

**THE CONTESTATION OF NONINTERVENTION:  
INTERNATIONAL ORDER AND EMERGENCE OF THE  
RESPONSIBILITY TO PROTECT (R2P)**

**Peter Spears Lind**

**A Thesis Submitted for the Degree of PhD  
at the  
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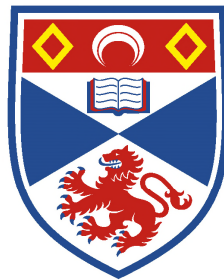
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The Contestation of Nonintervention:  
International Order and Emergence of the Responsibility to  
Protect (R2P)

Peter Spears Lind



University of  
St Andrews

This thesis is submitted in partial fulfilment for the degree of  
PhD  
at the University of St Andrews

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# Abstract

This thesis examines how the norm of nonintervention has interacted with the norm of the Responsibility to Protect (R2P) to construct a new normative architecture of international order. Nonintervention has long served as a deeply embedded norm in the international normative architecture. However, conflicting interpretations of how to respond in cases of egregious intra-state human rights abuses have fuelled contestation surrounding the potential for international protection measures including the projection of force. Drawing from international relations theory, I embrace a social constructivist approach with insights from the English School to explore the nature of normative structures and their role in undergirding international society. While foreign policy decisions reflect a spectrum of normative and non-normative considerations, norms serve as resources that guide and shape the behaviour of actors. Outlining the emergence of R2P and its invocation through empirical cases of mass atrocities in Sri Lanka (2009), Libya (2011), and Syria (2011-2015), this thesis traces the contestation of nonintervention through cases of intra-state humanitarian crises. I conclude that nonintervention has recurrently challenged R2P as a means of securing international order and the rights of independent political communities, with its persistent salience serving as a barrier to intervention and more expansive interpretations of R2P.

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# Introduction

One core research question drives this thesis: how has the norm of nonintervention interacted with the norm of the Responsibility to Protect (R2P) to construct a new normative architecture of international order? Over the past several decades, the international projection of force has been recurrently justified in terms of human rights protection. Marking an apparent shift in the undergirding structure of the international system, such actions have sparked debates surrounding their legal, ethical, and political foundations. While argued as heralding an erosion of a traditional conception of sovereignty and paradigm shift in international law towards human rather than state security, mass atrocity crimes and egregious human rights abuses have waged with inconsistent protection measures from the international community. Tracing the contestation of nonintervention outlines its normative influence in informing the decisions of state actors and highlights its persistent salience in cases of intra-state humanitarian crises. This thesis critically analyses the recent cases of Sri Lanka's final stages of civil war against the Tamil Tigers, NATO's intervention in Libya, and Syria's

civil war in which recognized imminent or ongoing mass atrocity crimes have been met with invocation of R2P and a variation of international responses. Where R2P should be operationalized, the norm of nonintervention has continued to persist and shape the trajectory of R2P – impacting both its substance and implementation.

### **Theorizing Normativity in International Relations**

From a pragmatic self-interested lens to state motivation based on economic self-help or material structural advantages, states would only risk lives and resources in response to threats to their own security or perceived material gains. Morality and ideational concerns linked to universal human rights and the egregious suffering of populations in other areas of the globe would be of little consequential concern. But then, why do historic periods emerge of patterned variations in international behavior? The study of norms provides insight into how state behavior changes, based on normative considerations that create, sustain, and shape conceptions of interests. While material power plays an important role surrounding the projection of force, actors exist within a socially constructed reality in which both material and ideational factors inform interests, calculations and decisions.

Concerning the normative context of international relations, we must address the theoretical assumptions surrounding international law and the undergirding normative structures that inform actors within international society. Realists argue that an anarchic structural reality defines the international system. Actors with given identities and interests compete for resources through the principle of self-help tied to economic utility maximization with international normative structures having nominal influence. While international laws and norms of conduct may exist, they serve as instrumental means to



justify behavior of the most powerful states<sup>1</sup>. Rather than viewing norms as powerless variables, my analysis emphasizes the enabling and constraining influence of norms from a social constructivist approach with insights from the English School.

Social constructivists emphasize norm's central role as not only regulative in providing privileges or constraints, but also as constitutive in that they can be internalized and reciprocally reconstitute the interests and identities of states. Adopting Jeffrey Legro's definition within international relations, norms exist as collective understandings of the proper behavior of actors<sup>2</sup>. As the invisible structures of international relations, norms are independent to actors, but are created and shaped under the weight of global practices, serving as reference points that give meaning to action and shape interests through providing understandings of rights and constraints<sup>3</sup>. Through norms, agents derive meanings and gain a contextual understanding of interests and the identities from which they make reasoned decisions. Furthermore, because norms embody a quality of 'oughtness', they "prompt justification for action and leave an extensive trail of communication among actors that we can study"<sup>4</sup>. What makes these normative structures relevant relates to the nature of normativity and their strategic impact on the foreign policy decisions and interactions among states. As norms emerge or change, they re/construct interests, shaping the perceptions and behaviors of international actors – which may elucidate change in international relations and the projection of military force.

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<sup>1</sup> See: Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton: Princeton University Press, 1999), pp. 51-52.

<sup>2</sup> Jeffrey W. Legro, 'Which norms matter? Revisiting the "failure" of internationalism', *International Organization* 51(1) (1997), 33.

<sup>3</sup> Antje Wiener, 'Contested compliance: Interventions on the normative structure of world politics', *European journal of international relations* 10(2) (2004), 189.

<sup>4</sup> Martha Finnemore and Kathryn Sikkink, 'International norm dynamics and political change', *International organization* 52(4) (1998), 892.

The English School as an approach highlights that a normative order exists through a level of shared beliefs, values, and culture manifested in an international society in which actors do follow some rules and customs opposed to purely self-interested behavior with norms and institutions having a regulative impact on the foreign policies of states<sup>5</sup>. As Hedley Bull outlines, “These rules may have the status of international law, moral rules, of custom or established practice, or they may be merely operational rules or ‘rules of the game’, worked out without formal agreement or even without verbal community”<sup>6</sup>. While a lack of common government does distinguish the international order from the domestic, the international system cannot be considered truly anarchic, with normative structures conditioning state interests<sup>7</sup>. However, as tied to beliefs and values, the normative architecture of international order shifts historically in character and content through perception of how to ensure international order. As Timothy Dunne asserts, “The sovereign state is the constitutive community of international society, one whose obedience to the norms of the society of states both reaffirms the identity of the sovereign state *and* reconstitutes the structure of the international society”<sup>8</sup>. How norms then function is through the contextualization of actions, interests, and identities within international relations – informing actors through providing intersubjective meanings and normative boundaries of legitimate conduct. “Their causal power, such that it is, lies in the effect norms have on actors reasoning and subsequent actions. Norms influence actors by shaping their perceptions and the argumentative logic that defines a particular issue or debate”<sup>9</sup>. States intervene within an international legal and normative context, with foreign policy choices reflecting a spectrum of both normative and non-normative

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<sup>5</sup> Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (New York: Colombia University Press, 1977), p. 65.

<sup>6</sup> Bull, *The Anarchical Society*, 64.

<sup>7</sup> Martin Wight, *Power Politics*, Hedley Bull and Carsten Holbraad (eds.) (Middlesex: Penguin Books, 1978), p. 105.

<sup>8</sup> Timothy Dunne, ‘The Social Construction of International Society’, *European Journal of International Relations* 1(3) (1995), 379.

<sup>9</sup> Adriana Sinclair, *International Relations Theory and International Law: A Critical Approach* (Cambridge: Cambridge University Press, 2010), p. 22.

considerations. Norms then serve as a resource for international actors, shaping “the goals that states are likely to pursue and the means that are deemed legitimate and effective for obtaining them, including the political costs and benefits associated with different choices”<sup>10</sup>. International norms provide a baseline or standard of conduct and intersubjective meaning from which actions derive perceptions and consequences that are both material and ideational and cannot be separated from social and historical context<sup>11</sup>.

Much of the theoretical discussion surrounding normative order within international relations has addressed how norms develop and emerge. Specifically, this body of work has emphasized the promotion and projection of ideas by NGOs, individuals, or institutional actors towards acceptance of behavior as normative practice. While the successful emergence and implementation of norms has been discussed and illustrated through a number of theoretical models, informing ‘positive’ behavioral changes, relatively little research has addressed the interaction of norms in relation to each other as well as the promotion and application of norms that proscribe behavior as standards of conduct. These ‘negative’ norms that prohibit particular behavior may also inform policy decisions in which inaction reflects more than material or pragmatic considerations devoid of normative meaning but may be seen as actions in themselves. From this perspective, prohibitive or proscriptive norms are also of great relevance within international relations – a research focus that this thesis seeks to develop through the contestation of nonintervention.

## **International Order and Nonintervention**

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<sup>10</sup> Nicola P. Contessi, ‘Multilateralism, Intervention and Norm Contestation: China’s Stance on Darfur in the UN Security Council’, *Security Dialogue* 41(3) (2010), 325.

<sup>11</sup> Anthony F. Lang Jr., ‘Conflicting Rules: Global Constitutionalism and the Kosovo Intervention’, *Journal of Intervention and Statebuilding* 3(2) (1999), 188; Anthony C. Arend, *Legal rules and international society* (Oxford: Oxford University Press, 1999).

As a contentious practice throughout history, intervention has been widely addressed within international relations and international law. Defined as coercive interference in the domestic affairs of foreign powers, intervention has been interpreted broadly to encompass economic and diplomatic coercion that is authoritative in its impact<sup>12</sup>.

However, I take a narrow approach to what has been emphasized as forcible military intervention, as the cross-border projection of force. Authoritatively coercive by nature, intervention vitiates sovereignty and has been disputed throughout history, shaping particular norms of conduct, or recognized standards of how international actors should or should not act at the international level<sup>13</sup>. These norms and international legal rules have concentrated around the UN Charter since its emergence in 1945. As the central vestige of international authority surrounding the use of force, Article 2(4) clearly outlines that all states must ‘refrain from the threat or use of force against the territorial integrity or political independence of any state’. Furthermore, Article 2(7) removes the right of the UN, let alone other actors or states, from intervening in ‘matters essentially within the domestic jurisdiction of any state’. Within this international legal order, the only permissible projection of coercive force are through government consent, under Article 51 outlining state’s ‘inherent right of individual or collective self defense’, or through measures mandated by the UN Security Council under Chapter VII in response to appraised threats to international peace and security.

Grounded in conceptions of sovereign equality and self-determination, nonintervention was tied to human rights through the UN Charter and process of decolonization – ‘established as a sacrosanct and unconditional principle of international law’<sup>14</sup>. It is

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<sup>12</sup> Terry Nardin and Melissa S. Williams, ‘Introduction’ in Terry Nardin and Melissa Williams (eds.), *Humanitarian Intervention* (New York: New York University Press, 2006), p. 1.

<sup>13</sup> Anthony F. Lang Jr., ‘Humanitarian intervention’, in Patrick Hayden (ed.), *The Ashgate Research Companion to Ethics and International Relations* (Surrey: Ashgate Publishing, 2009), p. 133.

<sup>14</sup> Luke Glanville, *Sovereignty and the Responsibility to Protect: A New History* (Chicago: University of Chicago Press, 2014), p. 56.

important to recognize that this international legal order was established to proscribe forms of international armed conflict<sup>15</sup>. Cases of domestic insurrection, civil war, or other disturbances were defined as firmly within the domestic sphere, with the pertinent state authority free to use force whenever it was seen fit. The projection of force to protect populations even subjected to egregious human rights abuses and mass killings was proscribed by international society. Throughout the Cold War, this international norm was applied to an extent that made sovereignty a seeming ‘license to kill’ with institutionalized indifference leaving the UN and member states bystanders to egregious human rights abuses<sup>16</sup>. Those cases of unilateral intervention including India in Pakistan in 1971, Vietnam in Cambodia in 1978-79 and Tanzania in Uganda in 1978-79, which could have been justified in terms of human rights protections largely reinforced international aversion to intervention, with rare cases of UN recognition of human suffering as justification of limited non-military sanction in Rhodesia and South Africa predominantly reflecting security and territorial concerns<sup>17</sup>. Through normative and positive legal development, nonintervention came to underwrite and in many ways define the modern international order<sup>18</sup>.

### **The Emergence of the Responsibility to Protect**

Following the Cold War, the normative context of humanitarian intervention shifted under the weight of liberal human rights norms. What Justin Morris highlights as a ‘rebalancing of sovereign rights against international recognized standards of human

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<sup>15</sup> Christine D. Gray, *International Law and the Use of Force* (Oxford: Oxford University Press, 2008), p. 31.

<sup>16</sup> Gareth Evans, ‘Ending mass atrocity crimes: a hopeless dream?’, speech given to the University of Cambridge, 10 May 2013, <http://www.gevans.org/speeches/speech513.html>.

<sup>17</sup> Justin Morris, ‘Libya and Syria: R2P and the spectre of the swinging pendulum’, *International Affairs* 89(5) (2013), 1268.

<sup>18</sup> R. J. Vincent, *Nonintervention and International Order* (Princeton: Princeton University Press, 1974), p. 20; Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000).

protection’<sup>19</sup>. A unipolar moment of Western power and democracy promotion heralded a wave of commissioned reports and UN activism surrounding universal human rights protection. This paralleled increasingly expansive peacekeeping and peacemaking initiatives through the UN and regional organizations<sup>20</sup>. Early 1990s humanitarian interventions in Northern Iraq, Somalia, and Bosnia proved particularly controversial, while failures to protect in Srebrenica and Rwanda led to new statements of ‘never again’ echoing back to the Holocaust<sup>21</sup>. The 1999 NATO intervention in response to ethnic cleansing in Kosovo re-exposed the contentious debate surrounding international rules on the use of force. Launching an air war and bombing from 15,000 feet without UNSC approval, NATO’s intervention looked more like traditional warfare than humanitarian aid work<sup>22</sup>.

With initial sponsorship from the Canadian government, the International Commission on Intervention and State Sovereignty (ICISS) was created in 2000 - meant to assist then-UN Secretary General Kofi Annan and other international actors find common objectives and a better means to approach sovereign responsibility and humanitarian intervention in a changing international environment. Releasing their report ‘Responsibility to Protect’ in December 2001, promotion on the part of individuals, states, and international institutions yielded wide-ranging advocacy. As Thomas Weiss outlines, “With the possible exception of the 1948 Convention on Genocide, no idea has moved faster in the international normative area than the ‘responsibility to protect’”<sup>23</sup>. Drawing directly from – and emerging to shift – the international normative context surrounding human rights

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<sup>19</sup> Morris, ‘Libya and Syria’, 1268.

<sup>20</sup> Virginia P. Fortna, *Does Peacekeeping Work?: Shaping Belligerents Choices After War* (Princeton: Princeton University Press, 2008).

<sup>21</sup> Jared Cohen, *One Hundred Days of Silence: America and the Rwanda Genocide* (New York: Rowan and Littlefield Publishers, 2007).

<sup>22</sup> Martti Koskenniemi, “‘The Lady Doth Protest Too Much’ Kosovo, and the Turn to Ethics in International Law’, *The Modern Law Review* 65(2) (2002), 166.

<sup>23</sup> Thomas G. Weiss, *Humanitarian Intervention: Ideas in Action* (Cambridge: Polity Press, 2007) p. 1.

protection the ICISS sought to provide greater clarity surrounding rules and criteria for when and under what authority humanitarian intervention could be more legitimately carried out. Among its precepts, the R2P report outlined that sovereign states hold a fundamental responsibility to protect their populations. However,

Where the population is suffering serious harm, as a result of internal war, insurgency, repression or state failure and the state in question is unwilling or unable to halt or avert it, the principle of nonintervention yields to the international responsibility to protect<sup>24</sup>.

Innovative in its ability to shape international discourse surrounding human rights protection, the norm has been invoked widely by individual states, NGOs, and international institutions. Shifting the debate from external right to internal responsibility placed emphasis on individual member states – the requirement of sovereigns to provide security to internal populations – an argument long addressed within political theory<sup>25</sup>. However, as Jennifer Welsh asserts, “the position that the international community might have not only a right but also a responsibility to protect individuals inside the jurisdiction of a particular state is more novel and controversial”<sup>26</sup>. As a positive obligation, this responsibility affirms a particular duty or culpability on the part of international actors and institutions in cases of failure to address cases of mass atrocity crimes within member states. It also works to shape the basis of sovereign authority as contingent – a legitimacy appraisal subject to institutions that are external to the state. The contribution of R2P as Liu Tiewa asserts, is that it “upgrades the concept of preventing mass violations of

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<sup>24</sup> International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect*. (Ottawa: International Development Research Center, 2001), p. xi.

<sup>25</sup> Jennifer M. Welsh, ‘Implementing the “Responsibility to Protect”’: Catalysing Debate and Building Capacity’ in Alexander Betts and Phil Orchard (eds.), *Implementation and World Politics: How International Norms Change Practice* (Oxford: Oxford University Press, 2014), p. 124.

<sup>26</sup> Ibid.

human rights to an ‘international responsibility’, indicating that the international community of states has a responsibility if not an obligation to intervene in states with serious human rights abuses”<sup>27</sup>. Grounding the authority of states in the capacity to protect its population – R2P does not assert new legal rules or institutional developments, but rather can be seen to confer public power and allocate jurisdiction<sup>28</sup>. If a population is subjected to egregious cruelty on large-scales due to regime unwillingness or inability to protect, the responsibility shifts to the international community.

Within fifteen years of the International Commission on Intervention and State Sovereignty’s report on the Responsibility to Protect, there has been a progression of effort to promote and implement the concept. The concept has been embedded in Kofi Annan’s 2004 report ‘In Larger Freedom’, the 2005 World Summit Outcome Document, and UN Secretary-General Ban-Ki Moon’s report ‘Implementing the Responsibility to Protect’ (2009) which led to further consideration in annual UNGA debates illustrating widespread support<sup>29</sup>. Institutionally, the UN Secretary General appointed a new Special Advisor on the Responsibility to Protect in 2008 – tasked alongside the Special Advisor on the Prevention of Genocide under a joint office to develop a strategy to better implement the norm<sup>30</sup>. This has led to the creation of a convening mechanism to bring the UN Under Secretaries General together during crisis situations and a UN-wide contact group on R2P<sup>31</sup>. Outside the UN, the Responsibility to Protect has come to dominate modern political discourse surrounding mass atrocities and humanitarian intervention. As

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<sup>27</sup> Liu Tiewa, ‘Is China like the other permanent members? Governmental and academic debates on R2P’ in Monica Serrano and Thomas G. Weiss (eds.), *The International Politics of Human Rights: Rallying to the R2P Cause?* (New York: Routledge, 2014), pp. 148-170.

<sup>28</sup> Anne Orford, ‘From Promise to Practice? The Legal Significance of the Responsibility to Protect Concept’, *Global Responsibility to Protect* 3(4) (2011), 400-424.

<sup>29</sup> UN Secretary-General, ‘Implementing the Responsibility to Protect: Report of the Secretary General’, UNGAOR, 63<sup>rd</sup> Sess., UN Doc. A/63/677, 12 January 2009.

<sup>30</sup> Welsh, ‘Implementing the “Responsibility to Protect”’, p. 124.

<sup>31</sup> Edward C. Luck, ‘From Promise to Practice: Implementing the Responsibility to Protect’ in Jared Genser and Irwin Cotler (eds.), *The Responsibility to Protect: The Promise of Stopping Mass Atrocities in our Time* (Oxford: Oxford University Press, 2012), pp. 85-108.



Aiden Hehir and Anthony Lang outline, fielding a ‘mini-industry’ of NGOs and think tanks, “R2P is today unarguably the pre-eminent academic framework for discussing humanitarian intervention”<sup>32</sup>. In 2008, the Global Centre for the Responsibility to Protect was created in New York with partnership institutions across the globe along with the establishment of an academic journal, *Global Responsibility to Protect* echoing an expanding body of R2P scholarship<sup>33</sup>. The norm has been unanimously endorsed by the UN General Assembly as well as UN Security Council – by mid-2015, included in roughly 30 UNSC resolutions including those on Sudan, Central African Republic, Somalia, Mali, Cote d’Ivoire, Libya, Syria, and Yemen<sup>34</sup>.

