctrine in its 2001 Report. As detailed in Chapter Five, the responsibility to protect provided the necessary framework for interventions of a humanitarian nature to be carried out under Security Council Chapter VII authorisation; this framework limited the possibility of abuse and allowed the international community to react to humanitarian crises without the concern of eroding the principle of non-intervention. However, in adopting the responsibility to protect at the 2005 World Summit, the framework necessary to limit potential abuse was stripped from the doctrine. As a result, that which had been intended to create a workable framework for interventions of a humanitarian nature was reduced to only a vague reiteration of pre-existing responsibilities under international law. Even after its adoption by the General Assembly the doctrine saw little use, resulting in no ability for a norm to be developed.

However, the most damaging effect on the responsibility to protect doctrine was NATO's exceeding of the Resolution 1973 (2011) mandate in the intervention in Libya.[15] Responding to events in Libya, in 2011the Security Council noted for the first time the responsibility to protect in its authorisation of the use of 'all

[14] K Annan, *We the Peoples: The Role of the United Nations in the 21st Century, Millennium Report of the Secretary-General of the United Nations* (United Nations 2000) 48.
[15] UNSC Resolution 1973 (2011) (17 March 2011) UN Doc R/RES/1973 (2011) (UNSC 1973).

necessary measures' to protect civilians under Chapter VII.[16] Had the original responsibility to protect framework (that proposed in 2001) been used, the intervention may have remained focussed on the protection of civilians. However, as Chapter Six considered, the NATO intervention in Libya went far beyond the original Resolution 1973 (2011) mandate; NATO cooperated with and aided the rebels, and was directly involved in the removal of Gaddafi. NATO collaboration went so far as use force against Gaddafi troops even where no threat to civilians existed; this included the provision of air support to rebels both before and during attacks on cities held by Gaddafi forces. The abstention of China and Russia from using their veto power in the vote to adopt Resolution 1973 (2011) had been a move towards greater Security Council efficacy; it saw two States traditionally opposed to intervention deciding not to use their veto in order to allow the protection of civilians. The resultant abuse of Resolution 1973 (2011) negated the growing confidence that Russia and China[17] had exhibited in the responsibility to protect doctrine. This can be seen in their absolute refusal to allow the adoption of any resolution regarding Syria that mentions the possibility of Chapter VII use, as was also noted in Chapter Six. Indeed, Russia has specifically cited the Libyan intervention as their reason for refusing to allow the adoption of any resolution which mentions possible recourse to Chapter VII,[18] while other nations, such as South Africa, have expressed concerns that such resolutions were a 'prelude to

[16] UNSC 1973 (n 15,) [4].
[17] Along with other States such as Pakistan, India, and South Africa.
[18] UNSC Verbatim Record (4 October 2011) UN Doc S/PV.6627 (UNSC VR 6627), 3.

further action' and 'part of a hidden agenda aimed at once again instituting regime change'.[19]

The purpose of this thesis was to determine whether any form of norm has developed in international law in relation to interventions on humanitarian bases, either in the form of humanitarian intervention or the responsibility to protect. What has been shown, through the analysis of the development of the customary international principle of non-intervention, the theory of humanitarian intervention, and subsequent State practice in relation to interventions based on humanitarian grounds, is that no norm of humanitarian intervention has developed. Furthermore, the thesis has established that, since the intervention in Libya in 2011, and in the diluted form adopted by the General Assembly in 2005, the responsibility to protect has been ineffectual in ensuring Security Council authorised humanitarian interventions are not abused. Finally, it has been shown that the Libyan intervention itself has served to solidify concerns regarding interventions based on a humanitarian basis and resulted in States, such as Russia, China, and India, returning to a position of being reluctant to allow the use of force for claimed humanitarian goals.

From these observations, therefore, it can be advanced that it is unlikely that any norm will develop in the near future, unless the international community adopts the responsibility to protect in its full form. Given the debates during the 2005 World Summit, and events thereafter, such a prospect seems unlikely. Larger States such as the United States and United Kingdom will continue to resist any

[19] UNSC VR 6627 (n 18), 11.

framework which restricts their military capabilities in such interventions to purely humanitarian goals while States such as Pakistan and Russia will continue to view any acceptance of an international responsibility to intervene in the domestic affairs of other States as contrary to Charter provisions. In light of current reactions to the Syrian crisis, it is likely that there will be continued attempts to use the responsibility to protect to implement democratic change, though such a use of the doctrine goes against its own principles, which will be combatted by continued attempts to block such intervention through the use, or threat of use, of veto power. Therefore, the failure to develop any norm on the basis of humanitarian grounds will result in continuing challenges in ensuring that massacres, such as that in Rwanda, do not occur again.

Bibliography

Books

Brown M, *The International Dimensions of Internal Conflict* (Center for Science and International Affairs 1996)

Advisory Council on International Affairs/Advisory Committee on Issues of Public Law, *Humanitarian Intervention* (The Hague 2000)

Akehurst M and Malanczuk P (eds), *A Modern Introduction to International Law* (7th edn, Routledge 1997)

Arend A and Beck R, *International Law and the Use of Force: Beyond the UN Charter Paradigm* (Routledge 1993)

Austin J, *The Province of Jurisprudence Determined* (John Murray 1832)

Badr G, *State Immunity: An Analytical and Prognostic View* (Martinus Nijhoff, 1984)

Bagudu R, *Judging Annan* (Author House 2007)

Balfour P (Lord Kinross), *The Ottoman Empire* (Folio Society 2003)

Bederman D, *International Law Frameworks* (Foundation Press 2001)

Bellamy A, *Global Politics and the Responsibility to Protect: From Words to Deeds* (Routledge 2011)

Bowett D, *Self-Defence in International Law* (Praeger 1958)

Brown C (ed.), *Political Restructuring in Europe: Ethical Perspectives* (Routledge 1994)

Brown M, *The International Dimensions of Internal Conflict* (Center for Science and International Affairs 1996)

Brownlie I, *International Law and the Use of Force by States* (Clarendon Press 1963)

Brzoska M and Lopez G, *Putting Teeth in the Tiger: Improving the Effectiveness of Arms Embargoes* (Emerald Group Publishing 2009)

Buchanan A, 'Reforming the International Law of Humanitarian Intervention' in Holzgrefe J and Keohane R (eds), Humanitarian Intervention: Ethical, Legal, and Political Dilemmas (CUP 2003)

Bull H (ed.), *Intervention in World Politics* (Clarendon Press 1984)

Burke C, *An Equitable Framework for Humanitarian Intervention* (Hart Publishing 2013)

Bush G H W, *Public Papers of the Presidents of the United States: George H W Bush Book I* (United States Government Printing Office 1992)

Byers M and Chesterman S, 'Changing the Rules about Rules?' in Holzgrefe J and Keohane R (eds), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (CUP 2003)

Chesterman S, *Just War or Just Peace? Humanitarian Intervention in International Law* (OUP 2001)

Cot J and Pellet A (eds), *La Charte des Nations Unies* (2nd edn, Economica 1985)

Crawford J, *The Creation of States in International Law* (2nd edn, OUP 2006)

D'Amato A, *International Law: Process and Prospect* (Transnational 1987)

Damrosch L (ed.), *Enforcing Restraint: Collective Intervention in Internal Conflicts* (Council on Foreign Relations 1991)

Damrosch L and Scheffer D (eds), *Law and Force in the New International Order* (Westview Press 1991)

Danish Institute of International Affairs, *Humanitarian Intervention: Legal and Political Aspects* (Copenhagen 1999)

Davidson J, *Grenada: A Study in Politics and the Limits of International Law* (Gower 1987)

Dekker I and Hey E (eds), *Netherlands Yearbook of International Law Volume 41: Necessity Across International Law* (Springer 2011)

Dickinson E, *The Equality of States in International Law* (Harvard University Press, 1920)

Dockerill R, 'Local Government Reform, Urban Expansion and Identity: Nottingham and Derby 1945-1968' (PhD thesis, University of Leicester 2013)

Dworkin R, *Law's Empire* (Hart Publishing 1986)

———, *Taking Rights Seriously* (Harvard University Press 1978)

East R (ed.), *Keesing's Contemporary Archives* (Longmans 1985)

Eppstein J, *The Catholic Tradition of the Law of Nations* (Burns Oates & Washbourne 1935)

Falk R, *Legal Order in a Violent World* (Princeton University Press 1968)

Forsythe D, *Encyclopaedia of Human Rights: Volume 1* (OUP 2009)

———, *The Politics of International Law* (Lynne Rienner 1990)