However, Sudan, Sri Lanka and Syria among other lower level structural atrocities have yielded inconsistent responses with assertions of the international community recurrently failing in its responsibility to protect domestic populations. The seemingly unheralded UNSC mandated humanitarian interventions in Libya and then Cote d’Ivoire in 2011 were framed by many as successes for the R2P doctrine with UN Secretary General Ban Ki-Moon echoing by fall of 2011 that ‘now it should be clear that the Responsibility to Protect has arrived’, and Thomas Weiss emphasizing that R2P was ‘alive and well after Libya’<sup>35</sup>. However, as further crises emerged and evolved, there has been emphasis on the seeming inconsistency of R2P’s implementation even within the Arab Spring with Bahrain’s popular democratic uprising repressed with foreign military assistance and

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<sup>32</sup> Aiden Hehir and Anthony F. Lang Jr., ‘The Impact of the Security Council on the Efficacy of the International Criminal Court and the Responsibility to Protect’, *Criminal Law Forum* 26(1) (2015), 157.

<sup>33</sup> Donald Steinberg, ‘Responsibility to Protect: Coming of Age?’, *Global Responsibility to Protect* 1(4) (2009), 433; Alex J. Bellamy, *The Responsibility to Protect: A Defense*. (Oxford: Oxford University Press, 2015), p. 13.

<sup>34</sup> Global Centre for the Responsibility to Protect, ‘UN Security Council Resolutions Referencing R2P’, last modified 28 May 2015, <http://www.globalr2p.org/resources/335>.

<sup>35</sup> 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, accessed 4 August 2015, [http://www.un.org/apps/news/infocus/sgspeeches/search\\_full.asp?statID=1325](http://www.un.org/apps/news/infocus/sgspeeches/search_full.asp?statID=1325); Thomas G. Weiss, ‘RtoP alive and well after Libya’, *Ethics & International Affairs* 25(03) (2011), 287-292.

Syria's increasing civilian body counts in the hundreds of thousands<sup>36</sup>. A number of scholars have outlined the erosion of R2P as a norm<sup>37</sup>, while Mohammed Nuruzzaman echoed, "If R2P had come of age in Libya, it has certainly seen a tragic death with the Security Council's inability to initiate actions on Syria"<sup>38</sup>. From many of these researchers, it is the pragmatic or economic motivations of states rather than normative conceptions that drive state behavior<sup>39</sup>. As Robert W. Murray asserts, "R2P is inherently a doctrine of intervention, despite what some of its cleverest advocates say about prevention or normative development"<sup>40</sup>. The utility of R2P is tied to timely and decisive responses to end ongoing human rights atrocities, with R2P framed as an institution in crisis<sup>41</sup>.

In relation to R2P, Edward Luck outlines that the UNSC is constrained by two critical elements, first, 'there are problems without solutions, or at least without any feasible or cost-effective answers in a reasonable time frame' and second, that the Council 'is not above the vagaries of international politics'<sup>42</sup>. Taking a more critical stance, Aiden Hehir contends a twin problem relating to 'the lack of will and the absence of sufficient military resources' is indicative of systemic failure at the international level<sup>43</sup>. Without changing the 'locus of authority or the decision-making process', R2P's track record for acting as a

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<sup>36</sup> Aidan Hehir, 'The Permanence of Inconsistency: Libya, the Security Council, and the Responsibility to Protect', *International Security* 38(1) (2013), 137-159.

<sup>37</sup> See: Jon Western and Joshua Goldstein, 'R2P after Syria: To save the doctrine, forget regime change', *Foreign Affairs* 26 March 2013, accessed 5 August 2015, <https://www.foreignaffairs.com/articles/syria/2013-03-26/r2p-after-syria>; Elliott Abrams, 'R2P R.I.P.' *The Council on Foreign Relations* 8 March 2012, accessed 14 June 2015, <http://blogs.cfr.org/abrams/2012/03/08/r2p-r-i-p/>.

<sup>38</sup> Mohammed Nuruzzaman, 'The "Responsibility to Protect" Doctrine: Revived in Libya, Buried in Syria', *Insight Turkey* 15(2) (2013), 58.

<sup>39</sup> Andrew Garwood-Gowers, 'The Responsibility to Protect and the Arab Spring: Libya as the Exception, Syria as the Norm', *UNSW Law Journal*, 36(2) (2013), 617.

<sup>40</sup> Robert W. Murray, 'Conclusion: The Responsibility to Protect After Libya' in Aidan Hehir and Robert Murray (eds.), *Libya: The Responsibility to Protect and the Future of Humanitarian Intervention* (London: Palgrave Macmillan, 2013), p. 228.

<sup>41</sup> Kirsten Ainley, 'The Responsibility to Protect and the International Criminal Court: counteracting the crisis', *International Affairs* 91(1) (2015), 37-54.

<sup>42</sup> Edward C. Luck, *UN Security Council: Practice and Promise* (New York: Routledge, 2006), pp. 7-8.

<sup>43</sup> Aidan Hehir, *Responsibility to Protect: Rhetoric, Reality, and the Future of Humanitarian Intervention* (New York: Palgrave Macmillan, 2012), p. 221.

‘moral lever’ has been questionable and likely to be heavily impacted by the rise of Russia, China, and other BRICS (i.e. Brazil, India, and South Africa) implicitly asserting a pluralist conception of strong state considerations for material self-interests rather than normative considerations<sup>44</sup>. Stephen Hopgood argues, Western middle classes have at times exerted a limited influence on the political decisions of European and North American powers underwriting R2P. However, “Whether to use R2P or the ICC will be decided on the ground not of justice but expediency”<sup>45</sup>. Asserting that the material considerations are the primary driver of state behavior, R2P to many skeptics serves as a limited means to shape behavior, failing to bring substantive change to suffering populations. Andrew Garwood-Gowers echoes this assertion: “there is little evidence, so far at least, that the emergence of R2P has substantially altered state decision-making on whether, and if so, how to intervene”<sup>46</sup>. Meaning that while R2P might have some distant or nominal normative value, without meaningful institutional change to separate humanitarian aims from the political will of the P5, or development of an independent military force, R2P’s enforcement ‘remains a matter of political will which is by definition transitory and context specific’<sup>47</sup>. However, as Luke Glanville counters, through recent humanitarian crises, “states were surely moved to intervene, or not to block intervention, in large part because of the power of ideas and norms of human protection related to R2P, and it is odd that so many scholars have been unwilling to acknowledge this”<sup>48</sup>. While R2P has been transformational in shaping international debate, it exists alongside a complex number of normative and non-normative considerations impacting contextual cases.

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<sup>44</sup> Robert W. Murray and Aidan Hehir, ‘Intervention in the emerging multipolar system: why R2P will miss the unipolar moment’, *Journal of Intervention and Statebuilding* 6(4) (2012), 387-406.

<sup>45</sup> Stephen Hopgood, *The Endtimes of Human Rights* (Ithaca: Cornell University Press, 2013), p. 167.

<sup>46</sup> Garwood-Gowers, ‘The Responsibility to Protect and the Arab Spring’, 617.

<sup>47</sup> Hehir and Lang, ‘The Impact of the Security Council’, 162.

<sup>48</sup> Luke Glanville ‘Syria Teaches Us Little About Questions of Military Intervention’, in Robert W. Murray and Alasdair McKay (eds.), *In the Eleventh Hour: R2P, Syria, and Humanitarianism in Crisis* (Bristol, UK: E-International Relations, 2014), p. 49.

This thesis provides an alternative hypothesis as to why international actors have failed to meet an international responsibility. The reason, I argue, is in part the result of the continued salience of nonintervention. As a recognized standard of international behavior, the norm of nonintervention proscribes the projection of armed force devoid of regime consent. With a humanitarian basis, nonintervention as a rule was meant to limit the potential for international armed conflict and provide a foundation for political self-determination in which political communities may determine their own internal systems free from external interference. How this norm has continued to inform the decision of state actors in cases of ongoing mass atrocity crimes provides further insight into R2P's argued advancement. Aligned with a critical constructivist approach, my argument traces the behavior and justifications of states through three recent cases of imminent or ongoing mass atrocity crimes. The emergence of R2P served in part as a response to the normative salience of nonintervention as norm entrepreneurs sought greater acceptance of international protection measures. As Gareth Evans asserts, "the whole point of embracing the new language of 'the responsibility to protect' is that it is capable of generating an effective, consensual response to extreme, conscious-shocking cases in a way that 'right to intervene' language could not"<sup>49</sup>. However, while R2P has shaped the norm of nonintervention, it has been reciprocally shaped in character and content which can be traced from the R2P report's emergence in 2001, through to the 2005 World Summit Outcome Document as well as the principled assertions of states during concrete cases of humanitarian crisis in which the meaning of R2P has been applied by actors. What this dynamic illustrates is that while R2P has been transformational in its impact on international discourse and human rights protections, it has been reciprocally shaped by

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<sup>49</sup> Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocities Once and For All* (Washington DC: Brookings Institution, 2009), p. 65.

nonintervention, which as a norm continues to persist with a level of continued contextual salience – impacting the implementation of R2P.

Answering this research question provides an exploration of the acceptability of particular forms of behavior at the international level which strategically empower or constrain actors – serving as a guide for military strategists and foreign policy decision-makers. When new norms emerge or existing norms change, they shape the ‘zones of permissibility’ surrounding different types of behavior<sup>50</sup>. Illegitimate actions are seen to derive negative material and ideational consequences, serving as manifestations of prevailing interpretations of international beliefs and values. Reciprocally, what is considered normatively acceptable may strategically empower states. How the normative architecture has been shaped by the introduction of R2P sheds light on the shifts in the acceptance of particular forms of behavior and character within international order – clarifying the legitimacy of particular forms of military force projection at the international level. If R2P has gained level of salience relative to nonintervention or shaped the interpreted boundaries of nonintervention and constraints placed on states within the international normative order, it may serve in limiting the costs or enable the projection of force for humanitarian purposes under particular conditions. The implications of this thesis for foreign policy decision-makers and military strategists then is through providing a framework for context to address cases of mass atrocity crimes at the international level. Through specific cases of mass atrocity crimes in which R2P has been invoked, the contestation of nonintervention within the wider normative architecture provides insight into how and why it has persisted, while also outlining the boundaries of R2P as a conflicting norm. This work may also help guide future constructivist research through outlining the evolution of R2P or other norm relative to a wider normative

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<sup>50</sup> Friedrich Kratochwil, ‘How do Norms Matter?’ in Michael Byers (ed.), *The Role of Laws in International Politics: Essays in International Relations and International Law (7<sup>th</sup> Ed.)* (Oxford: Oxford University Press, 2000), pp. 43-51.

context – broadening the scope and addressing more than a singular norm, but as different norms are contested within concrete cases or policy areas. Ultimately, insights into the evolution of sovereignty and constraints placed on state behavior at the international level taken over recurrent cases. How normative structures interact within a broader normative architecture then illuminates how they evolve and are shaped in relation to each other as well as the wider international context.

This research question also has implications for the utility of force at the international level. As social actions, the use of force does not exist as an end in itself, but aimed at some political purpose. For military action to have maximum utility is then predicated on legitimacy or the ability of force to achieve appropriate aims, linking the efficacy of force to the normative dimension of international relations<sup>51</sup>. Meaning that if nonintervention has continued to persist, how it has been contested through state behavior and justifications may shed light on why the norm has retained a high level of legitimacy. This research question then illustrates how the ethical values or beliefs that underwrite the norm of nonintervention have continued to serve as a salient block – how military force should be projected and with particular caution in regard to not only the international legitimacy of such behavior which has implications for the associated costs, but also the utility of such action in actually achieving political goals. Intervention exists as such a fundamental breach of the principles of political sovereignty and territorial integrity, that to consider humanitarian intervention under R2P a growing ‘norm’ within the normative architecture could be construed as a potentially dangerous provocation of global instability through its consequences both within targeted state constructs and on broader international order. This may provide insights to military planners and state foreign policy decision-makers surrounding what behaviors should be avoided or treated

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<sup>51</sup> Martha Finnemore, *The Purpose of Intervention: Changing Beliefs About the Use of Force* (Ithaca: Cornell University Press, 2003), p. 16.

with particular caution for their detrimental costs as well as impact – outlining why nonintervention has been promoted as a means of securing international order and conceptions of justice.

As a norm, R2P has been successfully projected into global politics, implemented by the UN through a number of cases, and invoked by powers globally surrounding large-scale or imminent human rights atrocities. However, how do we know when R2P has gained greater acceptance as an established or influential norm? As Antje Wiener highlights, “it could be argued that norm ‘erosion’ rather than the ‘power’ of norms will eventually carry the day”<sup>52</sup>. The contestation of nonintervention serves as an important lens in addressing potential norm erosion, or contextual resurgence, as well as persistent salience providing an inertial force against an emerging norm. As Martha Finnemore and Kathryn Sikkink outline, “new norms never enter a normative vacuum but instead emerge in a highly contested normative space where they must compete with other norms and perceptions of interests”<sup>53</sup>. Norms do not exist as binary concepts, but vary in their influence on a spectrum, which changes historically and contextually. As Ian Hurd echoes, “The contestation over, and ambiguity of, norms is an important aspect of world politics that is often overlooked in IR, even amongst constructivists... [norms do] not cease to exist as soon as one actor ‘changes its mind’ about the meaning”<sup>54</sup>. Addressing the contestation of the conflictive norm of nonintervention in specific cases then serves as an important lens to outline the continued salience of nonintervention, but also the normative boundaries of R2P. While often under-addressed, a historical approach to humanitarian intervention illustrates its long-spread practice in protecting foreign populations from conceptions of egregious abuse or tyranny. While how to respond when

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<sup>52</sup> Wiener, ‘Enacting Meaning-in-Use’, 176.

<sup>53</sup> Finnemore and Sikkink, ‘International norm dynamics and political change’, 897.

<sup>54</sup> Ian Hurd, ‘The strategic use of liberal internationalism: Libya and the UN sanctions, 1992–2003’, *International Organization* 59(3) (2005), 501.

foreign populations have been subjected to egregious abuses and mass killing has been a consistent subject throughout history, the normative context has changed<sup>55</sup>.

## **A Chapter Overview**

Chapter 1 situates the theoretical and methodological framework for my argument surrounding the importance of norms and their contestation in world politics. Illustrating the impact of norms within international relations and interchange with international law, this chapter highlights the theoretical assumptions surrounding the English School and social constructivism as well as their suitability for addressing the contestation of nonintervention. Outlining Kathryn Sikkink and Martha Finnemore's life cycle of norms serves as a starting point to address the emergence and evolution of norms<sup>56</sup>. States, individuals, and other global actors introduce principled ideas into domestic or world politics that may or may not gain legitimacy as prevailing standards of appropriate behavior. A linear approach to norms emphasizes their structural power or structuring impact on the policy decisions of states<sup>57</sup>. In contrast, this thesis embraces a critical approach to the development of norms, and their impact through their 'meaning-in-use' and ongoing contestation drawing from Antje Wiener's theory of contestation<sup>58</sup>.

Emphasizing the importance of social discourses including both behavior and justifications at the international level within specific policy areas in which norms are applied and invoked provides insight into the various normative and non-normative factors that inform the decisions of state actors and shape interest appraisals. Tracing the

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<sup>55</sup> Wheeler, *Saving Strangers*, 1.

<sup>56</sup> Finnemore and Sikkink, 'International norm dynamics and political change', 887-917.

<sup>57</sup> See: Jeffrey T. Checkel, 'The Constructive Turn in International Relations Theory', *World Politics* 50(2) (1998), 328.

<sup>58</sup> Antje Wiener, 'Enacting Meaning-in-Use: Qualitative Research on Norms and International Relations', *Review of International Studies* 35(1) (2009), 175-193; Antje Wiener, *A Theory of Contestation*. (London: Springer, 2014).



contextual meanings and articulated salience of specific norms individually and over cases provides a framework to address how norms evolve in relation to each other, the erosion of existing standards of behavior, and their continued, diminishing, or even resurging salience within wider normative context. As Theresa Reinold outlines, constructivists have largely neglected to better explain how some norms are more powerful than others, with variations in how they erode or strengthen<sup>59</sup>. While the advancement and institutionalization of R2P has been highlighted by a growing number of scholars, relatively little attention has been given to nonintervention as a legitimate standard of conduct and *action* - tracing the promotion of nonintervention as a principled policy decision through recent humanitarian crises and contestation surrounding mass human rights atrocities in which the emergence of R2P has challenged the legitimacy of nonintervention. This chapter concludes with an in-depth discussion of methodology, case study selection, and analysis that will be developed through this thesis. Instead of addressing the evolution of an emerging norm, this thesis addresses contestation through cases of intervention and non-intervention the continued relevance of an internalized and 'settled' norm of nonintervention within a broader normative order through several cases<sup>60</sup>. In addressing contestation, I draw from multiple sources for evidence including institutionalized rules of multilateral organization, bilateral agreements, relevant scholarship, and the legitimating practices of states through social practices defined as discourses<sup>61</sup>. These elements provide the backdrop for addressing how norms such as R2P and nonintervention inform the decisions of state actors, as well as how R2P has shaped the modern international normative order in the face of nonintervention which

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<sup>59</sup> Theresa Reinold, *Sovereignty and the Responsibility to Protect* (New York: Routledge Press, 2013), p. 10.

<sup>60</sup> Mervyn Frost, *Ethics in International Relations: A Constitutive Theory*, (Cambridge: Cambridge University Press, 1996), p. 105.

<sup>61</sup> See: Finnemore, M., & Sikkink, K. (1998). International Norm Dynamics and Political Change. *International organization*, 52(04), 887-917. 900; Wiener, A. (2009). 'Enacting Meaning-in-Use: Qualitative Research on Norms and International Relations'. *Review of International Studies*, 35(01), 175-193, 176-177.

may be elucidated through contestation as a lens to illustrate how the norms have interacted and constructed a distinctly modern normative architecture.

Chapter 2 outlines the norm of nonintervention as an undergirding principle of the modern international order and its contestation in relation to the emergence of R2P. From a historic perspective, the norm of nonintervention has evolved into a deeply embedded norm of international order through values and customs linked to conceptions of political autonomy, sovereign equality, and self-determination. Far from static, it has evolved in character and content throughout history, shaping the nature of sovereignty and normative architecture of international order through the development of positive international law and advent of the UN Charter system. Throughout the Cold War, nonintervention gained a near absolute articulation in regard to the impermissibility of force in the sovereign domain in relation to external conceptions of responsibility to ensure intra-state human rights protection. Addressing the ethical defense of nonintervention, sovereign rights of states are safeguarded by this norm - that actors will respect the sovereign equality of states, their right to self-determination, and not violate their communal rights through the projection of military force<sup>62</sup>. However, in recent cases of egregious violations of human rights or cases of mass atrocities, a contested shift in the salience of norms relating to international authority and human rights protection have cast nonintervention as increasingly contingent, with the norm of R2P articulating a responsibility for the international community to address intra-state mass atrocity crimes. Outlining the R2P's progression from the ICISS's 2001 report through the 2005 World Summit highlights shifts in the norm's meaning and ultimately recognition through unanimous institutional endorsement within the UNSC and UNGA. While this would seem to construct a new normative architecture of international order that shapes the

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<sup>62</sup> Michael Walzer, *Just and Unjust War: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977), pp. 86-91.

interests of states, intervention for the protection of human rights or justified through R2P have been sparse and inconsistent. Where R2P arguably should be implemented with international protection measures in response to large-scale mass atrocity crimes, cases have either not been addressed, or openly contested and yielded mixed responses. It is hard to determine nonintervention's and R2P's true impact 'behind the scenes' - how specific norms functionally shape the decisions of diplomats<sup>63</sup>. However, formal inclusion in various international reports and institutional documents and invocation in diplomatic and academic circles all illustrate R2P's considerable *cachet* as an agenda or doctrine to address mass atrocities. Tracing these invocations, this thesis outlines that the norm of nonintervention has retained a high level of normative salience, which has reciprocally shaped the meaning and implementation of R2P.

Chapter 3, 4, and 5 serve as empirical case studies of Sri Lanka, Libya, and Syria. Addressing a range of mixed international responses, I trace international behavior and justifications surrounding imminent or ongoing mass atrocity crimes in which R2P has been invoked by NGOs, international institutions, and member states, while the target state's government rejects international intervention for humanitarian purposes. The cases highlight how decision to intervene or non-intervene may reflect a wide number of complex factors reflecting both military capability and political resolve, which are shaped by normative considerations that can be traced through state behavior and justifications. Addressing the normative structure of the international system, these empirical cases enable an in-depth approach to the number of complex factors specific to particular cases. Pitting competing conceptions of values and how to secure human dignity between nonintervention and international civilian protection, each case traces the normative contestation of nonintervention.

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<sup>63</sup> Luke Charters-Reid, 'Responsibility to Protect at Ten', *Global Politics: An International Affairs Magazine* 27 Jan 2015 accessed 15 February 2015, <http://globalpolitics.co.uk/wp/2015/01/27/responsibility-to-protect-at-ten/>.

The first case in Chapter 3 addresses the final stages of Sri Lanka's three decade long civil war against the Liberation Tigers of Tamil Eelam (LTTE or Tamil Tigers) in early 2009. Waging a final and decisive victory, unrestricted warfare led to the death of an estimated 40-70,000 civilians<sup>64</sup>. Almost entirely un-answered by the international community, R2P was invoked by various member states throughout the final months, with nonintervention firmly upheld and the case never formally addressed by the UNSC, UN Human Rights Council, and widely supported by member states celebrating the government's victory against a well-known terrorist organization. In sharp contrast, Chapter 4 addresses the international response in Libya concentrating from February to October 2011 – the beginning of popular protests to end of NATO's mandate for military action. Directly invoking R2P, the UNSC passed consecutive resolutions - ultimately imposing a no-fly zone, arms embargo, and mandate to take 'all necessary measures' to protect civilians on the ground<sup>65</sup>. Latent in its development to Libya as a distinct revolution within the wider Arab Spring, the Chapter 5 case study of Syria slowly devolved into crisis with the Assad regime clinging to power through the use of widespread and indiscriminant weaponry including alleged chemical weapons. With a kaleidoscope of domestic revolutionary and Islamic jihadists, the Syrian regime has bombed civilian's positions and leveled many of its own cities with the death toll now over an estimated 200-250,000<sup>66</sup>. Focusing from the beginning of popular uprising through mid-2015, the Syrian case study highlights the continued contestation of nonintervention in the face of continued human rights atrocities and invocation of R2P –

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<sup>64</sup> Norah Niland, *Inhumanity and Humanitarian Action: Protection Failures in Sri Lanka* (Medford: Feinstein International Center, Tufts University, 2014), p. 1.

<sup>65</sup> United Nations Security Council, 'Resolution 1973', UNSC, S/RES/1973, 17 March 2011, [http://www.nato.int/nato\\_static/assets/pdf/pdf\\_2011\\_03/20110927\\_110311-UNSCR-1973.pdf](http://www.nato.int/nato_static/assets/pdf/pdf_2011_03/20110927_110311-UNSCR-1973.pdf).

<sup>66</sup> Somini Sengupta, 'U.N. Finds Its Voice on Syria's "Transition"', *The New York Times* 17 August 2015, accessed 18 August 2015, [http://www.nytimes.com/2015/08/18/world/middleeast/un-finds-its-voice-on-syrias-transition.html?ref=world&\\_r=0](http://www.nytimes.com/2015/08/18/world/middleeast/un-finds-its-voice-on-syrias-transition.html?ref=world&_r=0).

a case which various scholars and global leaders have called a blatant failure of the doctrine.

The conclusion returns to my theoretical foundations and the role nonintervention has continued to play in international relations, informing the decisions of international actors through periods of imminent or ongoing mass atrocities. Adopting a theoretical framework aligned with contestation, it is possible to elucidate contextual meanings and address transformation and change – how norms shape the interests of international actors and evolve through social and historical context. Through this framework, it is possible to address the wide spectrum of normative and non-normative factors at play within specific cases - a lens to help elucidate the salience of specific norms and how they inform the decisions of state actors or are even used pragmatically to justify a broader range of subjectively appraised interests. This lens also highlights how the interpreted meaning and salience of specific norms change and influence further cases - providing perspective to address patterned shifts in state behaviors and changes in the normative architecture of international order. Through each of these cases, the invocation and relative salience through implementation emphasize the persistent role of nonintervention in the international normative order and the way in which R2P has challenged existing conceptions of international responsibility and authority of international actors to protect foreign populations from egregious abuse. While R2P has been transformation and embedded itself in the normative architecture of the international system, nonintervention has in many ways persisted, shaping its emergence and the responses of the international community to cases of large-scale human rights atrocities.

# Chapter 1: The Importance of Norms

Having introduced the central research question, this chapter shifts to address the theoretical and methodological foundations that will be developed through the remainder of this thesis. First, this chapter outlines the definition of norms, interchange with international law and relevance within international relations. Second, this chapter outlines the theoretical assumptions surrounding the English School and Social Constructivism highlighting the importance of both material and ideational factors in shaping the interests of states. Third, aligned with a critical approach to social constructivism, this chapter addresses the emergence and evolution of norms through the ‘life-cycle’ of norms and contestation<sup>1</sup>. Norms are contested through ‘social practices defined as discourses’, which create, shape, and maintain norms, their implementation, and elucidates their relative and contextual ‘meaning-in-use’<sup>2</sup>. This chapter ultimately

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<sup>1</sup> Martha Finnemore and Kathryn Sikkink, ‘International norm dynamics and political change’, *International organization* 52(4) (1998), 896; Antje Wiener, *A Theory of Contestation*. (London: Springer, 2014), p. 3.

<sup>2</sup> Antje Wiener, ‘Enacting Meaning-in-Use: Qualitative Research on Norms and International Relations’, *Review of International Studies* 35(1) (2009), 176-177.

moves to develop a methodological framework surrounding the contestation of nonintervention through the emergence of R2P traced through a number of recent cases.

### **Definition and the Normativity of Norms**

Through historic interactions, international political communities have created layers of norms which function in providing context to particular actors and actions. Norms as live ‘meanings-in-use’ serve as intersubjective standards of appropriate behavior, providing context and understanding to actors within a socially constructed reality in which both material and ideational factors inform decisions<sup>3</sup>. How norms function or provide normativity at the international level is their intersubjective nature through what actors *should* do - clarifying or mapping out what is appropriate, or normatively accepted<sup>4</sup>. What is considered appropriate in context is as Karin Fierke outlines, “a function of legitimacy, defined by shared values and norms within institutions or other social structures”<sup>5</sup>. These normative structures then link the material and ideational to conceptions of interests that actors pursue, serving as the intersubjective ‘rules’ by which the international foreign policy ‘game’ is played<sup>6</sup>.

Until relatively recently, the preeminence of realism and neoliberal institutionalism as theoretical approaches to international relations, limited the study of normative

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<sup>3</sup> Antje Wiener, ‘Contested compliance: Interventions on the normative structure of world politics’, *European journal of international relations* 10(2) (2004), 189-234, 192; Peter J. Katzenstein, ‘Introduction’ in Peter J. Katzenstein (ed.), *The Culture of National Security: Norms and Identity in World Politics* (New York: Columbia University Press, 1996), p. 5.

<sup>4</sup> Audie Klotz, *Norms in International Relations: The Struggle Against Apartheid* (Ithaca: Cornell University Press, 1995), p. 14.

<sup>5</sup> Karin M. Fierke, ‘Constructivism’ in Tim Dunne, Milja Kurki, and Steve Smith (eds.), *International Relations Theories: Discipline and Diversity (3<sup>rd</sup> Ed.)* (Oxford: Oxford University Press, 2013), p. 190.

<sup>6</sup> Adriana Sinclair, *International Relations Theory and International Law: A Critical Approach* (Cambridge: Cambridge University Press, 2010), p. 27.

structures<sup>7</sup>. Within these neo-paradigms, norms are “positioned as the intervening variable or ‘intermediate variable’ mediating between interest and political outcomes with little or no independent explanatory power”<sup>8</sup>. Foreign policy decisions are determined by material self-interest, structural incentives, and economic utility maximization with the international political system ‘formed and maintained on the principle of self-help’<sup>9</sup>. The interests and relative power of states determine outcomes, framing rules and institutions as nominal elements of an anarchical structural reality. These approaches to state interests and material-rational motivations cast international rules as creations of the most powerful states, a means of manipulating the behavior of others and disingenuously justifying their own actions<sup>10</sup>. As Stephen Krasner outlines, “when they exist in the international system, they are instrumental, not deeply embedded”<sup>11</sup>. Institutions and norms may then serve to make interactions more efficient, but have negligible impact on the underlying interests or identities of states.

However, not all IR scholarship has embraced these neo/realist assumptions surrounding a structural anarchy – highlighting more normative approaches and interchange with international law. Louis Henkin’s work was in large part a response to dispel the ‘unrealistic’ assertions of ‘cynical realists’ as well as the *dialogue de sourds* between

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<sup>7</sup> Alexander Wendt, ‘Anarchy is What States Make of it: the Social Construction of Power Politics’, *International organization* 46(2) (1992), 391.

<sup>8</sup> Annika Björkdahl, ‘Norms in International Relations: Some Conceptual and Methodological Reflections’, *Cambridge Review of International Affairs* 15(1) (2002), 11; See: Stephen D. Krasner, ‘Structural Causes and Regime Consequences: Regimes as Intervening Variables’, *International organization* 36(2) (1982), 185-205.

<sup>9</sup> See: Kenneth N. Waltz, *Theory of International Politics* (Boston: McGraw-Hill, 1979), p. 91; Robert Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton: Princeton University Press, 1984); and John J. Mearsheimer, *The Tragedy of Great Power Politics* (New York: Norton, 2001) among others.

<sup>10</sup> Lee J.M. Seymour, ‘Let’s bullshit! Arguing, bargaining and dissembling over Darfur’, *European Journal of International Relations* 20(3) (2014), 571-595.

<sup>11</sup> Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton: Princeton University Press, 1999), pp. 51-52.



lawyers and diplomats<sup>12</sup>. Separated by distinct fields and vocabularies, an ideational divide has long existed between international lawyers and political scientists.

“Disciplinary vanity, the lack of a common vocabulary, and the unwillingness of each side to immerse itself in the academic culture of the other (due, among others, to the decade-long dominance of the realist paradigm in IR) have hindered intellectual *rapprochement*”<sup>13</sup>. The study of normative structures opens the pathway for interchange that has largely been under-developed<sup>14</sup>. As Başak Çalı highlights, international legal scholars are largely concerned with regulation of international affairs, while international relations focuses more on understanding and explaining. Yet, “Each discipline needs to inform the other in order to be successful. This shows us that international law and international relations can ask the same questions for different reasons”<sup>15</sup>.

Contrary to ideas of an anarchic world, states generally do follow international rules - conducting their behavior in terms of agreed upon norms of conduct<sup>16</sup>. “Although the strongest states are in a position to substitute brute power for legitimacy, what is surprising is how rare this happens. Even the great powers seek approval from their peers and domestic publics”<sup>17</sup>. Ian Hurd outlines three general factors for why states or other entities obey rules: coercion, self-interest, and legitimacy. “An actor might obey a rule: (1) because the actor fears the punishment of the rule enforcers, (2) because the actor sees the rule as in its own self-interest, and (3) because the actor feels the rule is

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<sup>12</sup> Louis Henkin, *How Nation's Behave: Law and Foreign Policy* (New York: Columbia University Press, 1979), p. 47.

<sup>13</sup> Theresa Reinold, *Sovereignty and the Responsibility to Protect* (New York: Routledge Press, 2013), p. 10.

<sup>14</sup> Martha Finnemore, *National Interests in International Society* (Ithaca: Cornell University Press, 1996), p. 139.

<sup>15</sup> Başak Çalı, ‘International law for international relations: Foundations for Interdisciplinary Study’ in Başak Çalı (ed.), *International Law for International Relations* (Oxford: Oxford University Press, 2010), p. 11.

<sup>16</sup> Martin Wight, ‘Western Values in International Relations’ in Herbert Butterfield and Martin Wight (eds.) *Diplomatic Investigations: Essays in the Theory of International Politics* (New South Wales, Australia: Allen and Unwin, 1966), pp. 96-97.

<sup>17</sup> Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000), p. 32.

legitimate and ought to be obeyed”<sup>18</sup>. Coercion exists as the fear of retribution, punishment, or general loss, while self-interest relates to material gain in wealth, status, or functional ability within a system. As a third element, legitimacy relates to the appraisal of rules “as proper or appropriate by the actors whom they are addressed within a socially constructed system of values and beliefs”<sup>19</sup>. Within a structural anarchy, the ‘stick and carrot’ of coercion and self-interest exist as the principle motivational factors – with the material interests and relative power of states determining outcomes<sup>20</sup>.

However, instrumental cost-benefit analysis fails to recognize the moral, value, or belief-based appraisals of actors as linked to their particular histories or identities. As Christian Reus-Smit highlights, “Power is constituted in profound ways by non-material factors as well, including beliefs, norms, and rules, and by the institutional structures and communicative processes that embed and mobilize them”<sup>21</sup>. Joseph Nye’s *Soft Power* furthers this conception that influencing the behavior of others involves much more than hard material factors alone<sup>22</sup>. Credibility – attraction and persuasion based on values and beliefs – rather than material power, may in fact be the ‘scarcest resource’ in modern world affairs<sup>23</sup>. States do not abandon a level of Realpolitik self-interest in the presence of international norms – but it is the alignment of power with normative principles reflecting values, morals, and consensus of a community that condition interests and shape legitimacy appraisals.

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<sup>18</sup> Ian Hurd, ‘Legitimacy and Authority in International Politics’, *International Organization* 53(2) (1999), 379.

<sup>19</sup> Ramesh Thakur, ‘Law, Legitimacy, and the United Nations’ in Richard Falk, Mark Juergensmeyer and Vesselin Popovski, (eds.), *Legality and Legitimacy in Global Affairs* (Oxford: Oxford University Press, 2012) p. 47.

<sup>20</sup> Jeffrey T. Checkel, ‘Norms, Institutions, and National identity in contemporary Europe’, *International Studies Quarterly* 43(1) (1999), 85.

<sup>21</sup> Christian Reus-Smit, ‘International Crises of Legitimacy’, *International Politics* 44 (2007), 162.

<sup>22</sup> Joseph S. Nye, *Soft Power: The Means to Success in World Politics* (New York: PublicAffairs, 2004), p. 5.

<sup>23</sup> Joseph S. Nye, ‘China’s Soft Power Deficit: To catch up, its politics must unleash the many talents of its civil society’, *The Wall Street Journal* 8 May 2012, accessed 18 March 2015, <http://www.wsj.com/articles/SB10001424052702304451104577389923098678842>.

Norms exist externally to agents, but are generated by agents as structural elements of international society. Through an intersubjective ‘backdrop of norms’ agents derive meanings and gain a contextual understanding of interests and the identities from which they make reasoned decisions<sup>24</sup>. International norms can be identified in part through regularity or patterns of behavior, acknowledgment between actors, or more formal recognition in international law – ranging based on their character across a spectrum from informal unspecific to formal and ‘institutionalized’ through inclusion in written positive law which more fully developed with the process of liberal institutionalism beginning in the nineteenth century<sup>25</sup>. Because norms also embody a quality of ‘oughtness’, states explain and justify their conduct in terms of existing structures<sup>26</sup>. Inclusion in formal conventions and institutions may serve to increase clarity or understanding, and ‘identify meaning that is normative practice’, however, “documented language about norms indicates no more than the formal validity of the norm, while its social recognition stands to be constructed by social interaction”<sup>27</sup>. In other words, both understandings and the consequences of action are not derived from an ‘objective reality’ but are ‘inherently constructed and sustained by social practice’<sup>28</sup>.

What makes these normative interactions relevant relates to the nature of normativity and its strategic impact on the foreign policy decisions and interactions among states. Serving as guidance devices, norms shape the behaviors of states through their conditioning

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<sup>24</sup> Friedrich V. Kratochwil, *Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs* (Cambridge: Cambridge University Press, 1998).

<sup>25</sup> Anthony F. Lang Jr., Nicholas Rengger and William Walker, ‘The Role(s) of Rules: Some Conceptual Clarifications’, *International relations*, 20(3) (2006), 276; Anthony F. Lang Jr., ‘Conflicting Rules: Global Constitutionalism and the Kosovo Intervention’, *Journal of Intervention and Statebuilding* 3(2) (1999), 188.

<sup>26</sup> Finnemore and Sikkink, ‘International norm dynamics and political change’, 892.

<sup>27</sup> Wiener, ‘Enacting Meaning-in-Use’, 176, 179.

<sup>28</sup> Monica Colombo, ‘Reflexivity and Narratives in Action Research: A Discursive Approach’, *Qualitative Sozialforschung/Forum: Qualitative Social Research* 4(2) (2003) accessed 17 March 2015, <http://www.qualitative-research.net/index.php/fqs/article/view/718/1554>.

impact – a pathway-type of influence on the behaviors of states through shaping conceptions of interests that are desirable and possible to pursue. “What is viewed as appropriate or legitimate can affect the possible costs of different actions; the more illegitimate a possible course of action appears to be, the higher the potential costs for those who proceed on their own”<sup>29</sup>. International norms then condition foreign policy decisions through the ideational and material costs of violation. “The crucial test of a norm’s existence is thus not that members of the community never violate it. Rather a norm’s strength is measured by the level of opprobrium community members attract from their peers for engaging in behavior that violates the norm”<sup>30</sup>. Conceptions of normative principles have power at the international level and link the material to the ideational – strategically impacting the foreign policy decisions of states while forcing actors to justify their behavior<sup>31</sup>. As Nicholas Wheeler asserts: “state action will be constrained if it cannot be justified in terms of plausible legitimating reason”<sup>32</sup>. However, while norms constrain, they also serve a crucial purpose to reciprocally empower actors. A rule that prohibits the use of force outside of individual or collective self-defense influences the legitimacy of those actors projecting force in self-defense. As Ian Hurd outlines:

The power of international law... comes not from its ability to differentiate rule breakers from rule followers, but rather from its ability to shape the terrain for political contestation in international relations... international law should be seen

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<sup>29</sup> Michael Barnett, (2011), ‘Social Constructivism’ in John Baylis, Steve Smith and Patricia Owens (eds.), *Globalization in World Politics* (Oxford: Oxford University Press, 2011), p. 159.

<sup>30</sup> Paul D. Williams, ‘From Non-intervention to Non-indifference: the origins and development of the African Union’s security culture’, *African Affairs* 106(423) (2007), 258.

<sup>31</sup> Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (New York: Columbia University Press, 1977), p. 43.

<sup>32</sup> Wheeler, *Saving Strangers*, 4.

as a resource that is used by states, rather than as a fixed standard against which we can assess behavior<sup>33</sup>.