Frowein J and Krisch N, 'Article 39' in Simma B (ed.), *The Charter of the United Nations: A Commentary Volume I* (2nd edn, OUP 2002)

Gildea R, *The Short Oxford History of the Modern World: Barricades and Borders, Europe 1800-1914* (OUP 1987)

Gilmore W, *The Grenada Intervention: Analysis and Documentation* (Mansell Publishing 1984)

Gourevitch P, *We Wish to Inform You that Tomorrow We Will Be Killed with Our Families* (Picador 1999)

Gray C, *International Law and the Use of Force* (3rd edn, OUP 2000)

Grotius H, *De Jure Belli ac Pacis Libri Tres* (first published 1625, Clarendon Press 1925)

———, *De Jure Belli Esti Pacis* (W Whewell tr, CUP 1853)

Hannikainen L, *Peremptory Norms (Jus Cogens) in International Law: Historical Development, Criteria, Present Status* (Finnish Lawyers' Publication Company 1988)

Herring G, *From Colony to Superpower: US Foreign Relations since 1776* (OUP 2008)

Higgins R, *The Development of International Law through the Political Organs of the United Nations* (OUP 1963)

Hinsley F, *Sovereignty* (Basic Books 1966)

Holbrooke R, *To End a War* (Random House 1998)

Holzgrefe J, 'The Humanitarian Intervention Debate' in Holzgrefe J and Keohane R (eds), Humanitarian Intervention: Ethical, Legal, and Political Dilemmas (CUP 2003)

Holzgrefe J and Keohane R (eds), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (CUP 2003)

Huband M, *The Liberian Civil War* (Cass 1998)

Hyland W, *Clinton's World: Remaking American Foreign Policy* (Praeger 1999)

International Commission on Intervention and State Sovereignty, *Report of the International Commission on Intervention and State Sovereignty: The Responsibility to Protect* (International Development Research Centre 2001)

———, *The Responsibility to Protect: Research, Bibliography, Background* (International Development Research Centre 2001)

Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned* (OUP 2000)

Jennings R and Watts A (eds), *Oppenheim's International Law: Volume I* (9th edn, Longman 1992)

Judah T, *Kosovo: War and Revenge* (Yale University Press 2002)

Karoubi M, *Just or Unjust War?: International Law and Unilateral Use of Armed Force by States at the Turn of the 20th Century* (Ashgate 2004)

Khoo N, *Collateral Damage: Sino-Soviet Rivalry and the Termination of the Sino-Vietnamese Alliance* (Columbia University Press 2011)

Kuperman A, *The Limits of Humanitarian Intervention: Genocide in Rwanda* (Brookings Institution Press 2001)

Le Bailly J, *Une poignée de mercenaires* (Presses de la Cité 1967)

Lefever E, *Crisis in the Congo* (Brookings Institution 1965)

Lillich R (ed.), *Humanitarian Intervention and the United Nations* (Procedural Aspects of International Law Institute 1973)

Malanczuk P, *Humanitarian Intervention and the Legitimacy of the Use of Force* (Het Spinhuis 1993)

Moore J (ed.), *Law and Civil War in the Modern World* (Johns Hopkins University Press 1974)

Morris S, *Why Vietnam Invaded Cambodia: Political Culture and Causes of War* (Stanford University Press 1999)

Mowla K, *The Judgement against Imperialism, Fascism and Racism against Caliphate and Islam, Volume II* (Author House 2008)

Murphy S, *Humanitarian Intervention: The United Nations in an Evolving World Order* (University of Pennsylvania Press 1996)

Musah A and Kavode Favemi J (eds), *Mercenaries: An African Security Dilemma* (Pluto Press 200)

Nincic D, *The Problem of Sovereignty in the Charter and in the Practice of the United Nations* (Martinus Nijhoff 1970)

Nolte G, 'Article 2(7)' in Simma B (ed.), *The Charter of the United Nations: A Commentary Volume I* (2nd edn, OUP 2002)

Oppenheim L, *International Law: A Treatise* (D McKay, 1952)

Orford A, *International Authority and the Responsibility to Protect* (CUP 2011)

Österdahl I, *Threat to the Peace* (Iustus 1998)

Paul C, Clarke C and Grill B, *Victory has a Thousand Fathers: Sources of Success in Counterinsurgency* (Rand Publishing 2010)

Pedone R, *Le chapitre VII de la Charte des Nations Unies* (Société Française poir le Droit International 1995)

Reisman M and McDougal M, 'Humanitarian Intervention to Protect the Ibos' in Lillich R (ed.), Humanitarian Intervention and the United Nations (1973)

Ronzitti N, *Rescuing Nationals Abroad through Military Coercion and Intervention on Grounds of Humanity* (Brill Academic Publishers 1985)

Rosenberger W and Tobin H (eds), *Keesing's Contemporary Archives* (Keesing's Publications 1960)

————, *Keesing's Contemporary Archives* (Keesing's Publications 1972)

Schachter O, 'The United Nations and Internal Conflict' in Moore J, *Law and Civil War in the Modern World* (Johns Hopkins University Press 1974)

Schindler D and Toman J, *The Laws of Armed Conflict* (Brill 1988)

Schnabel A and Thakur R (eds), *Kosovo and the Challenge of Humanitarian Intervention: Selective Indignation, Collective Action, and International Citizenship* (United Nations University Press 2000)

Schraeder P, *United States Foreign Policy toward Africa: Incrementalism, Crisis and Change* (CUP 1994)

Simma B (ed.), *The Charter of the United Nations: A Commentary Volume I* (2nd edn, OUP 2002)

Stone J, *Aggression and World Order* (University of California Press 1958)

Tanca A, *Foreign Armed Intervention in Internal Conflict* (Martinus Nijhoff Publishers 1993)

Tesón, F *Humanitarian Intervention: An Inquiry into Law and Morality* (2nd edn, Transnational Publishers 1997)

———, 'The Liberal Case for Humanitarian Intervention' in Holzgrefe J and Keohane R, *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (CUP 2003)

Tsagourias N, 'Necessity and Use of Force: A Special Regime' in Dekker I and Hey E (eds), *Netherlands Yearbook of International Law Volume 41: Necessity Across International Law* (Springer 2011)

Vanderstaeten L, *De la Force publique à l'Armée nationale congolaise: histoire d'une mutinerie* (Académie royale de Belgique 1993)

Vanthemsche G, *Belgium and the Congo 1885-1980* (CUP 2012)

Vickery M, *Cambodia, 1975 to 1982* (Silk Worm Books 1984)

Wagoner F, *Dragon Rouge: The Rescue of Hostages in the Congo* (National Defense University 1981)

Weiss T, *Humanitarian Intervention* (2nd edn, Polity Press 2012)

Weiss T and Hubert D, 'Interventions After the Cold War' in International Commission on Intervention and State Sovereignty, The Responsibility to Protect: Research, Bibliography, Background (International Development Research Centre 2001)

Weller M (ed.), *Regional Peace-Keeping and International Enforcement: The Liberian Crisis* (Cambridge International Documents Series 1994)

Wheeler N, *Saving Strangers: Humanitarian Intervention in International Society* (OUP 2000)

Wolfrum R (ed.), *Max Planck Encyclopaedia of Public International Law* (Max Planck Institute for Comparative Public Law and International Law 2011)

Woodrow Wilson International Center for Scholars, *African Regional and Sub-Regional Organizations: Assessing their Contributions to Economic*

Integration and Conflict Management (Woodrow Wilson International Center for Scholars 2008)

Woodward B, *Veil* (Simon & Schuster Paperbacks 1987)

Journals

Abiew F, 'Humanitarian Intervention and the Responsibility to Protect: Redefining a Role for "Kind-hearted Gunmen"' [2010] 29(2) Criminal Justice Ethics 93

Anand R, 'Sovereign Equality of States in International Law – II' [1966] 8 International Studies 386

Antonopoulos C, '"The Legitimacy to Legitimise": The Security Council Action in Libya under Resolution 1973 (2011)' [2012] 14 ICLR 359

Aréchaga E, 'International Law in the Past Third of a Century' [1978] 159 Recueil des cours de l'académie de droit international 1

Barnett M, 'On Gareth Evans: The Responsibility to Protect – Ending Mass Atrocity Crimes Once and For All' [2010] 2 Global Responsibility to Protect 307

Barton M, 'ECOWAS and West African Security: The New Regionalism' [2000] 4 DePaul International Law Journal 79

Bellamy A, 'Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq' [2006] 19(2) Ethics and International Affairs 31

———, 'Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit' [2006] 20 Ethics and International Affairs 142

Benjamin B, 'Unilateral Humanitarian Intervention: Legalising the Use of Force to Prevent Human Rights Atrocities' [1993] 16 Fordham International Law Journal 120

Berger L, 'State Practice Evidence of the Humanitarian Intervention Doctrine: The ECOWAS Intervention in Sierra Leone' [2001] 11 Indiana International and Comparative Law Review 605

Berman D and Michaelsen C, 'Intervention in Libya: Another Nail in the Coffin for the Responsibility-to-Protect?' [2012] 14 International Comparative Law Review 337

Bothe M, 'Terrorism and the Legality of Pre-emptive Force' [2003] 14 European Journal of International Law 227

Brockman J, 'Liberia: The Case for Changing UN Processes for Humanitarian Interventions' [2005] 22(3) Wisconsin International Law Journal 711

Brunnée J and Toope S, 'Norms, Institutions and the UN Reform: The Responsibility to Protect' [2006] 2 Journal of International Law and International Relations 121

————, 'Slouching Towards New "Just" Wars: International Law and the Use of Force after September 11th' [2004] LI (III) Netherlands International Law Review 363

————, 'The Responsibility to Protect and the Use of Force: Building Legality' [2010] 2 Global Responsibility to Protect 191

Cassese A, 'Ex iniuria ius oritur: Are We Moving towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community?' [1999] 10 European Journal of International Law 23

Conteh A, 'Sierra Leone and the Norm of Non-Intervention: Evolution and Practice' [1995] 7 American Journal of International Comparative Law 166

Cronoghue G, 'Responsibility to Protect: Syria the Law, Politics, and Future of Humanitarian Intervention Post-Libya' [2012] 3 International Humanitarian Legal Studies 124

De Sousa M, 'Humanitarian Intervention and the Responsibility to Protect: Bridging the Moral Legal Divide' [2010] 16 University College London Jurisprudence Review 51

Dinstein Y, 'Comments on War' [2004] 27 Harvard Journal of Law and Public Policy 877

Eaton J, 'An Emerging Norm: Determining the Meaning and Legal Status of the Responsibility to Protect' [2011] 32 Michigan Journal of International Law 765

Eckert A, 'The Non-Intervention Principle and International Humanitarian Interventions' [2001] 7 International Legal Theory 48

Evans G, 'When is it Right to Fight?' [2004] 46 Survival 59

Evans G and Sahnoun M, 'The Responsibility to Protect' [2002] 81(6) Foreign Affairs 99

Fenwick C, 'The Dominican Republic: Intervention or Collective Self-Defense' [1966] 60 American Journal of International Law 64

Focarelli C, 'The Responsibility to Protect Doctrine and Humanitarian Intervention: Too Many Ambiguities for a Working Doctrine' [2008] 13 Journal of Conflict and Security Law 191

Franck T and Rodley N, 'After Bangladesh: The Law of Humanitarian Intervention by Military Force' [1973] 67 American Journal of International Law 275

Franck T, 'The Emerging Right to Democratic Governance' [1992] 86 American Journal of International Law 46

Gagnon J, 'ECOWAS'S Right to Intervene in Cote D'Ivoire to Install Alassane Ouattara as President-Elect' [2013] 1(1) Notre Dame Journal of International Comparative Human Rights Law 51

Gordon R, 'Humanitarian Intervention by the United Nations: Iraq, Somali and Haiti' [1996] 31 Texas International Law Journal 43

Gross L, 'The Peace of Westphalia, 1648-1948' [1948] 42 American Journal of International Law 20

Haász V, 'The Current and Future Relevance of the "Responsibility to Protect" Doctrine – The Case of Libya' [2012] 150 Studia Iuridica Auctoritate Universitatis Pecs 71

Hakimi M, 'To Condone or Condemn? Regional Enforcement Actions in the Absence of Security Council Authorisation' [2007] 40 Vanderbilt Journal of Transnational Law 643

Hamilton R, 'The Responsibility to Protect: From Document to Doctrine – But What of Implementation?' [2006] 19 Harvard Human Rights Journal 289

Hannum H, 'The Responsibility to Protect: Paradigm or Pastiche' [2009] 60 Northern Irish Legal Quarterly 135

Harsch E, 'OAU Sets Inquiry into Rwanda Genocide' [1998] 12(1) Africa Recovery 4

Hart H, 'Positivism and the Separation of Law and Morals' [1957] 71 Harvard Law Review 593

Hassan D, 'The Rise of the Territorial State and the Treaty of Westphalia' [2006] 9 Yearbook of New Zealand Jurisprudence 62

Hassan F, 'Realpolitik in International Law: After Tanzanian-Ugandan Conflict "Humanitarian Intervention" Re-examined' [1981] 17 Willamette Law Review 859

Herron J, 'Responsibility to Protect: Moral Triumph or Gateway to Allowing Powerful States to Invade Weaker States in Violation of the UN Charter' [2012] 26 Temple International and Comparative Law Journal 367

Higgins R, 'International Law and the Avoidance, Containment and Resolution of Disputes' [1991] 9 Recueil des Cours de l'Académie de Droit International 230

Hipold P, 'Humanitarian Intervention: Is There a Need for a Legal Reappraisal?' [2001] 12 European Journal of International Law 437

————, 'Intervening in the Name of Humanity: R2P and the Power of Ideas' [2012] 17 Journal of Conflict & Security Law 49

Hoagland E, 'US Invades Grenada' *Washington Post* (Washington DC, 26 October 1983)

Jenkins P, 'The Economic Community of West African States and the Regional Use of Force' [2007] 35 Denver Journal of International Law and Policy 333

Jhablava F, 'Unilateral Humanitarian Intervention and International Law' [1981] 21 International Journal of International Law 208

Joffé C, 'The Arab Spring in North Africa: Origins and Prospects' [2011] 16(4) Journal of North African Studies 507

Joyner C, '"The Responsibility to Protect": Humanitarian Concern and the Lawfulness of Armed Intervention' [2007] 47 Virginia Journal of International Law 693

————, 'The Kosovo Intervention: Legal Analysis and a More Persuasive Paradigm' [2002] 13 European Journal of International Law 597

Jubilut L, 'Has the "Responsibility to Protect" Been a Real Change in Humanitarian Intervention? An Analysis from the Crisis in Libya' [2012] 14 International Community Law Review 309

Kaplan L, 'International Diplomacy and the Crisis in Kosovo' [1998] 74(4) International Affairs 745

Karoubi M, 'Unilateral Use of Armed Force and the Challenge of Humanitarian Intervention in International Law' [2002] 10 Asian Yearbook of International Law 95

Kelsen H, 'The Principle of Sovereign Equality of States as a Basis for International Organisation' [1944] 53(1) Yale Law Journal 207

Kınacıoğlu M, 'The Principle of Non-Intervention at the United Nations: The Charter Framework and the Legal Debate' [2005] X(2) Perceptions Journal of International Affairs 15

Krasner S, 'Compromising Westphalia' [1996] 20 International Security 110

————, 'The Hole in the Whole: Sovereignty, Shared Sovereignty, and International Law' [2004] 25 Michigan Journal of International Law 1075

Krylov N, 'Humanitarian Intervention Pros and Cons' [1995] 17 Loyola of Los Angeles International and Comparative Law Review 365

Leich M, 'Contemporary Practice of the United States Relating to International Law' [1990] 84 American Journal of International Law 536

Levitt J, 'Humanitarian Intervention by Regional Actors in Internal Conflicts: the Cases of ECOWAS in Liberia and Sierra Leone' [1998] 12(2) Temple International and Comparative Law Journal 333

Lillich R, 'Forcible Self-Help by States to Protect Human Rights' [1967] 53 Iowa Law Review 325

Luban D, 'Just War and Human Rights' [1980] 9 Philosophy and Public Affairs 160

Lumsden E, 'An Uneasy Peace: Multilateral Military Intervention in Civil Wars' [2003] 35 NYU Journal of International Legal Policy 795

Lynch S, 'An Invitation to Meddle: The International Community's Intervention in Libya and the Doctrine of Intervention by Invitation' [2012] 2 Creighton International and Comparative Law Journal 173

Mačák K and Zamir N, 'The Applicability of International Humanitarian Law to the Conflict in Libya' [2012] 14 International Community Law Review 403

Mahalingam R, 'The Compatibility of the Principle of Nonintervention with the Right of Humanitarian Intervention' [1997] 1 UCLA Journal of International Law & Foreign Affairs 221