The UN authorization and pervasive legitimacy of the US-led invasion in response to Iraqi aggression in Kuwait (1991) brought widespread support and monetary contributions from countries such as Japan and Saudi Arabia that underwrote the venture<sup>34</sup>. In contrast, the pre-emptive, contentious, and illegal US invasion of Iraq (2003) cost hundreds of billions of dollars and thousands of US lives – inviting “not only harsh reactions and violence from extremist Muslims and Arabs, but also severe criticism from its own allies all over the world”<sup>35</sup>. Actors still may break even the most legitimate or formal rules if they find them conflictual with their perceived contextual interests, but the power to break rules is not the same as to make them. “Law and norms, therefore, are not just instrumentally harnessed to the interests of powerful states”<sup>36</sup>. Existing norms may conflict with actor’s appraised interests in specific cases – but state policy decisions are carried out within a normative context, which conditions interest appraisals. States thus take part in endless processes of legitimation in which they pursue their foreign policy interests within a complex and elaborate artifice of normative structures – mapping out actor’s understanding of international norms, institutions, and consequences of particular action<sup>37</sup>. Addressing the theoretical assumptions of the English School and social constructivism provides foundational insight into their theoretical relevance within international relations and evolution of norms that will be developed in relation to nonintervention and R2P.

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<sup>33</sup> Ian Hurd, ‘Is humanitarian intervention legal? The rule of law in an incoherent world’, *Ethics & International Affairs* 25(3) (2011), 294.

<sup>34</sup> Wayne Sandholtz, (2009) ‘Explaining International Norm Change’, in Wayne Sandholtz and Kendall Stiles (eds.), *International Norms and Cycles of Change*. (Oxford: Oxford University Press, 2009), p. 1.

<sup>35</sup> Yasuaki Onuma, ‘International Law and Power in the Multipolar and Multicivilizational World of the Twenty-first Century’ in Richard Falk, Mark Juergensmeyer and Vesselin Popovski, (eds.), *Legality and Legitimacy in Global Affairs* (Oxford: Oxford University Press, 2012) p. 151.

<sup>36</sup> Roy Allison, *Russia, the West, and Military Intervention* (Oxford: Oxford University Press, 2013), p. 2.

<sup>37</sup> Ian Clark, *Legitimacy in International Society* (New York: Oxford University Press 2005), p. 2.

## International Society and the English School

Scholars such as Bull, Wight, Vincent et al. of the English School have long addressed the existence and normative character of the international system. “Never having yielded to American rationalism, the English School had long emphasized the social aspects of international life, such as the way in which culture conditions the identities of states, and how social dynamics underlie the institutions that sustain international order”<sup>38</sup>. As a theoretical approach to international relations, the English School stems from the founding of the British Committee on the Theory of International Politics in the 1950s<sup>39</sup>. Its principle contribution is the notion of an international society, incorporating aspects of three distinct traditions of international political theory: realism (Hobbes/Machiavelli – international system); rationalism (Grotius – international society); and revolutionism (Kant – world society) as interrelated political conditions that together ‘comprise the subject matter of international relations’<sup>40</sup>. A society is said to exist “when a group of states, conscious of certain common interests and common values, form a society in the sense that they conceive themselves to be bound by a common set of rules in their relations with one another, and share in the working of common institutions”<sup>41</sup>. The

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<sup>38</sup> Christian Reus-Smit, ‘Imagining society: constructivism and the English School’, *The British Journal of Politics & International Relations*, 4(3) (2002), 488.

<sup>39</sup> Barry Buzan, ‘The English School: an underexploited resource in IR’. *Review of International Studies*, 27(3) (2001), 472. Butterfield and Wight, *Diplomatic Investigations* helped develop the focus on international society, which continued in Hedley Bull, *The Anarchic Society*, and R.J. Vincent’s *Nonintervention and International Order* (Princeton: Princeton University Press, 1974) among other ‘foundational texts’.

<sup>40</sup> Martin Wight, *International Theory: The Three Traditions*, Gabriele Wight and Brian Porter (eds.), (London: Leicester University Press, 1991), p. 7. This ‘triad’ approach emerged with Martin Wight, but has since been further outlined and applied by authors such as A. Claire Cutler, ‘The “Grotain Tradition in International Relations’, *Review of International Studies* 17(1) (1991); Timothy Dunne, ‘The Social Construction of International Society’, *European Journal of International Relations* 1(3) (1995); and Barry Buzan ‘The English School’; Barry Buzan, *From International to World Society? English School Theory and the Social Structure of Globalization* (Cambridge: Cambridge University Press, 2004) among others.

<sup>41</sup> Bull, *The Anarchical Society*, 13.

English School's methodology reflects the 'eternal debate'<sup>42</sup> or "conversation between these three positions, one whose original function was pedagogical"<sup>43</sup>. While the motivations of states may at times reflect purely utilitarian material self-interest or a revolutionist cosmopolitanism, international norms and institutions shape foreign policy decisions within a society through their regulative impact<sup>44</sup>. These normative structures are framed as inventions of state elites – "but nonetheless, they are creations, and thus can be altered, amended or recreated"<sup>45</sup>. Both their construction and impact relies on the appraisal of legitimacy derived from the level of shared values and culture of an international society of states. As Nicholas Rengger highlights:

It is of course, the existence and character of international society that confers legitimacy on particular acts in international affairs and the illegitimacy on others. The immunity of diplomats, the normative force of international law, and ultimately the coercive sanction of the international community as a whole is manifested in and through, and only possible because of, the existence of international society<sup>46</sup>.

An internal division within the English School can be distinguished between solidarist and pluralist conceptions – reflecting the level or alleged depth of shared values and culture at the international level<sup>47</sup>. Pluralists such as Robert Jackson take a 'thin' state-

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<sup>42</sup> Ole Waever, 'International Society—Theoretical Promises Unfulfilled?', *Cooperation and Conflict* 27(1) (1992), 98.

<sup>43</sup> Timothy Dunne, *Inventing International Society* (Basingstoke: Palgrave Macmillan, 1998), p. 8.

<sup>44</sup> Martin Wight, 'Western Values in International Relations', 96-97. Wight further asserts that an international society can only be described 'in historical and sociological depth' drawing close ties to constructivism.

<sup>45</sup> Nicholas J. Rengger, *International Relations, Political Theory and the Problem of Order: Beyond International Relations Theory?* (New York: Routledge, 2000), p. 88.

<sup>46</sup> Nicholas J. Rengger, 'A City which Sustains All Things? Communitarianism and International Society', *Millennium-Journal of International Studies* 21(3) (1992), 359.

<sup>47</sup> Bull introduced this division partially through his distinction between state-centric positive law of Oppenheim and individual-centrism under a natural law trend of the twentieth century, which he identifies as neo-Grotian. Hedley Bull, 'The Grotian Conception of International Society' in Herbert Butterfield and

centered focus, highlighting an international society of diverse values, morals, beliefs, languages, political systems, and religions that are best secured through autonomy and a high level of independence<sup>48</sup>. With limited shared culture or values at the universal level, the moral or belief-based appraisals of states have limited international scope. The interests of states and populations are then best secured through autonomy and noninterference. In contrast, solidarists such as Nicholas Wheeler paint the international society with a ‘thick’ level of shared common values and interests to include human rights<sup>49</sup>. This allows for an expansive and universal view of basic human rights protections, legitimating a more activist stance. “The emergence of solidarist norms legitimating intervention would considerably broaden the category of exceptions and would correspondingly weaken the principle of nonintervention”<sup>50</sup>. Through both conceptions, much of the English School scholarship has addressed the relationship between international order and justice – which lies at the center of the debate over humanitarian intervention<sup>51</sup>. Insights of the English School provide an important background surrounding the normative structure of international society and social appraisals of actors.

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Martin Wight (eds.) *Diplomatic Investigations: Essays in the Theory of International Politics* (New South Wales, Australia: Allen and Unwin, 1966), p. 68.

<sup>48</sup> See: Robert Jackson, *The Global Covenant: Human Conduct in a World of States* (Oxford: Oxford University Press, 2000).

<sup>49</sup> James Mayall, ‘Introduction’ in James Mayall (ed.), *The New Interventionism 1991-1994: United National Experience in Cambodia, former Yugoslavia and Somalia* (Cambridge: Cambridge University Press, 1996). pp. 3-4.

<sup>50</sup> S. Neil MacFarlane, *Intervention in Contemporary World Politics* (Oxford: International Institute for Strategic Studies, Adelphi Paper 350, 2002), p. 8.

<sup>51</sup> Stanley Hoffman, *Janus and Minerva: Essays in the Theory and Practice of International Politics* (Boulder: Westview Press, 1987). Specifically addressing the divergence between international and domestic political order – in the absence of central power, ‘how can there be both anarchy and order?’ This relates to what Martha Finnemore calls, Bull’s ‘philosophical examination of the moral implications of order’ - relating to the English School scholarship addressing the impact of morality and normative rules on international politics in: Finnemore, *National Interests in International Society*, 18.



Building a framework surrounding contestation is premised on the notion that norms serve as the legitimating elements of global governance<sup>52</sup>. This implicitly draws from the appraisal of a relevant community or group of actors – at the international level, tied to the conception of an international society or international security order. “An international community exists to the extent that there is a shared understanding of what constitutes legitimate behavior by the various actors in world affairs”<sup>53</sup>. While the international community exists as a dynamic and diverse set of political communities, processes of socialization have developed an international security orders that helps “establish the core assumptions, beliefs and values of decision-makers about how security challenges can and should be dealt with”<sup>54</sup>. The very notion of society presupposes members that are bound by common rules and institutions – reflecting a ‘socialization’ aspect regarding the legitimacy of actors and their actions within international politics. Rules and institutions from this approach have a primarily regulative effect, driving collective cooperation and adherence. Through ongoing practices of contestation, international society has constructed a complex lattice of normative structures, which constantly evolves and conditions the interest appraisals of actors within an international order reflective in the English School. Like bricks in a wall, each state functions as an independent unit, but part of the whole bound together by a level of common mortar – the values and interests of a constitutive society.

### **The Reversion to Norms: Social Constructivism**

Drawing from similar conceptions of an international normative order, the English School and social constructivism share a tradition of historicist and normative inquiry with both serving as relevant lenses to address the evolution of the international

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<sup>52</sup> Wiener, *A Theory of Contestation*, 3.

<sup>53</sup> Thakur, ‘Law, Legitimacy, and the United Nations’, pp. 45-71.

<sup>54</sup> Williams, ‘From Non-intervention to Non-indifference’, 256.

normative architecture and how these changes shape state behavior. Both draw from ideas that meaningful patterns of action serve as “not merely descriptive ‘arrows’ that connect structure to agency and back, but rather the dynamic material and ideational process that enable structures to be stable or to evolve, and agents to reproduce or transform structures”<sup>55</sup>. However, as Reus-Smit highlights, “What constructivists have missed all together is the English School’s strong tradition of normative inquiry into the relationship between order and justice in international relations”<sup>56</sup>. From this perspective, norms and international laws are important because the “rules themselves often have a fundamental moral dimension”<sup>57</sup>. Meaning that the salience of norms and their impact may be derived from and elucidate ethical beliefs and considerations – with changing conceptions of justice and order internationally shaping existing structures and behavior. In contrast, the English School approach maintains a state-centrism with limited analytical clarity surrounding how normative structures evolve from within and externally to states including in relation to global civil society. Furthermore, as Shogo Suzuki asserts, most English School studies “have not explored in sufficient depth how these rules can also shape and define state interests and action”<sup>58</sup>. Social constructivism helps fill this gap, through providing a lens to address how norms shape interests and identities through their constitutive qualities, contestation, and their impact beyond state actors<sup>59</sup>. While distinct approaches, discourse between the two draws relevant insights. Addressing how norms are contested and shaped then serves as a means to address the evolution of norms and relevance of a normative architecture on international order.

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<sup>55</sup> Emanuel Adler and Vincent Pouliot, ‘International Practices’, *International Theory* 3(1) (2011), 5.

<sup>56</sup> Christian Reus-Smit, ‘The Constructivist Challenge after September 11’, in Alex J. Bellamy (ed.), *International Society and its Critics* (Oxford: Oxford University Press, 2005), p. 83.

<sup>57</sup> Eric Heinze, *Waging Humanitarian War: The Ethics, Law, and Politics of Humanitarian Intervention* (Albany: State University of New York Press, 2009), p. 5.

<sup>58</sup> Shogo Suzuki, *Civilization and Empire: China and Japan’s Encounter with European International Society* (London: Routledge, 2009), p. 6.

<sup>59</sup> Timothy Dunne, ‘The New Agenda’ in Alex J. Bellamy (ed.), *International Society and its Critics* (New York: Oxford University Press, 2004), p. 69.

Social constructivism as a theoretical approach to international relations examines the ideational as well as material aspects of reality, drawing from a long history of intellectual developments in philosophy, sociology, and social theory<sup>60</sup>. “Instead of conceiving the international system in terms of distribution of tangible resources and of ‘invisible’ structures working behind the backs of the actors, constructivism views this system as an artifice of man-made institutions, such as, but not limited to states”<sup>61</sup>. While physical material exists in nature, the creation and use of ideas and objects do not occur in a vacuum, but through intersubjective interactions that provide meaning. As Karin Fierke highlights, “phenomena, such as states or alliances or international institutions, that is, the collective subjects of international relations, may build on the basic material of human nature, but they take specific historical, cultural and political forms that are a product of human interaction in a social world”<sup>62</sup>. Social constructivism emphasizes the importance of intersubjectivity and language within international relations. The influence of history and social processes, which have in a very real sense constructed meaningful identities and silhouette the legitimacy of particular actions at the international level. Further outlined by Andrew Hurrell, constructivism:

[I]nvolves a number of central ideas: first, that, in contrast to rationalist theories, we need to pay far more attention to the processes by which both interest and identities are created and evolve, to the ways in which self-images interact with changing material incentives, and to the language and discourse through which these understandings are expressed; second, that it matters how actors interpret the world and how their understandings of ‘where we belong’ are formed; and third, that both interests and identities are shaped by particular histories and

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<sup>60</sup> Emanuel Adler, ‘Constructivism And International Relations’ in Walter Carlsnaes, Thomas Risse, and Beth A Simmons (eds.), *Handbook of International Relations* (London: Sage Publications, 2002), p. 96.

<sup>61</sup> Rey Koslowski and Friedrich V. Kratochwil, ‘Understanding Change in International Politics: the Soviet Empire's Demise and the International System’, *International Organization* 48(2) (1994), 222.

<sup>62</sup> Karin M. Fierke, *Critical Approaches to International Security* (Cambridge: Polity Press, 2007), p. 56.

cultures, by domestic factors, and by ongoing processes of interaction with other states<sup>63</sup>.

Drawing from this approach, ongoing interactions create and shape norms of conduct that are both regulative and constitutive of actor's interests and identities – serving as references points from which actors derive meaning<sup>64</sup>. As Jeffrey Checkel outlines, from a constructivist approach: “Norms are no longer a superstructure on a material base; rather they help to create and define the base. For constructivists, agents (states) and structures (global norms) are interacting; they are mutually constituted”<sup>65</sup>. This dynamic highlights the dual quality of norms as both ‘structuring and socially constructed’<sup>66</sup>. Applied at a macro level, constructivists distinguish between norms and institutions through their level of aggregation – framing institutions as “relatively stable collection of practices and rules defining appropriate behavior for specific groups of actors in specific situations”<sup>67</sup>. This serves as useful means of illustrating more ‘complex norms’ such as sovereignty, R2P, or institutions such as the United Nations an international level – constituted by numerous substantive and procedural norms - an evolving mix of rules and practices<sup>68</sup>. For constructivists, foreign policy decisions are not devoid of morality, and they are made-meaningful and contextualized by international norms – all of which are results and constitutive elements of a historically and socially constructed reality.

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<sup>63</sup> Andrew Hurrell, ‘Regionalism in Theoretical Perspective’ in Louise Fawcett and Andrew Hurrell (eds.), *Regionalism in World Politics: Regional Organization and International Order* (Oxford: Oxford University Press, 2005), p. 65.

<sup>64</sup> Frank Hindriks, ‘Constitutive Rules, Language, and Ontology’, *Erkenntnis*, 71(2) (2009), 254; Finnemore and Sikkink, ‘International norm dynamics and political change’, 891.

<sup>65</sup> Jeffrey T. Checkel, ‘The Constructive Turn in International Relations Theory’, *World Politics* 50(2) (1998), 328.

<sup>66</sup> Antje Wiener, ‘The Dual Quality of Norms and Governance Beyond the State: Sociological and Normative Approaches to “Interaction”’, *Critical Review of International Social and Political Philosophy* 10(1) (2007), 49.

<sup>67</sup> Reinold, *Sovereignty and the Responsibility to Protect*, 19; James G. March and Johan P. Olsen, ‘The Institutional Dynamics of International Political Orders’, *International organization* 52(4) (1998), 948; Peter Wilson, ‘The English School meets the Chicago School: the case for a grounded theory of international institutions’, *International Studies Review* 14(4) (2012).

<sup>68</sup> Jennifer M. Welsh, ‘Norm Contestation and the Responsibility to Protect’, *Global Responsibility to Protect* 5(4) (2013), 386-387.

## Conventional and Critical Constructivism

While ‘competing conceptions’ of the content of norms may exist early on, more formal recognition and incorporation in bilateral agreements or as institutionalized rules is seen through linear approaches as the end point from which norms can be applied within a positivist framework to address the impact of norms on state behavior<sup>69</sup>. Taking more positivist assumptions, these models have been used to outline the emergence of new norms trace growing acceptance and impact through changing the behavior of states. However, positivist constructivists neglect what happens after norms are institutionalized “domestically (in terms of how internalization may differ from state to state, or among institutions in a single state) and internationally (in terms of future interactions that shift a norm’s meaning and bring about conflicting interpretations)” which as a theoretical framework has lacked detail into how or why norms change<sup>70</sup>.

In addressing this ‘reactive’ impact of norms within international relations, constructivist scholarship has evolved with two widely recognized theoretical frameworks – a critical and a conventional strand<sup>71</sup>. Constructivists from both approaches agree upon ontology – the perception that “ideas, norms, rules constitute meanings which frame actors’ identity, interests, and actions”<sup>72</sup>. Where these strands differ is the nature of intersubjectivity – where meaning comes from or how meanings are constructed, which has implications on how that meaning is applied. The conventional strand builds a theoretical base upon a

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<sup>69</sup> Ibid., 379

<sup>70</sup> Ibid., 379; Wayne Sandholtz, ‘Explaining International Norm Change’, 1.

<sup>71</sup> Ted Hopf, ‘Constructivism all the way down’, *International Politics* 37(3) (2000), 369-378; Ted Hopf, ‘The Promise of Constructivism in International Relations Theory’, *International security* 23(1) (1998), 176.

<sup>72</sup> Audie Klotz, ‘Can We Speak a Common Constructivist Language?’, in Karin M. Fierke and Knud Erik Jorgensen (eds.), *Constructing International Relations: The Next Generation* (New York: M.E. Sharpe, 2001), pp. 223-235.

positivist epistemology to create a more causal relationship between norms and state behavior<sup>73</sup>. This approach holds intersubjective meanings and identities fixed for actors such as states at any one point in order to address the impact of norms<sup>74</sup>. As Antje Wiener emphasizes, the more conventional approaches’ “focus on *reaction* to norms is helpful to indicate the influence of one fundamental norm over another... or, in focusing on specific decision-making situations in which norms guide process of deliberation”<sup>75</sup>. This highlights the structuring power of norms through their influence on state behavior<sup>76</sup>.

In contrast, critical constructivists ‘focus on the meaning of norms as constituted by and constitutive of specific use’<sup>77</sup>. Karin Fierke refers to this as a more ‘consistent constructivism’, “highlighting the inseparability of a social ontology and social epistemology”<sup>78</sup>. Critical scholars do not see norms as causal, nor are norms static among a given set of actors. Furthermore, identities cannot be viewed as fixed or given with norms serving as explanatory variables impacting behavior. I embrace a critical lens in that norms clarify or map out what is appropriate in context, or normatively accepted as legitimate, but as norms emerge and are invoked, different actors may understand meanings and significance in different ways based on context and identities which are reciprocally shaped and far from given. While the weight of state actions shape normative structures external to actors, the appraised meanings are subjectively interpreted and applied by actors with different understandings. As Martha Finnemore outlines, “Most of us are the products, and captives, of our own normative context, and, like the decision

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<sup>73</sup> Faye Donnelly, *Securitization in the Iraq War: The rules of engagement in world politics* (New York: Routledge, 2013), p. 15.