Malanczuk P, 'Kurdish Crisis and Allied Intervention in the Aftermath of the Second Gulf War' [1991] 2(2) European Journal of International Law 114

Marcus M, 'Humanitarian Intervention without Borders: Belligerent Occupation or Colonization?' [2003] 25 Houston Journal of International Law 99

Martin S, 'Sovereignty and the Responsibility to Protect: Mutually Exclusive or Codependent' [2011] 20(1) Griffith Law Review 153

Massa A, 'Does Humanitarian Intervention Serve Human Rights? The Case of Kosovo' [2009] 1(2) Amsterdam Law Forum 52

McClean E, 'The Responsibility to Protect: The Role of International Human Rights Law' [2008] 13 Journal of Conflict Security Law 123

Meron T, 'Customary Law and Additional Protocol I to the Geneva Conventions for Protection of War Victims: Future Directions in Light of the US Decision not to Ratify' [1987] 81 American Society of International Law Proceedings 26

Nakhjavani A, 'To What Extent Does a Norm of Humanitarian Intervention Undermine the Theoretical Foundations upon which the International Legal Order was Built?' [2004] XVII Windsor Review of Legal and Social Issues 35

Nanda V, 'From Paralysis in Rwanda to Bold Moves in Libya: Emergence of the "Responsibility to Protect" Norm under International Law – Is the International Community Ready for it?' [2012] 34 Harvard Journal of International Law 1

Nardin T, 'From Right to Intervene to Duty to Protect: Michael Walzer on Humanitarian Intervention' [2013] 24(1) European Journal of International Law 67

O'Donoghue A, 'Humanitarian Intervention Revisited' [2005] 1 Harvard Law Review 165

Odom T, 'Dragon Operations: Hostage Rescues in the Congo 1964-1965' [1988] 14 Leavenworth Papers 1

Orford A, 'Moral Internationalism and the Responsibility to Protect' [2013] 24 EJIL 83

Österdahl I, 'Preach What You Practice. The Security Council and the Legalisation *ex post facto* of the Unilateral Use of Force' [2005] 74 Nordic Journal of International Law 231

Parekh B, 'Rethinking Humanitarian Intervention' [1997] 18 International Political Science Review 49

Payandeh M, 'The United Nations, Military Intervention, and Regime Change in Libya' [2011] 52(2) Virginia Journal of International Law 355

————, 'With Great Power Comes Great Responsibility? The Concept of the Responsibility to Protect within the Process of International Lawmaking' [2010] 35 Yale Journal of International Law 469

Peters A, 'Humanity as the A and Ω of Sovereignty' [2009] 20(3) European Journal of International Law 513

Phillips E, 'The Libyan Intervention: Legitimacy and the Challenges of the "Responsibility to Protect" Doctrine' [2012] 25 Denning Law Journal 39

Pippan C, 'The 2011 Libyan Uprising, Foreign Military Intervention and International Law' [2011] 2 Juridikum: *Zeitschrift für Kritik-Recht-Gesellschaft* 159

Richemond D, 'Normativity in International Law: The Case of Unilateral Humanitarian Intervention' [2003] 6 Yale Human Rights & Development Law Journal 45

Rytter J, 'Humanitarian Intervention without the Security Council: From San Francisco to Kosovo and Beyond [2001] 70 Nordic Journal of International Law 121

Schachter O, 'In Defense of International Rules on the Use of Force' [1986] 53 University of Chicago Law Review 113

————, 'The Legality of Pro-Democratic Invasion' [1984] 78 American Journal of International Law 645

————, 'Just War and Human Rights' [1989] 1 Pace Yearbook of International Law 1

Scheffer D, 'Towards a Modern Doctrine of International Humanitarian Intervention' [1992] 23 University of Toledo Law Review 253

Schmitt M, 'Computer Network Attack and the Use of Force in International Law: Thoughts on a Normative Framework' [1999] 37 Columbia Journal of Transnational Law 885

Shalom S, 'Reflections on NATO and Kosovo' [1999] 7(3) New Politics 27

Sharma S, 'Toward a Global Responsibility to Protect: Setbacks on the Path to Implementation' [2010] 16 Global Governance 121

Shen J, 'The Non-Intervention Principle and Humanitarian Interventions under International Law' [2001] 7 International Legal Theory 1

Sherman N, 'Empathy, Respect, and Humanitarian Intervention' [1998] 12(1) Ethics and International Affairs 103

Simma B, 'NATO, the UN and the Use of Force: Legal Aspects' [1999] 10 European Journal of International Law 1

Simon S, 'The Contemporary Legality of Unilateral Humanitarian Intervention' [1994] 24 California Western International Law Journal 117

Slaughter A, 'International Law in a World of Liberal States' [1995] 6 EJIL 503

Sorel J, 'L'élargissement de la notion de manace contra le paix' in R Pedone, *Le chapitre VII de la Charte des Nations Unies* (Société Française poir le Droit International 1995)

Stanton G, 'The Rwandan Genocide: Why Early Warning Failed' [2009] 2(1) Journal of African Conflicts and Peace Studies 6

Steele A, 'One Nation's Humanitarian Intervention is Another's Illegal Aggression: How to Govern International Responsibility in the Face of Civilian Suffering' [2013] 35 Loyala Los Angeles International and Comparative Law Review 99

Strauss E, 'A Bird in the Hand is Worth Two in the Bush: On the Assumed Legal Nature of the Responsibility to Protect' [2009] 1 Global Responsibility to Protect 291

Tesón F, 'Kosovo: A Powerful Precedent for the Doctrine of Humanitarian Intervention' [2009] 1 Amsterdam Law Forum 42

Thakur R, 'Libya and the Responsibility to Protect: Between Opportunistic Humanitarianism and Value-Free Pragmatism' [2011] 7(4) Security Challenges 13

Thielbörger P, 'The Status and Future of International Law after the Libya Intervention' [2012] 4(1) Goettingen Journal of International Law 11

Tomuschat C, 'International Law: Ensuring the Survival of Mankind on the Eve of a New Century' [1999] 281 Collected Courses of the Hague Academy of International Law 9

Tsagourias N, 'Humanitarian Intervention and Legal Principles' [2001] 7 International Legal Theory 83

Ulfstein G, 'The Legality of the NATO Bombing in Libya' [2013] International Comparative Law Quarterly 159

Valek P, 'Is Unilateral Humanitarian Intervention Compatible with the UN Charter' [2005] 26 Michigan Journal of International Law 1223

van der Vyver J, 'Statehood in International Law' [1991] 5 Emory International Law Review 9

Vereshchetin V and Danilenko G, 'Custom as a Source of International Law of Outer Space' [1985] 13 Journal of Space Law 22

Verwimp P, 'Death and Survival during the 1994 Genocide in Rwanda' [2004] 58(2) Population Studies 233

Vesel D, 'The Lonely Pragmatist: Humanitarian Intervention in an Imperfect World' [2004] 18 Brigham Young University Journal of Public Law 1

Virally M, 'Art 2 § 4' in Cot J and Pellet A (eds), *La Charte des Nations Unies* (2nd edn, Economica 1985)

Weiss, T 'RtoP Alive and Well after Libya' [2011] 25(3) Ethics & International Affairs 287

Welsh J and Banda M, 'International Law and the Responsibility to Protect: Clarifying of Expanding States' Responsibilities' [2010] 2 Global Responsibility to Protect 213

Wenzel M and Faltas S, 'Tightening the Screws in West Africa' in M Brzoska and G Lopez, *Putting Teeth in the Tiger: Improving the Effectiveness of Arms Embargoes* (Emerald Group Publishing 2009)

Wheatley S, 'The Foreign Affairs Select Committee Report on Kosovo: NATO Action and Humanitarian Intervention' [2000] 5 Journal of Conflict Security Law 261

———, 'The NATO Action against the Federal Republic of Yugoslavia: Humanitarian Intervention in the Post-Cold War Era' [1999] 50 Northern Irish Legal Quarterly 478

Wheeler N, 'A Victory for Common Humanity: The Responsibility to Protect after the 2005 World Summit' [2006] 2 Journal of International Law and International Relations 95

Wilhelm R, 'Problèmes relatifs à la protection de la personne humaine par le droit international dans les conflits armés ne présentant pas un caractère international' [1972] 37(1) Recueil des Cours 137

Williams G, 'Prelude to an Intervention: Grenada' [1997] 29 Journal of Latin American Studies 131

Williams P, 'Briefing: The Road to Humanitarian War in Libya' [2011] 3 Global Responsibility to Protect 248

Williams P and Bellamy A, 'Principles, Politics and Prudence: Libya, the Responsibility to Protect and the Use of Military Force' [2012] 18 Global Governance 273

Zifcak S, 'The Responsibility to Protect After Libya and Syria' [2012] 13 Michigan Journal of International Law 1

Judicial Decisions

Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Advisory Opinion) [2010] ICJ Rep 403

Armed Activities on the Territory of the Congo (*Democratic Republic of the Congo v Uganda*) (Judgment) [2005] ICJ Rep 168

Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Merits Judgment) [1986] ICJ Rep 14

Case Concerning Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v United States of America*) (Separate Opinion of Judge Sette-Camara) [1986] ICJ Rep 14

Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v Serbia and Montenegro*) (Judgment) [2007] ICJ Rep 43

Corfu Channel Case (*United Kingdom of Great Britain and Northern Ireland v Albania*) (Merits) [1949] ICJ Rep 35

Jurisdictional Immunities of the State (*Germany v Italy: Greece Intervening*) (Judgment) [2012] ICJ Rep 1

North Sea Continental Shelf Case (Federal Republic of Germany/Netherlands) (Judgment) [1969] ICJ Rep 3

Oil Platforms (*Islamic Republic of Iran v United States of America*) (Judgment) [2003] ICJ Rep 161

R v Gibbons and Proctor [1918] 13 Cr App R 134

R v Miller [1983] 2 AC 161

R v Sheppard [1862] Le & Ca 147

R v Smith [1979] Crim LR 251

Sambiaggio Case (*Italy v Venezuela*) (1903) 10 RIAA 499

UN Documents

Annan K, *We the Peoples: The Role of the United Nations in the 21st Century, Millennium Report of the Secretary-General of the United Nations* (United Nations 2000)

GAOR, 2002nd Meeting (7 December 1971) UN Doc A/PV.2002

GAOR, 2003rd Meeting (7 December 1971) UN Doc A/PV.2003

International Law Commission, 'Articles on the Responsibility of States for Internationally Wrongful Acts', in Report of the International Law Commission on the Work of its 53rd Session, UN Doc A/56/10 Chap. IV (2001) GAOR 56th Session Supp 10

International Law Commission, 'First Report on Diplomatic Protection by Mr John R Dugard, Special Rapporteur' (10 July – 18 August 2000) UN Doc A/CN.4/506

Report of the Secretary-General's High-Level Panel, 'A More Secure World: Our Shared Responsibility – Report of the High-Level Panel on Threats, Challenges and Change' (United Nations Department of Public Information 2004)

UN Secretary-General, 'Remarks at Breakfast Roundtable with Foreign Ministers on "The Responsibility to Protect: Responding to Imminent Threats of Mass Atrocities"' *UN News Centre* (23 September 2011) <http://www.un.org/apps/new/infocus/sgspeeches/serach_full.asp?statID=1325>

United Nations, 'General Assembly 65th Session: Webcast of the Interactive Dialogue' *UN News & Media* (12 July 2011) <http://www.unmiltimedia.org/tv/webcast/2011/07/general-assembly-65th-session-english.html>

UNCIO 'Proposals of the Delegation of the Republic of Bolivia for the Organization of a System of Peace and Security' (5 May 1945) 3 UNCIO 578

UNCIO 'Summary Report of Eleventh Meeting of Committee I/1' (4 June 1945) 6 UNCIO 334

UNGA '2005 World Summit Outcome' (15 September 2005) UN Doc A/RES/60/1

UNGA 'Early Warning, Assessment and the Responsibility to Protect – Report of the Secretary-General' (14 July 2010) UN Doc A/64/864

UNGA 'Implementing the Responsibility to Protect: Report of the Secretary General' (12 January 2009) UN Doc A/63/677

UNGA 'In Larger Freedom: Towards Development, Security and Human Rights for All – Report of the Secretary-General' (21 March 2005) UN Doc A/59/2005

UNGA 'Letter from the Permanent Representative of Mexico to the United Nations Addressed to the Secretary-General' (26 March 1999) UN Doc A/53/884

UNGA Resolution 377(V) A (3 November 1950) UN Doc A/RES/377 (V) A

UNGA Resolution 2625 (XXV) (24 October 1970) UN Doc A/RES/2625 (XXV)

UNGA Resolution 34/22 (1979) (14 November 1979) UN Doc A/RES/34/22 (1979)

UNGA Resolution 42/22 'Annex Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations' (18 November 1987) UN Doc A/RES/42/22

UNGA Resolution 1674 (28 April 2006) UN Doc A/RES/1674 (2006)

UNGA Verbatim Record (22 September 1999) UN Doc A/54/PV.8

UNGA Verbatim Records (6 April 2005) UN Doc A/59/PV.85

UNGA Verbatim Records (6 April 2005) UN Doc A/59/PV.86

UNGA Verbatim Record (7 April 2005) UN Doc A/59/PV.87

UNGA, 'Responsibility to Protect: Timely and Decisive Response – Report of the Secretary-General' (25 July 2012) UN Doc A/66/874

UNGA, 'Thematic Debate on the "Report of the Secretary-General on Implementing the Responsibility to Protect"' (23 July 2009) UN Doc A/63/PV.97

UNHRC 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic' (23 November 2011) UN Doc A/HRC/S-17/2/Add.1

UNHRC 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic' (16 August 2012) UN Doc A/HRC/21/50

UNHRC 'Report of the International Commission of Inquiry to Investigate All Alleged Violations of International Human Rights Laws in the Libyan Arab Jamahiriya' (12 January 2012) UN Doc A/HRC/17/44

UNHRC Resolution S-18/1 (5 December 2011) UN Doc A/HRC/RES/S-18/1

UNSC 'Cable from the President of the Republic of the Congo and Supreme Commander of the National Army and the Prime Minister and Minister of National Defence Addressed to the Secretary-General of the United Nations' (13 July 1960) UN Doc S/4382

UNSC 'France, Lebanon, United Kingdom of Great Britain and Northern Ireland and United States of America: Draft resolution' (17 March 2011) UN Doc S/2011/142

UNSC 'Letter Dated 29 April 1994 from the Secretary-General Addressed to the President of the Security Council' (1994) UN Doc S/1994/518

UNSC 'Letter from the Permanent Representative of Belgium Addressed to the President of the Security Council' (24 November 1964) UN Doc S/6063

UNSC 'Letter from the Permanent Representative of the United States of America Addressed to the President of the Security Council' (24 November 1964) UN Doc S/6062

UNSC 'Note by the President of the Security Council' (31 January 1992) UN Doc S/23500

UNSC 'Provisional Verbatim Record of the Three Thousand and Forty-Sixth Meeting of the Security Council' (January 31 1992) UN Doc s/PV.3046

UNSC 'Special Report of the Secretary-General on the United Nations Assistance Mission for Rwanda' (1994) UN Doc S/1994/470

UNSC 'Statement by the President of the Security Council' (3 August 2011) UN Doc S/PRST/2011/16

UNSC Draft Resolution (19 July 2012) UN Doc S/2012/538

UNSC Draft Resolution (4 February 2012) UN Doc S/2012/77

UNSC Draft Resolution (4 October 2011) UN Doc S/2011/612

UNSC Resolution 143 (1960) (14 July 1960) UN Doc S/RES/143 (1960)

UNSC Resolution 661 (1990) (6 August 1990) UN Doc S/RES/661(1990)

UNSC Resolution 665 (1990) (18 August 1990) UN Doc S/RES/665(1990)

UNSC Resolution 670 (1990) (25 September 1990) UN Doc S/RES/670(1990)

UNSC Resolution 688 (1991) (5 April 1991) UN Doc S/RES/688

UNSC Resolution 713 (1991) (25 September 1991) UN Doc S/RES/713 (1991)

UNSC Resolution 788 (1992) (19 November 1992) UN Doc S/RES/788 (1992)

UNSC Resolution 794 (1992) (3 December 1992) UN Doc S/RES/794 (1992)

UNSC Resolution 864 (1993) (15 September 1993) UN Doc S/RES/864 (1993)

UNSC Resolution 912 (1994) (21 April 1994) UN Doc S/RES/912 (1994)

UNSC Resolution 918 (1994) (17 May 1994) UN Doc S/RES/918 (1994)

UNSC Resolution 925 (1994) (3 August 1994) UN Doc S/1994/925

UNSC Resolution 929 (1994) (22 June 1994) UN Doc S/RES/929 (1994)

UNSC Resolution 1078 (9 November 1996) UN Doc S/RES/1078 (1996)