<sup>74</sup> Emanuel Adler, ‘Seizing the middle ground: constructivism in world politics’, *European journal of international relations* 3(3) (1997), 319-363; See: Katzenstein, ‘Introduction’, 5.

<sup>75</sup> Wiener, ‘Enacting Meaning-in-Use’, 179.

<sup>76</sup> Adler, ‘Seizing the Middle Ground’, 329.

<sup>77</sup> Wiener, ‘Enacting Meaning-in-Use’, 179.

<sup>78</sup> Fierke, ‘Constructivism’, 196.

makers we analyze, we take a whole range of ideas, beliefs, and contexts for granted”<sup>79</sup>. Where identity and interests come from plays an important factor in how norms emerge and constantly evolve.

Through a critical lens, I address norm contestation as a means of elucidating and tracing norms as ‘meanings-in-use’ but also as an engine of normative transformation. I emphasize the importance of language and how meaning and identities are produced and changed. Norms as fluid meanings may be understood and applied subjectively – with invocations expressing a range of salience or even pragmatic justifications leading to foreign policy choices. This thesis seeks to explore the various factors that can be seen ‘at play’ within specific context – how different norms are invoked and implemented. Normative structures and their trail of justifications provide insight into how these social facts have informed the decisions of actors. Crucially, agents pursuing their relative interests may understand and apply norms through diverging lenses – and they do so as actors with agency. This agency engenders power which means norms are neither causal nor can they be understood apart from their contextually applied meaning. Addressing the various normative and non-normative factors at play within any particular case then may elucidate how these elements may inform actors.

### **Constructivist Norm Emergence and Diffusion**

The construction of norms is a socialized process in which ideas are projected and contested at the international level and may gain legitimacy or shared acceptance<sup>80</sup>.

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<sup>79</sup> Martha Finnemore, *The Purpose of Intervention: Changing Beliefs About the Use of Force* (Ithaca: Cornell University Press, 2003), p. 4.

<sup>80</sup> Thomas Risse and Kathryn Sikkink, ‘The Socialization of International Human Rights Norms into Domestic Practices: Introduction’ in Thomas Risse, Steven C. Ropp and Kathryn Sikkink (eds.), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999).

Martha Finnemore and Kathryn Sikkink's life cycle provides a particularly relevant framework, outlining normative development through three stages of norm emergence, cascade, and internalization<sup>81</sup>. 'Norm entrepreneurs' including individuals, states, and organizations, introduce principled ideas into the domestic or international context – framing and shaping debate in promotion towards greater acceptance<sup>82</sup>. These actors “try not only to influence policy outcomes, but to transform the terms and nature of the debate... They also promote norm implementation, by pressuring target actors to adopt new policies, and by monitoring compliance with international standards”<sup>83</sup>. Once a norm gains a level of acceptance amongst international actors, it can be said to have become ‘nested’ – holding a substantive level of intersubjectively appraised legitimacy amongst a relevant community of actors and recognition that it can frame debates and used as a resource within specific global policy spheres<sup>84</sup>.

A nested norm shapes the boundaries of discourse and is promoted by actors, if gaining a critical level of legitimacy, may gain acceptance towards a ‘tipping point’ and cascade becoming internalized<sup>85</sup>. Whether or not the norm is accepted relies on social and historical context as well as the alignment between the idea and what Amitav Acharya calls norm localization: the process of ‘contestation between emerging transnational norms, and preexisting normative and social order’ which can happen at various global levels<sup>86</sup>. “The shared validity of norms is established through communicative action during which different socioculturally determined preferences are adapted and changed

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<sup>81</sup> Finnemore and Sikkink, ‘International norm dynamics and political change’, 896.

<sup>82</sup> Ibid.

<sup>83</sup> Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, NY: Cornell University Press, 1998), pp. 2-3.

<sup>84</sup> Alec S. Sweet, ‘What is a supranational constitution? An essay in international relations theory’, *The Review of Politics* 56(03) (1994), 441-474.

<sup>85</sup> Finnemore and Sikkink, ‘International norm dynamics and political change’, 896.

<sup>86</sup> Amitav Acharya, ‘How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism’, *International Organization* 58(2) (2004), 241.



based on the willingness to be persuaded by the better argument”<sup>87</sup>. Tracing a linear progression, most norm entrepreneurs fail, but the successful emergence, nesting and continued diffusion may lead to a critical mass of support in which diffusion cascades, after which the norm is said to have internalized or been deeply embedded as a legitimate standard of conduct at the international level<sup>88</sup>. When norms cascade to the point that they are deeply internalized, they become the ‘prevailing standard of appropriateness’<sup>89</sup>. This dynamic has been highlighted through various (generally constructivist) frameworks: ‘cascades’<sup>90</sup>, ‘spirals’<sup>91</sup>, ‘boomerangs’<sup>92</sup>, and ‘cycles’<sup>93</sup> – all emphasizing the acceptance and impact of norms through their emergence, diffusion, and internalization at the international level.

Norms of legal character have been identified and applied as formal or institutionalized rules – largely pegged to the expansion of international law<sup>94</sup>. Robert Axelrod highlights this connection through an evolutionary approach - emphasizing, “social norms and laws are often mutually supporting. This is true because social norms can become formalized into laws and because laws provide external validation of norms”<sup>95</sup>. Such rules also often require a level of consensus through agreement within international conventions or customary evolution through the patterned behavior of states paired with *opinio juris* or

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<sup>87</sup> Antje Wiener, *The Invisible Constitution of Politics: Contested Norms and International Encounters*. (Cambridge: Cambridge University Press, 2008), 45.

<sup>88</sup> Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions are Changing World Politics* (London: W.W. Norton and Company, 2011), p. 11.

<sup>89</sup> Finnemore and Sikkink, ‘International norm dynamics and political change’, 895.

<sup>90</sup> *Ibid.*, 887-917.

<sup>91</sup> Thomas Risse, Stephen C. Ropp and Kathryn Sikkink (eds.), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999).

<sup>92</sup> Margaret E. Keck and Kathryn Sikkink, ‘Transnational advocacy networks in international and regional politics’, *International Social Science Journal* 51(159) (1999), 89-101.

<sup>93</sup> Wayne Sandholtz and Kendall Stiles (eds.), *International Norms and Cycles of Change* (Oxford, Oxford University Press, 2009).

<sup>94</sup> Lang Jr., Rengger, and Walker, ‘The Role(s) of Rules’, 276.

<sup>95</sup> Robert Axelrod, ‘An Evolutionary Approach to Norms’, *American Political Science Review* 80(4) (1986), 1107.

recognition of the rule as of binding legal character<sup>96</sup>. Once a norm's meaning has been institutionalized, this formal explication and recognition is seen as having a stabilizing impact through both clarifying meaning and serving as a mark of the norm's legitimacy through diffusion to more formal acceptance. In this respect, "Law is both the path to internalization and evidence of it, and therefore serves as a synonym for internalization"<sup>97</sup>. Institutionalization then plays an important role in more formally clarifying meaning, and providing a top down approach to greater normative diffusion and habitualization.

### **The Contestation of Norms: Transformation and Elucidated 'Meaning-in-Use'**

While particular forms of constructivism seek to avoid causal claims, the contextually applied meaning and salience of norms does play a role in (re)constructing the legitimacy of specific forms of behavior and thus the interest appraisals of states. State policy decisions that conflict or contradict constructed international norms may have substantive consequences with high social and material costs. Linked to their enabling effect, the influence of norms is also tied to the idea that for behavior to have a maximum effect in any social context, utility and legitimacy of that action are closely bound<sup>98</sup>. Thus, both the negative and positive consequences of behavior may be linked to normative conceptions of the utility of specific forms of behavior, with the prevailing meanings and contingent appraisals of norms existing as reference points or resources from which actors derive consequences and serve as legitimate social aims which behavior is designed to achieve. However, because state actors have agency, norms are among various factors including non-normative considerations. "New or changed norms enable

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<sup>96</sup> Martin Dixon, *Textbook on International Law* (Oxford: Oxford University Press, 2007), p. 24.

<sup>97</sup> Sinclair, *International Relations Theory and International Law*, 175.

<sup>98</sup> Finnemore, *The Purpose of Intervention*, 16.

new or different behaviors; they do not ensure such behaviors”<sup>99</sup>. Norms then direct behavior and may be seen to have a conditioning effect in regard to specific foreign policy decisions, through outlining what is appraised as possible and legitimate within the ‘zones of permissibility’ surrounding different types of behavior that strategically empowers or constrains actors<sup>100</sup>. How norms shape identities, interests, and the legitimacy of specific behavior is a function of contestation.

Embracing a critical approach to social constructivism, norms enable or constrain behavior but are not causal, nor can they be separated from their contextually applied and actor-subjective meanings. State actors with agency make decision within a normative context. Material power and economic factors play an important role in international relations, but are shaped by norms, which shape interests and identities reciprocally as mutually constitutive. If norms gain a high level of diffusion and appraised legitimacy, they are likely to shape the interests of states and be used as justifications of state actors. Conversely, norms with a lower level of diffusion and acceptance, will likely have limited influence on the behavior of states and limited invocation as justification. However, “The existence of a norm [is] a matter of degree, rather than an all or nothing proposition, which allows one to speak of the growth or decay of a norm”<sup>101</sup>. Furthermore, the status of a norm as internalized or as an international legal rule does not necessarily change its strategic influence, with costs or empowerment determined contextually by social interaction.

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<sup>99</sup> Martha Finnemore, ‘Constructing Norms of Humanitarian Intervention’, in Peter J. Katzenstein (ed.), *The Culture of National Security: Norms and Identity in World Politics* (New York: Columbia University Press, 1996), p. 158.

<sup>100</sup> Friedrich Kratochwil, ‘How do Norms Matter?’ in Michael Byers (ed.), *The Role of Laws in International Politics: Essays in International Relations and International Law (7<sup>th</sup> Ed.)* (Oxford: Oxford University Press, 2000), pp. 43-51.

<sup>101</sup> Axelrod, ‘An Evolutionary Approach to Norms’, 1097.

Contestation is a mechanism deserving greater attention theoretically and well as a methodological framework to approach how norms inform the decisions of states – how they are maintained, shaped, or displaced. From a linear or conventional approach, the progression (i.e. ‘power’) of norms develops through continued invocation and state behavior determining whether a norm has emerged and internalized – ultimately towards institutionalization through *opinio juris* and embeddedness in international law. In contrast, as Antje Wiener outlines, “The theory of contestation holds that the ultimate goals regarding norm compliance in global governance is not about obtaining *legality* (i.e. establishing the distinctive quality of a norm) but about *legitimacy*”<sup>102</sup>. Meaning that the strength and influence of norms is contextual and not contingent on its status as a legal principle or some sort of institutionalized quality, but rather its recognition as normative in character. Normative salience is tied to appraised legitimacy at the international level, whereby the norm shapes actors conceptions of interests – ‘establishing the normative quality of a practice’<sup>103</sup>.

Norms that have existed for centuries can evaporate, and with the introduction of new ideas and technologies, norms can emerge that never existed – creating new interests and enabling behaviors that previously didn’t exist. In emphasizing adherence to norms and their structuring of behavior, social constructivists have tended to make norms static, or trace their evolution through their causal implications for behavior, which as Matthew Hoffman has criticized, constructivism has been ‘missing dynamism’<sup>104</sup>. While existing literature and studies have emphasized the importance of individual norms and their impact in global governance, social norms are important because they “structure governance, not just because they provide common expectation and elicit conformance,

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<sup>102</sup> Wiener, *A Theory of Contestation*, 67.

<sup>103</sup> Ibid.

<sup>104</sup> Matthew J. Hoffman, ‘Competition and Contestation in the Evolution of Social Norms’, Paper presented at the Annual Convention of International Studies Association, Montreal, 17-20 March 2004, p. 2.

but also because social norms engender contestation”<sup>105</sup>. These processes of contestation are socially creative in themselves, through providing context for actors to coordinate policies and structure debate. This contestation is also an engine of change that can elucidate the relationship between competing norms and their contextual influence in informing the decisions of actors.

As the mechanism of both normative emergence and change, contestation is an ongoing and implicit social fact as well as approach to elucidating normative meanings – defined as a ‘*social activity* that involves discursive and critical engagement’<sup>106</sup>. As new norms emerge or resurge in international relations, they enter a complex normative context and compete for legitimacy. Differing actors hold varying subjective interpretations of norms and apply them differently in specific contexts which are illuminated through their applied ‘meaning-in-use’<sup>107</sup>. What this highlights is the relationship between norms and how norms compete, are shaped or maintained, and inform the behavior of actors. Norms are not binary in their influence, nor are they stable, but vary between cases and contexts with varying levels of salience. “It is precisely because norms are not objective truths, but rather inter-subjectively held beliefs, that they can continue to be contested, and their meaning shaped by practice and the broader social context in which they are situated”<sup>108</sup>. As normative principles conflict or the behavior of actors are disjointed from normative beliefs – across various global levels such as regional or sub-regional – actors appraise and constantly re-appraise the legitimacy and relevance of specific norms aligned with contextual situations and practices.

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<sup>105</sup> Hoffman, ‘Competition and Contestation in the Evolution of Social Norms’, 1.

<sup>106</sup> Wiener, *A Theory of Contestation*, 2.

<sup>107</sup> Wiener, ‘Enacting Meaning-in-Use’, 182.

<sup>108</sup> Welsh, ‘Norm Contestation and the Responsibility to Protect’, 380.

Contestation is inherent in the process through which actors subjectively interpret intersubjective notions of appropriateness, act on the understanding (engendering political outcomes), and, in turn, alter intersubjective notions of appropriateness. Contestation is the engine of politics and mutual constitution itself and it requires more analytic scrutiny as a mechanism for institutional change<sup>109</sup>.

Because the match between norms and specific situations are never perfect, or existing rules conflict, norms are continually contested and thus shaped at the international and sub-national levels. Rules must be sufficiently general in principle, while their application approaches unique and distinct situations within an evolving political context. As H.L.A Hart highlights: “Nothing can eliminate this duality of a core of certainty a penumbra of doubt when we are engaged in bringing particular situations under general rules”<sup>110</sup>. As norms are applied, they become contested to match specific context. This contestation also emerges between different norms and principles – highlighting that numerous norm structures exist within any given society or order, in which ‘tensions and contradictions are commonplace’<sup>111</sup>. As Friedrich Kratochwil highlights, “From experience we know that effective regimes, such as constitutions, frequently show important discontinuities between specific norms and higher principles, quite aside from the fact that many of the higher principles are expressions of *competing* values”<sup>112</sup>. These practices are ongoing, particularly resulting from the introduction of new rules, or when conflicting interpretations of state behavior and normative principles are invoked. As subjectively interpreted norms are applied to specific situations, actors apply their understandings of their interests and justify their decisions according to prevailing norms.

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<sup>109</sup> Matthew J. Hoffmann, ‘My Norm is Better than your Norm: Contestation and Norm Dynamics.’ Paper presented at the annual Meeting of the International Studies Association 48th Annual Convention, Chicago, Illinois, 28 February, 2007.

<sup>110</sup> H.L.A. Hart, *The Concept of Law* (2<sup>nd</sup> Ed.) (Oxford: Oxford University Press, 1994), p. 123.

<sup>111</sup> Sandholtz, ‘Explaining International Norm Change’, 10.

<sup>112</sup> Kratochwil, *Rules, Norms, and Decisions*, 62.

In a very real sense, these are moments of ‘strategic construction’ that maintain, shape, or displace existing norms or seek to legitimize new or emerging norms as moments of socially articulated ‘conflicting interpretations of values’<sup>113</sup>. Contestation is then a mechanism that both illuminates the meanings of intersubjective facts, and serves as a means to strategically transform existing or introduce new normative structures.

Particularly regarding the discursive side of contestation, Thomas Risse asserts, diplomatic negotiations and public discourse plays an underdeveloped analytical role. The current debate between social constructivism and rational choice fails to include a logic of ‘truth seeking’ which highlights “a conscious process whereby actors have to figure out the situation in which they act, apply the appropriate norm, or choose among conflicting rules”<sup>114</sup>. As a topic long-addressed by international legal scholars, Martti Koskenniemi emphasizes, “Engaging in the formalism of legal argument inevitably makes public the normative basis and objectives of one’s actions and assumes the actor’s institutional accountability for what it is that one is justifying”<sup>115</sup>. These interactions in a very real sense are practices of legitimation through which, actors at various levels attempt to persuasively justify their behavior - to pre-empt or persuade. “The relationship between a putative norm and legitimacy is, though often overlooked, of great importance. By definition, expressing adherence to a norm, whether legal or moral, constitutes a means of legitimization”<sup>116</sup>. This serves as a means of rallying support for particular action, or trying to reduce negative repercussion against or in response to particular action.

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<sup>113</sup> Nicola P. Contessi, ‘Multilateralism, intervention and norm contestation: China’s stance on Darfur in the UN security council’, *Security Dialogue* 41(3) (2010), 325.

<sup>114</sup> Thomas Risse, “‘Let’s argue!’: Communicative Action in World Politics”, *International Organization*, 54(1) (2000), 6.

<sup>115</sup> Martti Koskenniemi, *The Politics of International Law* (Portland, OR: Hart Publishing, 2011), p. 111.

<sup>116</sup> Aidan Hehir, ‘The Permanence of Inconsistency: Libya, the Security Council, and the Responsibility to Protect’, *International Security* 38(1) (2013), 150.

Events that invoke contradictory norms generate disputes, in which actors must collectively figure out, through argumentation, what the norms should mean. The outcomes of those arguments inevitably modify the rules, whether by making them stronger or weaker, clearer or more ambiguous, more specific or less<sup>117</sup>.

The justifications and behavior invoked at the international level provides an indication of the legitimacy and acceptance of rules in specific policy domains<sup>118</sup>. Even ‘violations’ of existing or emerging norms may serve to strengthen or better consolidate their meaning. While far from static, the conceptual boundaries of norms are not infinitely elastic. As highlighted by Cristina Badescu and Thomas Weiss, these “abuses can help clarify the scope of an emerging norm and thereby reinforce it”<sup>119</sup>. As behavior and justification serve as socialized practices surrounding contestation, they shape existing norms. Particularly in cases of conflicting normative principles, these interactions serve to strengthen or condition the relative strength of particular interpretations. “Breaking rules might also be seen as a necessary step in reinforcing rules at another level”<sup>120</sup>. Behavior and justifications are not random practices, but are pursued for strategic and reasoned social and political aims, which also serve to shape the normative context of the international system. Under the weight of state behavior and justification as social discourses, normative structures are illuminated in meaning and shaped in content.

Normative contestation serves as an instrument of change, but also as a means of elucidating meaning at the international level. Norms may appear stable at any given

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<sup>117</sup> Wayne Sandholtz, *Prohibiting Plunder: How Norms Change* (Oxford: Oxford University Press, 2007), p. 269.

<sup>118</sup> Mervyn Frost, *Ethics in International Relations: A Constitutive Theory* (Cambridge: Cambridge University Press, 1996), p. 105.

<sup>119</sup> Cristina G. Badescu and Thomas G. Weiss, ‘Misrepresenting R2P and Advancing Norms: An Alternative Spiral?’, *International Studies Perspectives* 11(4) (2010), 355.