UNSC Resolution 1101 (1997) (28 March 1997) UN Doc S/RES/1101 (1997)

UNSC Resolution 1132 (1997) (8 October 1997) UN Doc S/RES/1132 (1997)

UNSC Resolution 1160 (1998) (31 March 1998) UN Doc S/RES/1160 (1998)

UNSC Resolution 1162 (1998) (17 April 1998) UN Doc S/RES/1162 (1998)

UNSC Resolution 1199 (1998) (23 September 1998) UN Doc S/RES/1199 (1998)

UNSC Resolution 1203 (1998) (24 October 1998) UN Doc S/RES/1203 (1998)

UNSC Resolution 1264 (1999) (15 September 1999) UN Doc S/RES/1264 (1999)

UNSC Resolution 1755 (30 April 2007) UN Doc S/RES/1755

UNSC Resolution 1769 (2007) (31 July 2007) UN Doc S/RES/1769 (2007)

UNSC Resolution 1970 (2011) (26 February 2011) UN Doc S/RES/1970 (2011)

UNSC Resolution 1973 (2011) (17 March 2011) UN Doc S/RES/1973 (2011)

UNSC Resolution 1975 (2011) (30 March 2011) UN Doc S/RES/1975 (2011)

UNSC Resolution 2042 (2012) (14 April 2012) UN Doc S/RES/2042 (2012)

UNSC Resolution 2042 (2012) (14 April 2012) UN Doc S/RES/2042 (2012)

UNSC Resolution 2043 (2012) (21 April 2012) UN Doc S/RES/2043 (2012)

UNSC Verbatim Record (13 July 1960) UN Doc S/PV.873

UNSC Verbatim Record (20-21 July 1960) UN Doc S/PV.877

UNSC Verbatim Record (9 December 1964) UN Doc S/PV.1170

UNSC Verbatim Record (10 December 1964) UN Doc S/PV.1171

UNSC Verbatim Record (10 December 1964) UN Doc S/PV.1172

UNSC Verbatim Record (5 December 1971) UN Doc S/PV.1606

UNSC Verbatim Record (6 December 1971) UN Doc S/PV.1607

UNSC Verbatim Record (12 December 1971) UN Doc S/PV.1611

UNSC Verbatim Record (13 December 1971) UN Doc S/PV.1613

UNSC Verbatim Record (9 July 1976) UN Doc S/PV.1939

UNSC Verbatim Record (11 January 1979) UN Doc S/PV.2108

UNSC Verbatim Record (12 January 1979) UN Doc S/PV.2109

UNSC Verbatim Record (13 January 1979) UN Doc S/PV.2110

UNSC Verbatim Record (15 January 1979) UN Doc S/PV.2111

UNSC Verbatim Record (27 October 1983) UN Doc S/PV.2491

UNSC Verbatim Record (22 January 1990) UN Doc S/PV.2974

UNSC Verbatim Record (5 April 1991) UN Doc S/PV.2982

UNSC Verbatim Record (24 October 1998) UN Doc S/PV.3937

UNSC Verbatim Record (24 March 1999) UN Doc S/PV.3988

UNSC Verbatim Record (9 December 2005) UN Doc S/PV.5319

UNSC Verbatim Record (28 June 2006) UN Doc S/PV.5467

UNSC Verbatim Record (17 March 2011) UN Doc S/PV.6498

UNSC Verbatim Record (27 April 2011) UN Doc S/PV.6524

UNSC Verbatim Record (3 August 2011) UN Doc S/PV.6598

UNSC Verbatim Record (4 October 2011) UN Doc S/PV.6627

UNSC Verbatim Record (4 February 2012) UN Doc S/PV.6710

UNSC Verbatim Record (19 July 2012) UN Doc S/PV.6810

Regional Organisation Documents

African Union Peace and Security Council 'Communique' (10 March 2011) AU Doc PSC/PR/COMM.2 (CCLXV)

Arab Organisation for Human Rights, 'Report of the Independent Civil Society Fact-Finding Mission to Libya' (January 2012) <http://www.pchrgaza.org/files/2012/FFM_Libya-Report.pdf >

Council of Europe Parliamentary Assembly '2009 Ordinary Session: Report of Fifth Sitting Addendum 2' (28 January 2009) AS (2009) CR 5

Economic Community of West African States (Ministers of Foreign Affairs of the Community of Five on Sierra Leone) 'Final Communiqué' (6 February 1998) <http://www.sierra-leone.org/Other-Conflict/ECOWAS-020698.html >

Economic Community of West African States Standing Mediation Committee (7 August 1990) Decision A/DEC.1/8/90

NATO Secretary General Solana, 'Statement to the Press Following Decision on the ACTORD' (13 October 1998) <http://www.nato.int/docu/speech/1998/s981013a.htm >

NATO Secretary General Solana, 'Press Statement' (23 March 1999) <http://www.nato.int/docu/pr/1999/p99-040e.htm >

Organisation of Islamic Cooperation, 'Final Communique Issued by the Emergency Meeting of the Committee of Permanent Representatives to the Organization of the Islamic Conference on the Alarming Developments in Libyan Jamahiriya' (8 March 2011) <http://www.oic-oci.org/oicv2/topic/?t_id=5022&ref=2110&lan=en&x_key=libya>

Treaties and Domestic Legislation

Acte Constitutionnel 1791

Additional Protocol Relative to Non-Intervention (adopted 23 December 1936, entered into force 25 August 1937) 188 LNTS 31

Charter of the Arab League (adopted 22 March 1945, entered into force 22 March 1945) LXX UNTS 237

Charter of the Organization of the American States (adopted 30 April 1948, entered into force 13 December 1951) 119 UNTS 3

Charter of the United Nations (adopted 26 June 1945, entry into force 24 October 1945) 1 UNTS XVI

Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31

Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 85

Convention (IV) relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287

Convention for the Pacific Settlement of International Disputes (Hague I) (adopted 29 July 1899, entered into force 4 September 1900) 36 Stat 2199

Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into effect 12 January 1951) 78 UNTS 277

Convention with Respect to the Laws and Customs of War on Land (Hague II) (adopted 29 July 1899, entered into force 4 September 1900) 32 Stat 1803

Covenant of the League of Nations (adopted 28 June 1919, entered into force 10 January 1920) 225 CTS 195

General Act for the Pacific Settlement of International Disputes (adopted 26 September 1928, entered into force 16 August 1929) 2123 LNTS 345

Kellogg-Briand Pact 1928 (adopted 27 August 1928, entered into force 24 July 1929) 46 USSL 2343

Montevideo Convention on the Rights and Duties of States (adopted 26 December 1933, entered into force 26 December 1934) 165 LNTS 19

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609

Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90

Treaty of Paris 1856

Treaty of the Economic Community of West African States (adopted 28 May 1975, entered into force 1 August 1975) 14 ILM 1200

Treaty of the Economic Community of West African States 1993 (adopted 24 July 1993) 1010 UNTS 17

Treaty of Westphalia 1648

Vienna Convention on the Law of Treaties (adopted 23 May 1969, entry into force 27 January 1980) 1155 UNTS 331

Online Sources

--, '1983: US Troops Invade Grenada' (*BBC News*) <http://news.bbc.co.uk/onthisday/hi/dates/stories/october/25/newsid_3207000/3207509.stm>

--, '27 Dead in Assault on Syria Protest, Activists Say' *Jakarta Post* (3 June 2011) <http://www.thejakartapost.com/news/2011/06/03/27-dead-assault-syria-protest-activists-say.html>

--, 'African Union President Condemns NATO Bombing on Libya' *Mathaba News* (30 May 2011) <http://www.mathaba.net/news/?x=626964>

--, 'CEN-SAD Condemns NATO's Contempt for AU initiative on Libya' *Panapress* (9 June 2011) <http://www.panapress.com/CEN-SAD-condemns-NATO-s-contempt-for-AU-initiative-on-Libya--12-777632-29-lang2-index.html>

--, 'Executive Summary' in Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned* (OUP 2000) 1

--, 'Interactive Dialogue of the UN General Assembly on the Role of Regional and Sub-Regional Arrangements in Implementing the Responsibility to Protect' *International Coalition for the Responsibility to Protect* (August 2011) <http://www.responsibilitytoprotect.org/ICRtoP%20Report%20on%20RIGO%20GA%20dialogue%20on%20RtoP%20FINAL%281%29.pdf>

--, 'Libya Protests: Defiant Gaddafi Refuses to Quit' *BBC News* (22 February 2011) <http://www.bbc.co.uk/news/world-middle-east-12544624>

--, 'Libya Protests: Second City Benghazi Hit by Violence' *BBC News* (16 February 2011) <http://www.bbc.co.uk/news/world-africa-12477275>

--, 'Libya: Gaddafi Government Accepts Truce Plan, Says Zuma' *BBC News* (11 April 2011) <http://www.bbc.co.uk/news/world-africa-13029165>

--, 'Libya: Timeline of Key Events Since February 2011' (UN Integrated Regional Information Networks: Humanitarian News and Analysis, 8 April 2011) <http://www.irinnews.org/report/92410/libya-timeline-of-key-events-since-february-2011>

--, 'Numbers' in A Des Forges, Leave None to Tell the Story (Human Rights Watch 1999) <http://www.hrw.org/legacy/reports/1999/rwanda/Geno1-3-04.htm#P95_39230>

--, 'Qaddafi Vows to Fight to "Last Man and Woman" as Loyal Forces Battle Rebels' *Fox News* (2 March 2011) <http://www.foxnews.com/world/2011/03/02/diplomats-nato-eu-mulling-libyan-fly-zone/>

--, 'Remarks by the President in Address to the Nation on Libya' *National Defense University* (28 March 2011) <http://www.whitehouse.gov/the-press-office/2011/03/28/remarks-president-address-nation-libya>

--, 'Remarks by the President on the Situation in Libya' *Office of the Press Secretary* (18 March 2011) <http://www.whitehouse.gov/the-press-office/2011/03/18/remarks-president-situation-libya>

--, 'Report on the Alleged Use of Chemical Weapons in the Ghouta Area of Damascus on 21 August 2013' (15 September 2013) <http://www.cfr.org/syria/un-report-alleged-use-chemical-weapons-ghouta-area-damascus-september-2013/p31404>

--, 'Responsibility to Protect: The Lessons of Libya' *Economist* (19 May 2011) <http://www.economist.com/node/18709571>

--, 'Russia will veto military intervention in Syria at UNSC – Foreign Ministry' *RT News* (30 May 2012) <http://rt.com/politics/russia-veto-initiative-foreign-560/>

--, 'Spokesperson for the Secretary-General on the situation in Kenya' (2 January 2008) <http://www.un.org/sg/statements/?nid=2937>

--, 'Syria "at crossroads of pain and hope"' *The Australian* (21 June 2011) <http://www.theaustralian.com.au/news/world/syria-at-crossroads-of-pain-and-hope/story-e6frg6so-1226078784696>

--, 'Syria Chemical Attacks' *BBC News* (16 September 2013) <http://www.bbc.co.uk/news/world-middle-east-23927399>

--, 'Syria: Death Toll Rises as Bombardment of Civilian Areas Escalates in Homs' *Amnesty International* (15 February 2012)

<http://www.amnesty.org/en/bews/syria-bombardment-civlian-areas-excalates-homs-2012-02-14>

--, 'Zuma Blasts NATO'S Campaign in Libya for "Lasting Scar"' *Mail & Guardian Online* (10 December 2011) <http://mg.co.za/article/2011-12-10-zuma-blasts-natos-campaign-in-libya-for-lasting-scar>

ABC Radio, 'Defiant Gaddafi Issues Chilling Threat' *World Today* (23 February 2011) <http://www.abc.net.au/worldtoday/content/2011/s3146582.htm>

Akande D, 'Does SC Resolution 1973 Permit Coalition Military Support for the Libyan Rebels?' *EJIL Talk* (31 March 2011) <http://www.ejiltalk.org/does-sc-resolution-1973-permit-coalition-military-support-for-the-libyan-rebels/>

Al-Shaheibi R, 'Fighting Continues in Libya as Rival Militias Clash' *CNS News* (13 November 2011) <http://www.cnsnews.com/news/article/fighting-continues-libya-rival-militias-clash>

Black I, 'Qatar admits sending hundreds of troops to support Libya rebels' *Guardian* (26 October 2011) <http://www.theguardian.com/world/2011/oct/26/qatar-troops-libya-rebels-support>

Black I, 'UK and France dismiss Italy's call for pause in NATO bombing of Libya' *Guardian* (22 June 2011) <http://www.theguardian.com/world/2011/jun/22/libya-nato-bombing-uk-france-italy>

Brownlie I, 'Appendix 2 - Memorandum submitted by Professor Ian Brownlie CBE, QC' (28 July 1999) <http://www.publications.parliament.uk/pa/cm199900/cmselect/cmfaff/28/28ap03.htm>

Cameron, D, Obama B and Sarkozy N, 'Libya's Pathway to Peace' *New York Times Online* (14 April 2011) <http://www.nytimes.com/2011/04/15/opinion/15iht-edlibya15.html?_r=0>

Chapman J, 'I'll help Syria if the US attacks, says Putin in chilling threat to Obama as G20 summit breaks up in acrimony' *Mail Online* (6 September 2013) <http://www.dailymail.co.uk/news/article-2414139/Syria-Russia-vows-help-Syria-America-carries-military-strikes-Assad-s-regime.html>

Charlton J, 'Syria Crisis: "Clear and convincing evidence of sarin gas" says UN' *The Independent* (16 September 2013) <http://www.independent.co.uk/news/world/middle-east/syria-crisis-clear-and-convincing-evidence-of-sarin-gas-says-un-8817774.html>

Chesterman S, '"Leading from Behind": The Responsibility to Protect, the Obama Doctrine, and Humanitarian Intervention after Libya' (2011) Public Law & Legal Theory Research Paper Series Working Paper No 11-35 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1855843>

Chmaytelli M and Green P, 'Libya Rebels, NATO Don't Have Joint Operations, Official Says' *Bloomberg* (16 April 2011) <http://www.bloomberg.com/news/2011-04-16/libya-rebels-nato-don-t-have-joint-operations-official-says.html>

Chomsky N, 'In Retrospect: A Review of NATO's War over Kosovo, Part II' [2001] 5 *Z Magazine* <http://www.zcommunications.org/in-retrospect-by-noam-chomsky-1.html>

Clinton W, 'Presidential Decision Directive NSC-25' (3 May 1994) <http://www.clintonlibrary.gov/_previous/Documents/2010%20FOIA/Presidential%20Directives/PDD-25.pdf>

Crawford E, 'Proportionality' [2011] Max Planck Encyclopaedia of Public International Law <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1459?rskey=gfKQXd&result=1&q=proportionality&prd=EPIL>

Evans G, 'The Responsibility to Protect after Libya and Syria' (20 July 2012) <http://www.law.monash.edu.au/castancentre/conference/2012/evans-paper.pdf>

Evans G, 'Public Lecture: Responding to Mass Atrocity Crimes: The Responsibility to Protect (R2P) After Libya' *Global Centre for the Responsibility to Protect* (24 October 2012) <http://www.gevans.org/speeches/speech496.html >

Fahim K and Kirkpatrick D, 'Qaddafi's Grip on the Capital Tightens as Revolt Grows' *New York Times Online* (22 February 2011) <http://www.nytimes.com/2011/02/23/world/africa/23libya.html?pagewanted-all>

Fahim K, 'Slap to a Man's Pride Set off Tumult in Tunisia' *New York Times Online* (11 January 2011) <http://www.nytimes.com/2011/01/22/world/africa/22sidi.html?pagewanted=1&_r=2&src=twrhp&>

Fornaji H, 'Plight of foreigners in Libya "worse than under Qaddafi" claims Amnesty International' *Libya Herald* (13 November 2012) <http://www.libyaherald.com/2012/11/13/plight-of-foreigners-in-libya-worse-than-under-qaddafi-claims-amnesty-international/#axzz2fGPXPzoD>

Gillis C, 'Benghazi a scene of violence year after embassy attack' *USA Today* (15 September 2013) <http://www.usatoday.com/story/news/world/2013/09/15/benghazi-libya-violence/2813297/>

Gomez S, 'The US Invasion of the Dominican Republic' [1997] I(2) Sincronia <http://fuentes.csh.udg.mx/CUCSH/Sincronia/num_anteriores.html>

Hecht D, 'Sierra Leone Changes Power without Coup, Despite Ongoing War' *Christian Science Monitor* (1 April 1996) <http://www.csmonitor.com/1996/0401/01061.html>

Hepinstall S and Fullerton E (eds), 'Rare Political Protests Held in Syria: Witnesses' *Reuters* (15 March 2011) <http://www.reuters.com/article/2011/03/15/us-syria-protest-idUSTRE72E8DQ20110315>