<sup>120</sup> Lang Jr., Rengger and Walker, ‘The Role of Rule(s)’, 287.



point in time, but they are constantly evolving through their applied ‘meaning-in-use’<sup>121</sup>. This contestation is both creative and destructive – leading to the emergence of new norms or the modification of existing normative structures. “The assumption is that while norms are always meaningful, their meaning is constituted through an interactive process. Interpretation is thus derived from the social practice of enacting meaning that is used in a specific context”<sup>122</sup>. As actors apply meanings and justify behavioral choices, the normative bounds of international rules are outlined. “If norms evolve interactively, as most constructivists would agree, then any process of contestation will reflect a specific re/enacting of the normative ‘structure meaning-in-use’”<sup>123</sup>. Norms must be sufficiently broad, but provide the boundaries of discourse and debate within any single situation. This contestation may alter, maintain, or erode existing interpretations – resetting the normative structure of future debate. This contestation occurs as actors subjectively interpret and apply general norms to specific situations, but also in periods in which subjective normative beliefs conflict. Particularly in periods of crisis or in which actors are forced to articulate their behaviors or beliefs, the meanings-in-use are enhanced.

The contestation and application of norms is a historically contingent process, highlighting the wider material and ideational factors that underwrite reasoned foreign policy decisions and the impact of precedent within specific policy domains which frames the context for future debate. “While contestation always involves dialogue expressed through deliberation, the practice of contestation is contingent with regard to context and involved agency”<sup>124</sup>. Thus, ongoing patterns of discursive and critical engagement both shape norms and frame the wider normative context for future contestation. The edited volume by Wayne Sandholtz and Kendall Stiles highlights the

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<sup>121</sup> Wiener, ‘Enacting Meaning-in-Use’, 176, 182.

<sup>122</sup> Antje Wiener, *The Invisible Constitution of Politics*, 4.

<sup>123</sup> Wiener, ‘Enacting Meaning-in-Use’, 179.

<sup>124</sup> Wiener, *A Theory of Contestation*, 50.

‘cyclical’ nature of normative context and argument. While norms appear fixed at any give moment, they evolve cyclically overtime with periods of conflicting interpretations and crisis triggering argumentation that modifies existing rule structures<sup>125</sup>. The idea that norms hold a historical contingency whereby a norm may be illuminated in meaning at discrete points in time, but shaped through societal changes and repeated use aligns with Antje Wiener’s contention that, “While norms may acquire stability over extended periods of time, they remain flexible by definition”<sup>126</sup>. Furthermore, the wider international context provides insight into how different norms interact and are applied historically within any particular case. This framework serves as a particularly relevant means to better examine particular global policy areas from which conflicting subjective interpretations of normative principles are invoked during times of crisis, which both modify rules through periods of contestation and set the normative context for future social practice. This type of cyclical path-dependency serves as a useful means of illustrating recurrent patterns in specific issue areas in which social practices and discourse serve as ‘norm shapers’ – conditioning normative structures for future application<sup>127</sup>. The results of past actions or normative context can shape future political behavior and context, strengthening or eroding particular norms through ongoing practice. The idea being that when conflictual norms are applied, the resulting fallout or negative impact may normatively condition repeated interaction as a ‘counter-norm’, leading to gradual erosion or momentary weakening of particular ideas or norms.

### **The Contestation of Internalized Non-action: A Shifted Framework for Debate**

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<sup>125</sup> Sandholtz and Stiles, *International Norms and Cycles of Change*.

<sup>126</sup> Antje Wiener, ‘Contested meanings of norms: a research framework’, *Comparative European Politics* 5(1) (2007), 6.

<sup>127</sup> Brian L. Job and Anastasia Shesterinina, ‘China as a Global Norm-Shaper: Institutionalization and Implementation of the Responsibility to Protect’ in Alexander Betts and Phil Orchard (eds.), *Implementation and World Politics: How International Norms Change Practice* (Oxford: Oxford University Press, 2014), p. 153.

An important element of this thesis is the contestation of nonintervention as an *action* at the international level. As Martha Finnemore outlines: “When states justify their interventions, they draw on and articulate shared values and expectations that other decision maker and other publics in other states hold”<sup>128</sup>. A contention is that the same may be said for a proscriptive norm or a ‘prohibitory norm’ - an imperative to not act<sup>129</sup>. As a foreign policy behavioral choice, like intervention, nonintervention serves as a foreign policy decision with profound political consequences. Like any promoted action – foreign policy analysts and decision-makers with agency take a reasoned approach to appraisals of consequence. With moral basis in itself, nonintervention may be contested as the legitimate decision and international norm. Rather than tracing social discourses of a positive action, this thesis addresses the contestation of nonintervention as a negative action.

Social activity or contestation surrounding non-action diverges in that much of constructivist research has widely addressed why particular behavior takes place. Research has widely addressed how normative development informs actors to take positive steps, while this thesis serves to illustrate principled promotion of a non-action. As Badescu and Weiss highlight, existing “literature provides a host of insights about norm innovation in international society, but all stress the need for successful application to concrete cases”<sup>130</sup>. Within complex normative and non-normative considerations, where it appears the material or pragmatic considerations of states determine behavior, or individual cases where it appears norms have limited impact on the behavior of states in terms of operationalization, a prohibitory norm may still play an important role in structuring the parameters for debate<sup>131</sup>. This illustrates that in cases where it could be

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<sup>128</sup> Finnemore, *The Purpose of Intervention*, 15.

<sup>129</sup> Legro, ‘Which Norms Matter?’, 37.

<sup>130</sup> Badescu and Weiss, ‘Misrepresenting R2P and Advancing Norms’, 358

<sup>131</sup> Hoffman, ‘Competition and Contestation in the Evolution of Social Norms’, 2.

argued that states did not carry out a policy behavioral choice because such action was devoid of material gains, norms could still be seen to be at work. Thus, particular interventionist behavior could not take place because such actions would not bring economic or material structural benefits. However, this norm as a nonintervention may still be seen to be ‘at play’ in framing international debate as well as informing actors of perceived material and ideological costs and utility benefits of particular choices.

Furthermore, nonintervention within international law serves as a deeply embedded and internalized norm, what Mervyn Frost refers to as ‘settled’ – accepted by a plurality to the extent that they are taken for granted<sup>132</sup>. Unlike arguments surrounding justification for emerging norms, nonintervention exists as an established and internalized norm. As Ted Hopf emphasizes, constructivists should be ‘agnostic about change in world politics’<sup>133</sup>. “Studies of norm dynamics should account for a range of responses to new norms from constitutive compliance to outright rejection, and the evolutionary and path-dependence forms of acceptance that fall in between”<sup>134</sup>. Or further, as Jeffrey Legro highlights, “In order to understand how norms operate, studies must allow for more variations: the success or failure, existence or obsolescence of norms... analyzed in conjunction with comparable cases of norm effectiveness”<sup>135</sup>. Instead of addressing the evolution an emerging norm, this thesis addresses normative contestation through mixed-behavioral cases of implementation and non-implementation elucidating the normative meaning and continued relevance of the institutionalized and ‘settled’ norm of nonintervention<sup>136</sup>. This provides a lens to address the persistence of nonintervention within the normative architecture of international order and how it has informed agent’s decisions through the emergence of R2P. During periods of humanitarian crisis in which nonintervention is

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<sup>132</sup> Frost, *Ethics in International Relations*, 105.

<sup>133</sup> Hopf, ‘The Promise of Constructivism in International Relations Theory’, 180.

<sup>134</sup> Acharya, ‘How Ideas Spread’, 242.

<sup>135</sup> Legro, ‘Which Norms Matter?’, 34.

<sup>136</sup> Frost, *Ethics in International Relations*, 105.

normatively challenged by an emerging norm, contestation will illuminate subjective normative appraisals of individual actors, providing insight into how nonintervention has informed the decision of international actors – tracing the contested legitimacy of nonintervention through specific cases of imminent or ongoing recognized mass atrocity crimes at the international level.

### **Methodological Framework: Normative Contestation of Nonintervention**

Because both breaches of nonintervention and egregious failures to protect individuals from mass atrocities at the global level bring ideational and material consequences, actors are forced to justify their decisions, which are appraised by global actors in terms of their legitimacy. Periods of mass atrocities provide particularly relevant windows to address contestation and shifting character of nonintervention in relation to R2P due to the spillover effects of such atrocities and these crisis exposure of conflicting interpretation of values at the international level – how actors subjectively appraise situations and are forced to justify their actions at the international level – most principally the UNSC. Collectively, this evidence – particularly through periods of crisis - maps out the applied ‘meaning-in-use’ of nonintervention. As humanitarian ‘conscious shocking emergencies’ emerge, contestation outlines changes in the meaning and application of norms within specific normative context – highlighting their ‘meaning-in-use’ and argumentation in the international system relative to human rights protections and R2P<sup>137</sup>. During periods of crisis, global actors are forced to respond quickly and justify their choices. “A situation of crisis raises the stakes for norm interpretation as time constraints enhance the reduced social feedback factor”<sup>138</sup>. Evidence from specific cases will primarily draw from social discourses through periods of anticipated or ongoing humanitarian emergencies in which

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<sup>137</sup> Michael M. Walzer, *Just and Unjust War: A Moral Argument with Historical Illustrations*, (New York: Basic Books, 1977), p. 22; Badescu and Weiss, ‘Misrepresenting R2P and Advancing Norms’, 355.

<sup>138</sup> Wiener, ‘Enacting Meaning-in-Use’, 182

R2P has been invoked, centred on relevant member states to each crisis and the UNSC as the central vestige of international authority surrounding the projection of military force. For this thesis, cases of recognized imminent or ongoing mass atrocities will be examined through three case studies, which allow the discourses to be studied in sufficient detail.

### *Case Studies*

My research methodology focuses on a number of case studies addressing the complex factors influencing international behavior and how nonintervention played a role in informing the behavior of actors. For this thesis, cases of recognized imminent or ongoing mass atrocities will be examined. George and Bennett define a case study as “the detailed examination of an aspect of a historical episode to develop or test historical explanations that may be generalizable to other events”<sup>139</sup>. Studies may be single, or small number of cases (a ‘small-n’ study). A multiple case study “entails studying two contrasting cases using more or less identical methods”<sup>140</sup>. The use of multiple-case design allows examination of the different ways that the principle of nonintervention was contested for comparison as well as potential sequential tracing through historic examples. As noted by Robert Yin, contrasting multiple cases allows us to test a theory in a number of different situations<sup>141</sup>. Contrasting multiple cases then has the potential to allow better insight into the scope of events and circumstances, and can also increase the methodological strength of the study<sup>142</sup>.

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<sup>139</sup> Alexander L. George and Andrew Bennett, *Case Studies and Theory Development in the Social Sciences* (Cambridge, Massachusetts: MIT Press, 2004), p. 5.

<sup>140</sup> Alan Bryman, *Social Research Methods (4<sup>th</sup> Ed.)* (New York: Oxford University Press, 2012), p. 72.

<sup>141</sup> Robert K. Yin, *Case Study Research: Design and Methods (5<sup>th</sup> Ed.)* (Los Angeles: Sage Publications, 2014).

<sup>142</sup> Bryman, *Social Research Methods*.

One of the main constraints of case study research involves generalizability<sup>143</sup>. As Lijphart highlights, “the principle problem facing comparative method can be succinctly stated as: many variables: small number of cases”<sup>144</sup>. As case study research contains a large amount of detail about single or several cases, it makes it hard to apply findings to a number of other settings. In order to minimize this, I have chosen to examine multiple-case studies, which is one way in which generalizability of findings can be increased<sup>145</sup>. Another potential disadvantage in case study research is selection bias, where researchers choose cases that align well with their argument or hypothesis<sup>146</sup>. The cases of Syria, Libya and Sri Lanka in this study were selected not because they were all examples of when states chose not to intervene. Indeed, in Libya the opposite was the case. As is explained in greater detail below, the cases were selected on the basis of other important considerations. Though case study research has been criticized, they can be beneficial in exploratory research<sup>147</sup>. Case studies offer the depth of exploration, and can allow a variety of insights perspectives<sup>148</sup>. One main benefit of case study research is construct validity<sup>149</sup>, as allows examination of a large number of variables, and provides a greater understanding of a range of “contextual characteristics”<sup>150</sup>. This allows the researcher to address more detailed understanding of what is occurring within the relevant situation<sup>151</sup>.

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<sup>143</sup> Dawn Burton, ‘The Use of Case Studies in Social Science Research’, in Dawn Burton (ed.), *Research Training for Social Scientists: A Handbook for Postgraduate Researchers* (London: Sage Publications Ltd, 2000).

<sup>144</sup> Arend Lijphart, ‘Comparative politics and the comparative method’, *The American Political Science Review* 65(3) (1971), 685.

<sup>145</sup> Burton, ‘The Use of Case Studies in Social Science Research’.

<sup>146</sup> George and Bennett, *Case Studies and Theory Development in the Social Sciences*.

<sup>147</sup> John Gerring, *Case Study Research: Principles and Practices* (New York: Cambridge University Press, 2007).

<sup>148</sup> Gary Thomas, *How to do Your Case Study: A Guide for Students & Researchers* (London: Sage Publications, 2011).

<sup>149</sup> Andrew Bennett, ‘Case study methods: Design, use, and comparative advantages’ in Detlef Sprintz and Yael Wolinsky-Nahmias (eds.), *Models, Numbers, and Cases: Methods for Studying International Relations* (Ann Arbor: The University of Michigan Press, 2004), pp. 19-55.

<sup>150</sup> Peter Swanborn, *Case Study Research: What, Why and How?* (London: Sage Publications, 2011), p. 30.

<sup>151</sup> Pamela Baxter and Susan Jack, ‘Qualitative case study methodology: Study design and implementation for novice researchers’, *The Qualitative Report* 13(4) (2008), 544-559.

### *Case Selection*

The cases of Syria, Libya and Sri Lanka were selected to provide comparisons across different incidents, while controlling for uniform characteristics. The conflicts in Syria, Libya and Sri Lanka all occurred after the 2005 World Summit, when UN Member States addressed and unanimously endorsed an articulation of the responsibility to protect international populations from four mass atrocity crimes; genocide, crimes against humanity, ethnic cleansing and war crimes within the SOD. With Sri Lanka occurring in early 2009, the SOD paragraphs had already been unanimously endorsed by international heads of government and state, as well as by the UNSC. Common across all three cases were the invocation of R2P by NGOs as well as member states. As the humanitarian crises unfolded, it became evident that mass atrocities (genocide, crimes against humanity, ethnic cleansing and war crimes) had occurred in each case. They are also demonstrations the government's unwillingness or inability protect its population. All three also have a level of regional variance with South Asia, North Africa, and the Middle East with recognized imminent or ongoing mass atrocities committed in member states illustrating a variance of regional actors and involvement.

All three highlight particularly relevant cases surrounding the legitimacy of governments and their actions within the international system. Each involves egregious cases of anticipated or ongoing mass atrocity crimes in which the state has violated individual rights through the targeting of noncombatants or the indiscriminate use of force on mass scale. These highlight cases where the regime has either lost monopoly on the use of force through anarchic conditions within the territorial bounds recognized by the international community, or in which the state retains dominance – but uses unrestricted force or other strategies and as a means of quelling domestic insurrection that cause mass atrocities. Individually, Uppsala's Conflict Data Program on one-sided violence



highlights Sri Lanka and Syria as several of the highest level of civilian casualties caused by state actors in the past decade, while Libya serves as the most clear-cut example of a UNSC mandated R2P intervention to date. These three also highlight cases of both action and inaction surrounding the invocation of R2P and normative contestation surrounding nonintervention.

### *Caveats and Considerations*

While these are far from the only cases of recent mass atrocities, they provide a cross section of sequential examples that have been highlighted as particularly relevant to the emergence of R2P<sup>152</sup>. Darfur, the Democratic Republic of the Congo, and the Central African Republic all provide examples, including others such as Colombia, and Gaza that may be framed as fringe cases or slow-burning human rights atrocities that have been highlighted as ‘structural atrocities’ and received little international attention as cases for potential intervention. Perhaps the most blatant, Darfur, provides a recent case of mass atrocities committed by a state actor. However, the Darfur crisis had escalated and peaked from 2003-2004, prior to the more formal adoption of R2P at the 2005 World Summit<sup>153</sup>. With the first case beginning in 2009, these three were selected to highlight cases carried out or directly supported by state actors within the purview of the more-recent normative context post-R2P recognition.

### *Case Analysis*

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<sup>152</sup> See: Alex J. Bellamy, *The Responsibility to Protect: A Defense*. (Oxford: Oxford University Press, 2015); Aidan Hehir, *The Responsibility to Protect: Rhetoric, Reality and the Future of Humanitarian Intervention* (New York: Palgrave Macmillan, 2012) among others.

<sup>153</sup> Bellamy, *The Responsibility to Protect*, 8.

In each case, I examine the background and nature of atrocities to outline the context surrounding imminent or ongoing mass atrocity crimes and invocation of R2P. I then focus on the behavior and justifications of international actors, tracing the contestation of nonintervention within each case. Particularly regarding international security and intervention, “Contested interpretations are played out and compete on the international states for the benefit of wider audiences and to persuade them, most prominently in the UN Security Council”<sup>154</sup>. Tracing both the actions and justifications of states allows examination of state behavior to provide insight into how nonintervention has informed decisions in particular contexts. This is made difficult by the fact that “We can only have indirect evidence of norms just as we can only have indirect evidence of most other motivations for political action (interests or threats for example)”<sup>155</sup>. In relation to the norm’s invocation and what constitutes a reference to specific norms, I take an expansive view. While a matter of debate particularly surrounding R2P, the ‘responsibility to protect’ for this thesis is also expanded to encompass references to the 2005 world summit document, variations of (for example, ‘paragraphs 138 and 139’ or ‘the responsibility of each state to protect civilians’), also surrounding ‘manifest failure’ to protect populations from the four mass atrocity crimes<sup>156</sup>. As the distinctly modern manifestation of an international ‘civilian protection norm’ there must be some direct reference to R2P. However, this thesis is more concerned with the normative position that even during cases of imminent or ongoing mass atrocity crimes, the contestation of nonintervention as principled assertions in the face of such actions, which serves to normatively insulate the external projection of force. This may be a reference to violation of the UN Charter, non-use of force, or the articulated arguments that that the international community has a principled obligation to refrain from intervention in such

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<sup>154</sup> Allison, *Russia, the West, and Military Intervention*, 8.

<sup>155</sup> Finnemore and Sikkink, ‘International norm dynamics and political change’, 892.

<sup>156</sup> Justin Morris, ‘Libya and Syria: R2P and the spectre of the swinging pendulum’, *International Affairs*, 89(5) (2013), 1267.

cases devoid of regime consent. These are highly contextual assertions of actors that a norm of nonintervention should be upheld and implemented as an international standard of behavior. Critically, not all justifications for inaction reinforce or illustrate the salience of nonintervention as a norm, but could also reflect the pragmatic application of the intervention norm articulated through R2P. This in itself provides a useful lens to address the interaction between R2P and nonintervention with normative factors also existing alongside competing norms and non-normative material and political factors – analysis that requires an in-depth examination of relevant global actors and wider international context surrounding any particular case of mass atrocity crimes.

In addressing the contestation of nonintervention, I draw from multiple sources for evidence including institutionalized rules of multilateral organization, relevant scholarship, and the legitimating practices of states through social practices defined as discourses<sup>157</sup>. Evidence can be drawn from statements and resolutions within UN bodies such as the Security Council, General Assembly, and Human Right Council and the legitimating practices of states within those organs. While the principal vestige of authority in the modern international security order, the Security Council is also “a key venue for deliberation and justificatory discourse – a place where the rules about the use of force are defined, debated, interpreted and reinterpreted”<sup>158</sup>. These sources exist in greater context along a wider and growing body of conventions addressing human rights and R2P including the 2005 World Summit *Outcome Document* which outline the continued contingency of sovereignty on state legitimacy defined in terms of human rights protections<sup>159</sup>. Greater clarity can also be drawn from a growing body of

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<sup>157</sup> Finnemore and Sikkink, ‘International norm dynamics and political change’, 900; Wiener, ‘Enacting Meaning-in-Use’, 176-177.

<sup>158</sup> Ian Johnstone, ‘Discursive Power in the UN Security Council’, *Journal of International Law and International Relations*, 2(1) (2005), 73.

<sup>159</sup> Maziar Jamnejad and Michael Wood, ‘The Principle of Non-intervention’, *Leiden Journal of International Law* 22(2) (2009), 345-381.

scholarship and research surrounding humanitarian intervention, the Responsibility to Protect, and its impact at the international level. R2P provides a particularly relevant case in part due to the wide body of contributions, and connection between scholarship and foreign policy within global organizations, institutions, and states. The ICISS report itself emerged from a group of vocal researchers, states, and at request of UN officials such as Kofi Annan - working closely among states and officials to create a relevant and workable policy initiative. Scholars such as Jennifer Welsh, Francis Deng, and Samantha Power among many others have addressed issues surrounding state responsibility and military intervention, and also been active political players involved in policy discourse and decision-making as the UN Secretary General's Special Advisor on the Responsibility to Protect, Special Advisor on the Prevention of Genocide, and US Ambassador to the UN, respectively. As a longstanding issue in foreign policy, military intervention and human rights protections have both been addressed thoroughly – outlining the continued relevance and normative order surrounding the importance of both nonintervention and the protection of populations from egregious violations of their human rights. Through contestation of these norms across periods of crisis, it is possible to illustrate how nonintervention continues to inform the decisions of state actors even in the face of mass atrocities at the international level.

Tracing the continued contestation of nonintervention serves as an important lens to address how the norm continues to inform the decisions of state actors, while illuminating the modern boundaries of R2P. As the subjectively interpreted meanings of normative principles conflict or the behavior of actors are disjointed from normative beliefs – across various global levels– actors appraise and constantly re-appraise the legitimacy and relevance of specific norms aligned with contextual situations and practices<sup>160</sup>. This contestation serves as a means to illuminate the 'meaning-in-use' of specific norms as

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<sup>160</sup> Badescu and Weiss, 'Misrepresenting R2P and Advancing Norms', 355.

actors are forced to apply meanings, but also a mechanism of strategic construction, as actors project their preferred interpretation of norms at the international level – a means of legitimation<sup>161</sup>. When agent’s conceptions of justice diverge with intra-state humanitarian crises – a normative paradox arises which yields contestation surrounding how to best protect human dignity. This dichotomy is illustrated through the normative contestation of nonintervention and international civilian protection as ‘conflictive interpretations of values’<sup>162</sup>.

## **Conclusion**

Examining both the material and ideational elements of reality, social constructivists view norms as constitutive elements of reality. While states and other global actors still pursue their relative interests, they do so in an international normative and legal context that constrains and empowers state action while elucidating the normative bounds of the international order. Through contestation, defined as social discourses, norms emerge and are transformed. This shapes normative meanings, their relative strength, and sets part of the normative context surrounding future debate. This is a historically and international context contingent process, which also elucidates norms ‘meaning-in-use’ through the application and invocation of normative meanings – particularly during times of crisis<sup>163</sup>. Addressing the contestation of norms as conflicting interpretation of values – or the disconnect between subjective appraisals – and intersubjective norms, elucidates meaning and change of norms as they are applied in concrete situations. Norm contestation then plays an important role in illustrating normative change at the international level as well as how norms influence the decision of international actors. The following chapter will

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<sup>161</sup> Wiener, ‘Enacting Meaning-in-Use’, 176.

<sup>162</sup> Wood, Heather Jacques, Taylor Nuttall, and Kendall Stiles, ‘Humanitarian Intervention’ in Wayne Sandholtz and Kendall Stiles (eds.), *International Norms and Cycles of Change* (Oxford: Oxford University Press, 2009), p. 263; Contessi, ‘Multilateralism, intervention and norm contestation’, 326.

<sup>163</sup> Wiener, ‘Enacting Meaning-in-Use’, 175-193.

outline the norm of nonintervention, its importance as an undergirding principle of the modern international system, and its contestation – specifically through the emergence and ‘nesting’ of R2P.

## **Chapter 2: The Janus Face of Nonintervention**

The previous chapter outlined the theoretical foundations that will be developed throughout this thesis tied to social constructivism and the English School. Norms as standards of appropriate behavior provide meaning and context within a socially constructed reality in which both material and ideational factors inform decisions. In parallel, while these social constructions are shaped, they reciprocally shape the international system. These norms are introduced, molded, and maintained under the weight of state practice, which can be traced through social discourses. This second chapter shifts to outline the norm of nonintervention and its persistence through the emergence of R2P. The first section of this chapter outlines nonintervention and its relationship to international order – an internalized norm of international society entrenched in international law. Second, this chapter addresses the normative shift surrounding human rights protection and emergence of R2P. Third, engaging relevant literature surrounding the contentious impact of R2P in international relations, I assert

that through the norm's emergence, the salience of nonintervention has reciprocally shaped and challenged the implementation of R2P – setting the context for further analysis through three empirical cases.

### **International Order and the Norm of Nonintervention**

The idea that sovereignty entails exclusive jurisdiction and the imperative to refrain from coercive interference in the internal affairs of others is widely framed as the traditional conception of statehood<sup>1</sup>. This formation is articulated under the principle of *cuius regio, eius religio*, codified at the Religions Peace of Augsburg and later affirmed at the Peace of Westphalia in 1648 ending the Thirty Years' War in Europe<sup>2</sup>. From a realist approach to international relations, there has been a tendency to frame this Westphalian conception of sovereignty and its corollary of nonintervention as static, with state behavior mirroring consequential interests of states rather than the influence of evolving normative structures. Through the recurrent 'violation' of a static Westphalian sovereignty throughout history, Stephen Krasner asserts that the international system is best conceived as 'Organized Hypocrisy'<sup>3</sup>. However, English School scholarship has long disputed these rigid assumptions, with the past several decades also yielding a rise in critical legal and predominantly constructivist scholarship challenging this dehistoricized conception of sovereignty and its supposed traditional corollary of nonintervention<sup>4</sup>. As Charles Kegley *et al.* outline, "to accept this traditional definition of nonintervention invites the fallacious conclusion that the meaning of intervention – the illegal coercive interference of one sovereign state in the domestic affairs of another sovereign state – is

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<sup>1</sup> J. Brian Hehir, 'Intervention: From theories to cases', *Ethics and International Affairs* 9(1), 6.

<sup>2</sup> Philip Windsor, 'Superpower Intervention' in Hedley Bull (ed.), *Intervention in World Politics* (Oxford: Clarendon Press, 1984), p. 45.

<sup>3</sup> Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton N.J.: Princeton University Press, 1999).

<sup>4</sup> Luke Glanville, *Sovereignty and the Responsibility to Protect: A New History* (Chicago: University of Chicago Press, 2014), p. 56.



invariant overtime”<sup>5</sup>. Sovereignty may be broadly conceived as political autonomy within delimited territorial boundaries, but its constitutive meaning shifts and reflects societal transformations. These norms may vary in interpretation and salience among members, but their regulative influence as inter-subjective standards serve to condition international actors and as a means to appraise international behavior. With changes in the undergirding beliefs and values within an international society, this normative order could shift, conditioning different interpretations of what constitutes legitimate behavior.

The frontiers protected by the principle of nonintervention are unclear at any one time, they vary over time, and they are defined differently by different statesmen... But the idea of frontier remains a helpful one, not least for international law, in establishing a convention that there are frontiers which states must have good reason to cross<sup>6</sup>.

Drawing from an English School approach, an international normative architecture has developed historically amongst political communities and projected globally with the expansion of international society. Through a minimum level of shared values and beliefs in the maintenance of international order, a society is formed in which the behaviors of states reflect neither purely Hobbesian realism nor Kantian liberalism, but are regulated by norms and institutions<sup>7</sup>. Amongst these norms as Hedley Bull outlines, intervention, “is generally believed to be legally and morally wrong: sovereign states or independent political communities are thought to have the right to have their spheres of jurisdiction

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<sup>5</sup> Charles W. Kegley Jr., Gregory A. Raymond and Margaret G. Hermann, ‘The rise and fall of the nonintervention norm: Some correlates and potential consequences’, *The Fletcher Forum of World Affairs* 22(1) (1998), 82.

<sup>6</sup> R.J. Vincent, *Nonintervention and International Order* (Princeton: Princeton University Press, 1974), pp.15-16.

<sup>7</sup> Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (New York: Columbia University Press, 1977), p. 13.

respected, and dictatorial interference abridges that right”<sup>8</sup>. This normative argument stems from the moral utility of nonintervention with both an internal and external dimension. Externally, intervention is seen as a provocation of global instability with the projection of force having a tendency to strain relations between states, contributing to wider international conflict. While the principle also has an internal dimension, providing political communities autonomy to develop institutions and societies reflective of their relative values and beliefs. As pluralists emphasize, because there is a minimal level of shared values and beliefs, expansive interpretations of justice attached to ethics and universal human rights may have limited legitimacy and negative influence on international order which international society functions to preserve<sup>9</sup>.

As R.J. Vincent outlines, that principle of nonintervention rests upon “placing order between states before justice for the responsibility of making a decision as to whether an actor or institution within any of them is just or unjust”<sup>10</sup>. The rationale for humanitarian intervention is then often cyclically conflictual – meaning that the violation of sovereignty for the benefit of individual rights may actually weaken and potentially destabilize international order, which undermines collective human security. It is “within states that a platform of order is established on which the justice we associate with the notion of human rights might be based. So anything that threatens order threatens also the possibility of achieving justice”<sup>11</sup>. Ideally, nonintervention serves as a means to protect political communities – a conception of international society in which different cultures, religions, and value-sets may exist within distinct political communities that may best

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<sup>8</sup> Hedley Bull, ‘Introduction’ in Hedley Bull (ed.), *Intervention in World Politics* (Oxford: Clarendon Press, 1984), p. 2.

<sup>9</sup> Robert H. Jackson, *Quasi-States, Sovereignty, International Relations and the Third World* (Cambridge: Cambridge University Press, 1990), p. 6.

<sup>10</sup> Vincent, *Nonintervention and International Order*, p. 344.

<sup>11</sup> R. J. Vincent, *Human Rights and International Relations* (Cambridge: Cambridge University Press, 1986), p. 114.

reflect and protect their domestic populations<sup>12</sup>. As Michael Walzer argues, the value of this order is in part embedded in the idea of ‘communal integrity’ which “derives its moral and political force from the rights of contemporary men and women to live as members of a historic community and to express their inherited culture through political forms worked out amongst themselves”<sup>13</sup>. The rationale for any intervention must then be restricted at a necessarily high level<sup>14</sup>. These ‘statist’ arguments often echo John Stuart Mill’s classic essay (1859) ‘A Few Words on Non-Intervention’ which provided two primary bases or rationale for nonintervention: referring to how intervention ‘undermines the authenticity of domestic struggles for liberty’, and that the exportation of freedom through intervention would be unstable or untenable<sup>15</sup>. If an intrastate conflict is entirely ‘native’, then those within the state should have the ability to seek stability and liberty without foreign interference, for “if they have not sufficient love for liberty to be able to rest it from merely domestic oppressors, the liberty which is bestowed on them by other hands than their own, will have nothing real, nothing permanent”<sup>16</sup>. As inherently authoritative, the projection of force often plays a critical role in domestic political outcomes. With foreign militaries propping up existing regimes, or leading to regime change through their support of particular domestic actors, the resulting institutions and leadership may then not reflect domestic legitimacy – contributing to further instability.

The norm of nonintervention may then be pegged to the argument that conceptions of justice surrounding particular behavior, actors, or institutions within states cannot be

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<sup>12</sup> Robert H. Jackson, *The Global Covenant: Human Conduct in a World of States* (Oxford: Oxford University Press, 2000), p. 214; Mohammed Ayoob, ‘Humanitarian intervention and state sovereignty’, *The International Journal of Human Rights* 6(1) (2002), 92.

<sup>13</sup> Michael Walzer, ‘The moral standing of states: A response to four critics’, *Philosophy & Public Affairs* 9(3), 211.

<sup>14</sup> Michael Walzer, *Just and Unjust War: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977), p. 107.

<sup>15</sup> Michael W. Doyle, ‘International ethics and the Responsibility to Protect’, *International Studies Review* 13(1) (2011), p. 76.

<sup>16</sup> John Stuart Mill, ‘A few words on non-intervention’, *New England Review* (2006) [1859], 260.

determined externally. But as Nicholas Onuf highlights, a strict adherence to nonintervention takes for granted the existence of at times conflictive values and beliefs of the international order, which assumes its own normative form<sup>17</sup>. This highlights the duality of the modern international society, with the norm of nonintervention ensuring international order as a means of protecting human rights, and in doing so, normatively insulating outside actors from coercive interference that at times may serve to protect human rights. What Nicholas Wheeler highlights as ‘exposing the conflict between order and justice as its starkest’<sup>18</sup>. However, hinting at the potential for normative interventionary practice for humanitarian or other purposes, Hedley Bull caveated, “If, however, an intervention itself expresses the collective will of the society of states, it may be carried out without bringing that harmony and concord (of the society of sovereign states) into jeopardy”<sup>19</sup>. In this respect, rather than human rights and nonintervention as dichotomous principles, their interaction emphasizes how the values, beliefs, and practices of states have constructed an international normative architecture reflective of conceptions of how best to secure international order. As Anthony Lang outlines, “Here arises a dilemma, not one between amoral politicians and moralistic humanitarians, but one between competing moral claims about the nature of responsibility and political community”<sup>20</sup>. International rules and institutions then serve as contested manifestations of values surrounding how best to secure and sustain international order, which is reflective in the normative development of an international architecture and its regulative impact on state behavior.

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<sup>17</sup> Nicholas Onuf, ‘Normative Framework for Humanitarian Intervention’ in Anthony F. Lang Jr. (ed.), *Just Intervention* (Washington D.C.: Georgetown University Press, 2003), p. 35; Krasner, *Sovereignty: Organized Hypocrisy*, 21

<sup>18</sup> Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000), p. 11.

<sup>19</sup> Hedley Bull, ‘Conclusion’ in Hedley Bull (ed.), *Intervention in World Politics* (Oxford: Clarendon Press, 1984), p. 195.

<sup>20</sup> Anthony F. Lang Jr., ‘Humanitarian Intervention- Definition and Debates’ in Anthony F. Lang Jr. (ed.), *Just Intervention* (Washington D.C.: Georgetown University Press, 2003), p. 2.

Far from detached from conceptions of the protection of human dignity, the first widely-cited articulations of reciprocal non-interference were linked to individual rights through accounts of natural law within the work of Christian Wolff and Emer de Vattel<sup>21</sup>.

It is an evident consequence of the liberty and independence of nations, that all have a right to be governed as they think proper, and that no state has the smallest right to interfere in the government of another. Of all the rights that can belong to a nation, sovereignty is doubtless, the most precious, and that which other nations ought the most scrupulously to respect, if they would not do her an injury<sup>22</sup>.

Framing the current international system as one based on contingent norms, the historic evolution of nonintervention highlights its ‘essentially relative’ character – shaped by and shaping the normative conceptions and behavior of state actors<sup>23</sup>. As Tom Ruys argues, “up until the nineteenth century, the predominant conviction was that every State had a customary right, inherent in sovereignty itself, to embark upon war whenever it pleased”<sup>24</sup>. The projection of force to collect foreign debts, rescue one’s own nationals, and war plunder were all recognized practices until norms shaped the behavior of states<sup>25</sup>. Along with the development of positive international law through into the nineteenth and twentieth centuries, intervention became ‘progressively illegal’, coming to underwrite the modern international system as a deeply entrenched and internalized norm that states will

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<sup>21</sup> Onuf, ‘Normative Framework for Humanitarian Intervention’, p. 35; Krasner, *Sovereignty: Organized Hypocrisy*, 21

<sup>22</sup> Emer de Vattel, *The Law of Nations, Or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns, with Three Early Essays on the Origin and Nature of Natural Law and on Luxury*, Béla Kaposy and Richard Whatmore (eds.) (Indianapolis: Liberty Fund, 2008), p. 289.

<sup>23</sup> Maziar Jamnejad and Michael Wood, ‘The principle of non-intervention’, *Leiden Journal of International Law* 22(2) (2009), p. 381.

<sup>24</sup> Tom Ruys, *“Armed Attack” and Article 51 of the UN Charter: Evolutions in Customary Law and Practice* (Cambridge: Cambridge University Press, 2010).

<sup>25</sup> Finnemore, *The Purpose of Intervention*.

refrain from coercive interference in each other's affairs<sup>26</sup>. While many frame the traditional conception of Westphalian sovereignty with a static or absolute correlative of nonintervention, it was not until the twentieth century that nonintervention was firmly 'established as a sacrosanct and unconditional principle of international law'<sup>27</sup>. Through periods of upheaval and crisis, the growing destruction of warfare, disruptive impact of intervention for societal development contributed to expansive definitions of aggression – paralleling a more absolute conception and articulation of nonintervention. Grounded in conceptions of sovereign equality and self-determination following two world wars and process of decolonization, nonintervention was tied to human rights through the creation of the UN<sup>28</sup>.

An expansive definition of aggression to include the 'threat' as well as the use of force was included in the drafting of the UN Charter in San Francisco at the request of several smaller states including Bolivia and Norway – "designed to ensure there were no loopholes"<sup>29</sup>. Among the concerns was the right to determine their own domestic institutions and forms of government, free from outside interference. Within a decade of signing the UN Charter, the General Assembly affirmed a universal conception of sovereign independence with non-contingent rights on intra-state capacity to govern<sup>30</sup>. Framed as a type of 'Charter Liberalism' embracing agnosticism towards the internal practices or regime characteristics of states, "laudable objectives – such as the promotion of human rights, justice, and social progress – were equally included among the purposes

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<sup>26</sup> Anthony F. Lang Jr., 'Humanitarian Intervention' in Patrick Hayden (ed.), *The Ashgate Research Companion to Ethics and International Relations* (Surrey: Ashgate Publishing, 2009), p. 135.

<sup>27</sup> Glanville, *Sovereignty and the Responsibility to Protect*, 56.

<sup>28</sup> Christian Reus-Smit, *Individual Rights and the Making of the International System* (Cambridge: Cambridge University Press, 2013), p. 201.

<sup>29</sup> Simon Chesterman, *Just War or Just Peace?: Humanitarian Intervention and International Law* (Oxford: Oxford University Press, 2001), p. 49.

<sup>30</sup> Glanville, *Sovereignty and the Responsibility to Protect*, 150; Jean L. Cohen, *Globalisation and Sovereignty: Rethinking Legality, Legitimacy, and Constitutionalism* (Cambridge: Cambridge University Press, 2012), p. 175.

of the United Nations; however, these were to be realized by peaceful means – their pursuit did not justify the use of force”<sup>31</sup>. With increased UN membership through the 1950s, the process of decolonization took hold, along with diffusion of nonintervention as universal norm.

The UN Charter comprehensively proscribes intervention outside of self-defense under Article 51 and Chapter VII enforcement measures adopted by the Security Council under Article 42 in response to ‘international threats to peace and security’. Article 2(4) outlines: ‘All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any states, or in any other manner inconsistent with the Purposes of the United Nations’. Furthermore, Article 2(7) asserts: ‘Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state’ which defines not only the boundaries of state authority, but the limits of international jurisdiction. The UN Charter thus explicitly bans the international threat or use of force, and further restricts the UN from intervention in the internal affairs of states.

The UN General Assembly repeatedly affirmed the prohibition of intervention with a parallel articulation within customary international law outlined by the International Court of Justice (ICJ)<sup>32</sup>. In December 1965, the UN General Assembly adopted the Declaration on the Inadmissibility of Intervention, with its substantive section affirmed in the 1970 UN Friendly Relations Declaration:

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<sup>31</sup> Theresa Reinold, *Sovereignty and the Responsibility to Protect* (New York: Routledge Press, 2013), pp. 54-55.

<sup>32</sup> Marc Weller, *Iraq and the Use of Force in International Law* (Oxford: Oxford University Press, 2010), p. 60.