Huang Y, 'On the Military Intervention under the Doctrine of the Responsibility to Protect' *Chinese Society of International Law* (9 November 2011) <http://a10014931063.oinsite.cn/web/errors/404.aspx?aspxerrorpath=/_d271634455.htm>

International Crisis Group, 'Holding Libya Together: Security Challenges After Qadhafi – Middle East/North Africa Report N°115' (14 December 2011) <http://www.crisisgroup.org/~/media/Files/Middle%20East%20North%20Africa/North%20Africa/115%20Holding%20Libya%20Together%20--%20Security%20Challenges%20after%20Qadhafi.pdf>

Khumar N, 'Syria crisis: More signs US involvement in civil war may be greater than first anticipated as Obama looks to boost rebels' *The Independent* (7 September 2013) <http://www.independent.co.uk/news/world/americas/syria-crisis-more-signs-us-involvement-in-civil-war-may-be-greater-than-first-anticipated-as-obama-looks-to-boost-rebels-8802694.html>

Kissack R, 'What's the Use of Arguing? European Union Strategies for the Promotion of Human Rights in the United Nations' *Conference Paper* (April 2009) <http://www.unc.edu/euce/eusa2009/papers.php>

Lanotte O, 'Chronology of the Democratic Republic of Congo/Zaire (1960-1997)' *Encyclopaedia of Mass Violence* (April 6 2010) < http://www.massviolence.org/Chronology-of-the-Democratic-Republic-of-Congo-Zaire-1960-1997>

Lyon A, 'Syria's Assad Meets Annan, but Gives Little Ground' *Reuters* (10 March 2012) <http://www.reuters.com/article/2012/03/10/us-syria-idUSBRE8280G820120210>

Miklaszewski J, Kube C and McClam E, 'Military strikes on Syria "as early as Thursday" US officials say' *NBC News Online* (27 August 2013) <http://worldnews.nbcnews.com/_news/2013/08/27/20209022-military-strikes-on-syria-as-early-as-thursday-us-officials-say?lite>

Monroe J, 'The Monroe Doctrine' (2 December 1823) <http://avalon.law.yale.edu/19th_century/monroe.asp>

Narayana N, 'Syria Rebels to Observe Friday as the "Day of Defiance"' *International Business Times* (6 May 2011) <http://www.ibtimes.com/syria-rebels-observe-friday-day-defiance-282533>

Neild B, 'Can African Union Broker a Libya Peace Plan?' *CNN* (11 April 2011) <http://edition.cnn.com/2011/WORLD/africa/04/11/libya.war.african.union/index.html>

Office of the Press Secretary, 'Statement by the Press Secretary: President Clinton Signs New Peacekeeping Policy' (5 May 1994) <http://www.fas.org/irp/offdocs/pdd25.htm>

Ross T and Farmer B, 'Navy ready to launch first strike on Syria' *The Telegraph* (25 August 2013) <http://www.telegraph.co.uk/news/worldnews/middleeast/syria/10265765/Navy-ready-to-launch-first-strike-on-Syria.html>

Russell B, 'Putin warns Syria strike would "increase violence and unleash new wave of terrorism"' *The Express Online* (12 September 2013) <http://www.express.co.uk/news/uk/428845/Putin-warns-Syria-strike-would-increase-violence-and-unleash-new-wave-of-terrorism>

Saleh Y and Noueihed L, 'Arab League proposes new plan for Syrian transition' *Reuters* (22 January 2012) <http://www.reuters.com/article/2012/01/22/us-syria-idUSTRE8041A820120122>

Sample I, 'UN Inspectors in Syria: Under fire, in record time, sarin is confirmed' *The Guardian Online* (16 September 2013) <http://www.theguardian.com/world/2013/sep/16/un-inspectors-syria-sarin-gas>

Schmitt E, 'Surveillance and Coordination with NATO Aided Rebels' *New York Times Online* (21 August 2011) <http://www.nytimes.com/2011/08/22/world/africa/22nato.html>

Shupak G, 'NATO's "Humanitarian War" on Libya: Prelude to a Humanitarian Disaster' *Global Research News* (3 September 2013) <http://www.globalresearch.ca/natos-humanitarian-war-on-libya-prelude-to-a-humanitarian-disaster/5347894>

Stewart S, 'Libya after Gadhafi: Transitioning from Rebellion to Rule' *Security Weekly* (24 August 2011) <http://www.stratfor.com/weekly/20110824-libya-after-gadhafi-transitioning-rebellion-rule>

Sylvester R, 'The Blair Doctrine: This is an Ethical Fight' *Independent* (28 March 1999) <http://www.independent.co.uk/life-style/war-in-europe-the-blair-doctrine-this-is-an-ethical-fight-1083648.html>

Walker P, 'No Apology from NATO for Air Strike on Libyan Rebel Tanks' *The Guardian* (8 April 2011) <http://www.guardian.co.uk/world/2011/apr/08/nato-no-apology-libya-air-strike>

Waterfield B, 'Libya: British Military Advisers Set up "Joint Operations Centre" in Benghazi' *The Telegraph* (18 May 2011) <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8521977/Libya-British-military-advisers-set-up-joint-operations-centre-in-Benghazi.html>

Wheeler W, 'Violence between rebel factions hints at civil war in Libya' *Global Post* (13 September 2013) <http://www.globalpost.com/dispatches/globalpost-blogs/groundtruth/libya-violence-rebel-factions-civil-war>

Miscellaneous

Albright M, 'Press Conference by US Secretary of State Albright' (8 October 1998)

Amnesty International, 'Libyan writer detained following protest call' (8 February 2011) <http://www.amnesty.org/en/news-and-updates/libyan-writer-detained-following-protest-call-2011-02-08>

Department of Defence, 'Operations Series ADDP 3.10: Noncombatant Evacuation Operations' (June 2011) <www.defence.gov.au%2Fadfwc%2FDocuments%2FDoctrineLibrary%2FADDP%2FADDP_3_10_Noncombatant_Evac_Ops.pdf&ei=JnELUpiTNYer0AWohIDoAg&usg=AFQjCNEncKnc5F7HHKJb2DRaa-Fi1r9fLA&bvm=bv.50723672,d.d2k>

Doe S, 'Letter to the Chairman and Members of the Ministerial Meeting of the ECOWAS Standing Mediation Committee' (July 14 1990)

Global Policy Forum, 'Changing Patterns in the Use of the Veto in the Security Council' (2008) <http://www.globalpolicy.org/component/content/article/102/32810.html>

HC Deb 19 October 1998, vol 317, col 953

HC Deb 26 April 1999, vol 330, col 30

House of Commons' Foreign Affairs Select Committee, 'Fourth Report on Kosovo: HC 28 – I/II' (2000) <http://www.publications.parliament.uk/pa/cm199900/cmselect/cmfaff/28/2813.htm>

Human Rights Watch, *Death of a Dictator: Bloody Vengeance in Sirte* (Human Rights Watch 2012)

International Commission of Jurists Secretariat, *The Events in East Pakistan* (International Commission of Jurists 1972)

Johnson LB, 'Statement of 2 May 1965' [1965] 1 Johnson Papers 465

Johnson LB, 'Statement on US Policy' [1965] LIII (1358) Department of State Bulletin 1

Joint Chiefs of Staff, 'Joint Publication 3-68: Noncombatant Evacuation Operations' (December 2010) <http://www.fas.org/irp/doddir/dod/jp3-68.pdf>

Ministère de la Défense, 'Doctrine interarmées DIA – 3.4.2: Les opérations d'évacuation de ressortissants' (July 2009) <http://www.cicde.defense.gouv.fr/IMG/pdf/DIA_3-4-2.pdf>

Ministry of Defence, 'Joint Doctrine Publication 3-51: Non-Combatant Evacuation Operations' (2nd edn, February 2013) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/142584/20130301-jdp3_51_ed3_neo.pdf >

National Archives and Records Service, *Public Papers of the Presidents of the United States: Lyndon B Johnson 1965* (Government Printing Office 1966)

Schorlemer S, 'The Responsibility to Protect as an Element of Peace: Recommendations for its Operationalisation – Policy Paper 28' (Development and Peace Foundation 2007)

US House of Representatives, 'Statement of Hon. Herman J Cohen, Assistant Secretary of State, Bureau of African Affairs' (19 June 1990) 104 United States Statutes at Large 3

US State Department, 'Press Conference with Russian Foreign Minister Igor Ivanov' (26 July 1999)
<http://secretary.state.gov/www/statements/1999/990726b.html>