No state or Group of states has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any state. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic or cultural elements, are in violation of international law<sup>33</sup>.

Regional organizational charters also outlined parallel assertions including; Articles 19 and 21 of the Organization of American States, Title I of the Treaty of the European Union, Article 4 of the Constitutive Act of the African Union, Article 2(2) of the Charter of the Association of Southeast Asian Nation, Pact of the League of Arab States, and Charter of the Organization of the Islamic Conference<sup>34</sup>. As early as 1949, ICJ affirmed the customary international legal principle of nonintervention and its non-contingency amongst existing international institutions:

[T]he alleged right of intervention as the manifestation of a policy of force, such as has, in the past, given rise to most serious abuses and such as cannot, whatever be the present defects in international organization, find a place in international law. Intervention is perhaps still less admissible in the particular form it would take here; for, from the nature of things, it would be reserved for the most powerful States, and might easily lead to perverting the administration of international justice itself<sup>35</sup>.

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<sup>33</sup> UN General Assembly, 'Resolution 2625', UN GAOR, 25<sup>th</sup> Sess., UN Doc. A/RES/25/2625, 24 October 1970; also see: UN General Assembly, 'Resolution 2131', UN GAOR, 20<sup>th</sup> Sess., UN Doc. A/RES/20/2131, 21 December 1965, para. 2.

<sup>34</sup> Jamnejad and Wood, 'The principle of non-intervention', 363-364.

<sup>35</sup> United Kingdom of Great Britain and Northern Ireland v. Albania, *Corfu Channel Case*, International Court of Justice (1949), rep. 4, p. 35.



Particularly in the *Nicaragua v United States of America* case in 1986, the ICJ made it clear that customary international law does not allow for ‘justified’ cases of intervention in support of ‘political or moral values’ – “For such a general right to come into existence would involve a fundamental modification of the customary law principle of non-intervention”<sup>36</sup>. Nonintervention thus transformed as a constitutive norm of state sovereignty, becoming internalized internationally – deeply embedded within international law and international societal conceptions surrounding the legitimate application of force. Far from a powerless intermediary variable, nonintervention served as the ‘prevailing standard of appropriateness’ with intervention outside of self-defense and UNSC chapter VII authorization in response to international threats acknowledged as illegitimate<sup>37</sup>.

Consequently, throughout the Cold War, this norm of nonintervention conditioned state interests, framing debate and providing a salient block against articulations of a state right or international responsibility or right to project force outside of collective self-defense. Intervention’s still occurred, but of those cases from 1945-1990 widely referred to as humanitarian in nature or outcome – all three were largely incidental to wider strategic interests of intervening states and were justified in terms of prevailing norms<sup>38</sup>. While a number of interventions functionally ended mass human rights atrocities referring to ethnic cleansing, genocide, war crimes, and crimes against humanity they illustrate the normative salience of nonintervention with international actors widely condemning the actions of intervening states and in cases pushed for international or regional sanctions<sup>39</sup>. Furthermore, when force was projected overtly and covertly throughout the Cold War,

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<sup>36</sup> *Nicaragua v. United States of America, Military and Paramilitary Activities in and against Nicaragua*, International Court of Justice (1986), p. 106, para 206-207.

<sup>37</sup> Martha Finnemore and Kathryn Sikkink, ‘International Norm Dynamics and Political Change’, *International Organization* 52(4) (1998), p. 895.

<sup>38</sup> Brad R. Roth, *Sovereign Equality and Moral Disagreement: Premises of a Pluralist International Legal Order* (Oxford: Oxford University Press, 2011), p. 237.

<sup>39</sup> Wheeler, *Saving Strangers*.

the range of interests pursued reflected the ideological and material power realities of the superpowers with the breaches provoking “such fierce controversy and so much nationalistic passion that their net effect was to reinforce, not negate, the norm of non-intervention”<sup>40</sup>. While cases of regime consent proved politically less contentious, the existing normative international order affirmed nonintervention<sup>41</sup>. However, the 1990s seemed to herald a normative shift, with the influence of human rights norms promoting intervention in areas previously restricted.

### **The Emergence of the Responsibility to Protect**

The end of the Cold War marked a shift in the perceived nature of sovereignty, with the legitimacy of individual states increasingly tied to the state authorities’ capacity and willingness to protect its population from egregious abuses. The promotion of liberal institutionalism and democratization unleashed a wave of commissions and intellectual activity advocating the language of humanitarianism and strengthening of the UN’s role in international security politics<sup>42</sup>. The rapid development of non-government organizations (NGOs) and their work in promoting liberal human rights norms also meant that while intra-state crises were far from new, they became harder to ignore and easier for domestic populations to endorse<sup>43</sup>. The nature of threats also shifted with the decline of Soviet power and greater emphasis placed on intra-state structural and development concerns<sup>44</sup>. As John Ikenberry outlines, “The threat to international order was no longer

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<sup>40</sup> S. Neil MacFarlane, *Intervention in Contemporary World Politics* (Oxford: International Institute for Strategic Studies, Adelphi Paper 350, 2002); Ramesh Thakur, ‘Outlook: Intervention, Sovereignty and the Responsibility to Protect: Experiences by ICISS’, *Security Dialogue* 33(3) (2002), 329.

<sup>41</sup> D. J. B. Trim and Brendan Simms, ‘Towards a history of humanitarian intervention’, in Brendan Simms and D. J. B. Trim (eds.), *Humanitarian Intervention: A History* (Cambridge: Cambridge University Press, 2011), pp. 1-24.

<sup>42</sup> Michael Barnett, *The International Humanitarian Order* (New York: Routledge, 2010), p. 21.

<sup>43</sup> Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca: Cornell University Press, 1998).

<sup>44</sup> Benjamin E. Valentino, ‘The true costs of humanitarian intervention: The hard truth about a noble notion’, *Foreign Affairs* (2011), 61.

great-power war, as it had been for centuries, but violence and instability emerging from weak, failed and hostile states residing on the periphery of the system”<sup>45</sup>. The number of intra-state relative to inter-state conflict deaths and internally displaced populations (IDPs) had skyrocketed, with war refugees in the tens of millions<sup>46</sup>. The UN’s Special Advisor on IDPs Francis Deng among others challenged statist conceptions of sovereignty through pegging the legitimacy of states to their capacities to protect populations:

Sovereignty carries with it certain responsibilities for which governments must be held accountable. And they are accountable not only to their national constituencies but ultimately to the international community. In other words, by effectively discharging its responsibilities for good governance, a state can legitimately claim protection for its national sovereignty<sup>47</sup>

Traditional conceptions of sovereignty were seen to be eroding through the promotion of human rights norms and processes of globalization<sup>48</sup>. In this wake, UN institutional focus highlighted shifting emphasis from inter-state conflict to intra-state structural concerns, peacekeeping and peace enforcement initiatives that included the use of military force<sup>49</sup>. As David Malone highlights, the early 1990s marked ‘a period of euphoria’ surrounding the UN, peacekeeping, and peacemaking activism<sup>50</sup>. Following protection measures in

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<sup>45</sup> G. John Ikenberry, *Liberal Leviathan: The Origins, Crisis, and Transformation of the American World Order* (Princeton: Princeton University Press, 2011), p. 222.

<sup>46</sup> Robin Cohen and Francis Mading Deng (eds.) *The Forsaken People: Case Studies of the Internally Displaced* (Washington D.C.: Brookings Institute, 1998), p.1.

<sup>47</sup> Francis M. Deng, Sadikiel Kimaro, Terrence Lyons, Donald Rothchild and I. William Zartman, *Sovereignty as Responsibility: Conflict Management in Africa* (Washington D.C.: Brookings Institute, 1996), p. 1.

<sup>48</sup> Cohen, *Globalisation and Sovereignty*, p.159.

<sup>49</sup> Finnemore, *The Purpose of Intervention*, p. 52; Michael W. Doyle and Nicholas Sambanis, ‘Peacekeeping Operations’ in Thomas G. Weiss and Sam Daws (eds.), *The Oxford Handbook on the United Nations* (Oxford: Oxford University Press, 2007), p. 324.

<sup>50</sup> David M. Malone, *The International Struggle Over Iraq: Politics in the UN Security Council 1980-2005* (Oxford: Oxford University Press, 2006), p. 11.

1991 for the Kurds in Northern Iraq, French President François Mitterrand declared, “For the first time, non-interference has stopped at the point where it was becoming failure to assist a people in danger”<sup>51</sup>. The UNSC authorized unprecedented action - the recognition of failed states as potential threats to international peace and security in Somalia 1992, efforts to militarily disarm and build institutions in Cambodia 1992-93, and the approval of ‘all necessary measures’ to protect populations in Bosnia 1993<sup>52</sup>. From a range of policy areas, the rights of states were argued as increasingly contingent on stable governance and protection of basic human rights<sup>53</sup>.

Non-interventions also played a substantial role in the development of a more solidarist approach to humanitarian intervention. In 1994, nearly a million were killed in roughly three months during the Rwandan Genocide. As Michael Barnett highlights, the UN – most prominently the P5 – responded with what is best categorized as ‘willful ignorance and indifference’<sup>54</sup>. Looking on in silence, the UN Security Council reduced peacekeeping forces and stood idle as reports surfaced regarding the scale and nature of atrocities<sup>55</sup>. A year later in 1995, UN peacekeepers in Bosnia failed to prevent mass murder of over eight thousand men and boys within the UN declared ‘safe area’ of Srebrenica. While a UN mission had already been in place, the mandated scope and extent of protection had failed a civilian population – further shifting international emphasis towards the promotion of greater protection measures.

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<sup>51</sup> Kofi Annan, ‘Human Rights and Humanitarian Intervention in the Twenty-First Century’ in Samantha Power and Graham Allison (eds.), *Realising Human Rights: Moving from Inspiration to Impact* (New York: St. Martin’s Press, 2000), p. 311.

<sup>52</sup> James Mayall, ‘Introduction’ in James Mayall (ed.), *The New Interventionism 1991-1994: United National Experience in Cambodia, former Yugoslavia and Somalia* (Cambridge: Cambridge University Press, 1996), pp.1-24; Wheeler, *Saving Strangers*, pp. 251-252.

<sup>53</sup> Ikenberry, *Liberal Leviathan* 246.

<sup>54</sup> Michael Barnett, *Eyewitness to a Genocide: The United Nations and Rwanda* (New York: Cornell University Press, 2002), p. 4.

<sup>55</sup> Romeo Dallaire, *Shake Hands with the Devil: The Failure of Humanity in Rwanda* (London: Arrow Books, 2003).

The Kosovo Crisis in 1999 proved a ‘watershed event’<sup>56</sup>. Stalled at the UNSC by implicit Chinese and Russian vetoes, the North Atlantic Treaty Organization (NATO) intervened without authorization in response to ongoing ethnic cleansing committed by the Belgrade authorities. US President Bill Clinton took a particularly active stance, with UK Prime Minister Tony Blair asserting: “the principle of noninterference must be qualified in important respects. Acts of genocide can never be a purely internal matter”<sup>57</sup>. However, the intervention highlighted a central problem; without a case of self-defense, regime consent, or Security Council authorization, the military force projection was a violation of international law and undergirding normative structure of international order<sup>58</sup>. As Ramesh Thakur outlines, NATO military actors in Kosovo without UNSC approval faced a triple policy dilemma: (1) A strict adoption of nonintervention in the interest of self-determination and sovereign inviolability provides state authorities with a seeming license to kill that at times included external complacency in cases of intra-state mass atrocity crimes, while (2) the only legal means of projecting force remains the UN Security Council – placing international authority and potential ‘policy paralysis’ within the strategic interests of the Permanent Five. But (3) to act without Security Council approval violates international law and threatens to undermine international order<sup>59</sup>. The post-action Kosovo Commission famously asserted that the intervention was ‘illegal but legitimate’ or an act of principled non-compliance in which adherence to existing rules

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<sup>56</sup> Doyle, ‘International ethics and the Responsibility to Protect’, 79.

<sup>57</sup> Tony Blair, ‘The Blair Doctrine’, speech given to the Chicago Council on Global Affairs, Chicago, 22 April 1999, [http://www.pbs.org/newshour/bb/international-jan-june99-blair\\_doctrine4-23/](http://www.pbs.org/newshour/bb/international-jan-june99-blair_doctrine4-23/); William Clinton, ‘Remarks by the President to the KFOR Troops’, speech given at Skopje, Macedonia Airport, 22 June 1999, <http://clinton4.nara.gov/textonly/WH/New/Europe-9906/html/Speeches/990622d.html>; Doyle, ‘International ethics and the Responsibility to Protect’, 79.

<sup>58</sup> Doyle, ‘International ethics and the Responsibility to Protect’, 79

<sup>59</sup> Ramesh Thakur, ‘Law, Legitimacy, and the United Nations’ in Richard Falk, Mark Juergensmeyer and Vesselin Popovski (eds.), *Legality and Legitimacy in Global Affairs* (Oxford: Oxford University Press, 2012), p. 53.

would have been an illegitimate stain on the conscious of mankind<sup>60</sup>. To the General Assembly in 1999, then Secretary-General Kofi Annan asserted:

To those for whom the greatest threat to the future of international order is the use of force in absence of a Security Council mandate, one might ask... in the context of Rwanda: If, in those dark days and hours leading up to the genocide, a coalition of states had been prepared to act in defense of the Tutsi population but did not receive prompt Council authorization, should such a coalition have stood aside and allowed the horror to unfold?<sup>61</sup>

If the projection of military force for the protection of fundamental rights was legitimate under specific circumstances, the international community needed greater clarity surrounding what thresholds or criteria existed. Emphasizing ‘sovereignty as responsibility’ drawing from Francis Deng and other’s, UN Secretary General Kofi Annan endorsed, and Canada supported, the creation of an International Commission on State Sovereignty (ICISS) to establish ‘clearer rules, procedures, and criteria for determining whether, when and how to intervene’ that could be embraced by the UNGA<sup>62</sup>. Led by Australia’s former Foreign Minister Gareth Evans and Algerian diplomat, Mohammed Sahnoun, the Commission was overseen by an advisory board to ground their report in political realities as well as its own research directorate – leading various global roundtables in cities such as St. Petersburg, Washington DC, New Delhi,

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<sup>60</sup> Independent International Commission on Kosovo, *The Kosovo Report: Conflict International Response, Lessons Learned* (Oxford: Oxford University Press, 2000), p. 4.

<sup>61</sup> UN Secretary-General, ‘Secretary-General presents his Annual Report to General Assembly’, Press Release SG/SM/7136, GA/9596, 20 September 1999, accessed 5 May 2015, <http://www.un.org/press/en/1999/19990920.sgsm7136.html>.

<sup>62</sup> International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001), p. 11.

and Beijing which shaped the positions of commissioners while providing a ‘cross regional testing ground’ for ideas and proposals leading up to the report’s release<sup>63</sup>.

In 2001, the ICISS released their report, entitled the ‘Responsibility to Protect’, which argued that as sovereign actors, state rights are contingent on the responsibility to protect their populations. Grounded in existing international law and the just war tradition, the report provided a framework of rules and conditions surrounding state responsibility and cases in which the responsibility shifts to the international community<sup>64</sup>. Outlining a three-fold responsibility to prevent, react, and rebuild, prevention was highlighted as ‘the single most important dimension’ with subsequent positive and negative instruments to ensure civilian protection ranging from political pressure, economic tools, to the projection of force<sup>65</sup>. Under the most severe conditions, the report outlined two ‘threshold criteria’ or circumstances in which military intervention might be justified for human protection purposes, (1) to “halt or avert: large scale loss of life, real or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation” or alternatively, (2) in cases of “large scale ‘ethnic cleansing,’ actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape”<sup>66</sup>. Acknowledging that military force should only be used in those most exceptional cases, the framework embraced a set of precautionary just war principles including right authority, just cause, right intention, last resort, proportional means, and reasonable prospects<sup>67</sup>.

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<sup>63</sup> Alex J. Bellamy, *A Responsibility to Protect: The Global Effort to End Mass Atrocities* (Cambridge: Polity Press, 2009), pp. 43-48; Marc Pollentine, ‘Constructing the Responsibility to Protect’ (PhD diss., Cardiff University, 2012), p. 115.

<sup>64</sup> Anthony F. Lang Jr., ‘Conflicting Rules: Global Constitutionalism and the Kosovo Intervention’, *Journal of Intervention and Statebuilding* 3(2) (2009), 185-204.

<sup>65</sup> ICISS, *The Responsibility to Protect*, xi.

<sup>66</sup> Doyle, ‘International ethics and the Responsibility to Protect’, 79; ICISS, *The Responsibility to Protect*, p. 32.

<sup>67</sup> ICISS, *The Responsibility to Protect*, pp. 32-37.

Shifting the debate from an external right to intervene to the internal responsibilities of governments, R2P was expanded to address root causes and criteria for when and under what authority humanitarian intervention could be more legitimately carried out – drawing directly from and emerging to shift – the international normative context surrounding human rights protection. As Gareth Evans asserts, “the whole point of embracing the new language of ‘the responsibility to protect’ is that it is capable of generating an effective, consensual response to extreme, conscious-shocking cases in a way that ‘right to intervene’ language could not”<sup>68</sup>. Having failed to respond adequately in Rwanda, Srebrenica, or authorize protection measures in Kosovo, the ICISS forwarded a set of rules and criteria that could be embraced by the international community. Resting the normative impact of R2P on existing institutional mechanisms, the legality and to large part, legitimacy rests on the political will of the P5 to address specific crises and military capacity of regional actors or those international powers with the ability to project force globally.

The question of authority proved a particularly ‘thorny issue’<sup>69</sup>. Emphasizing that the ongoing legitimacy of the UNSC is tied to its capacity to respond to international threats – which implicitly includes civilian protection measures – the ICISS proposed a voluntary agreement among UNSC members to not veto majority backed R2P resolutions unless their vital national interests are at stake<sup>70</sup>. The report further highlighted the General Assembly’s ‘Uniting For Peace’ resolution of 1950, and potential for regional or sub-regional input surrounding authorization – leaving the possibility of ‘coalition of the willing’ questions without UNSC authorization in-part ambiguous, as well as responsibility surrounding non-intentional killings, de-facto civil war circumstances,

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<sup>68</sup> Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocities Once and For All* (Washington D.C.: Brookings Institution, 2009), p. 65.

<sup>69</sup> Alex J. Bellamy, *Global Politics and the Responsibility to Protect: From Words to Deeds* (New York: Routledge, 2011), p. 9.

<sup>70</sup> ICISS, *The Responsibility to Protect*.



removal of democratically elected regimes, and natural disasters<sup>71</sup>. However, the Commission ultimately concluded, “As a matter of political reality, it would be impossible to find consensus, in the Commission’s view, around any set of proposals for military intervention which acknowledge the validity of any intervention not authorized by the Security Council or General Assembly”<sup>72</sup>. The R2P report was both evidence of changing international understandings surrounding civilian protection in relation to international order, and contested as a means to build greater consensus surrounding how the international community could better respond to halt or avert large-scale atrocities.

Released in the turbulent post-9/11 environment of the Global War on Terror, R2P faced widespread skepticism surrounding humanitarian justifications underwriting the preemptive invasion of Iraq. However, norm entrepreneurs continued to promote its more formal institutionalization<sup>73</sup>. In preparation for the 2005 World Summit, the UN Secretary-General established the ‘High Level Panel on Threat, Challenge and Change’ in 2004 to address potential institutional reform<sup>74</sup>. As a panel member, Gareth Evans and other R2P norm entrepreneurs worked alongside Secretary-General Kofi Annan and were able to develop momentum towards greater institutionalization of R2P<sup>75</sup>. These actors ensured the principle’s inclusion in the High Level Panel’s findings as well as the Secretary General’s report *In Larger Freedom* leading up to the World Summit. The High Level Panel endorsed an ‘emerging norm that there is a collective international responsibility to protect’, further asserting:

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<sup>71</sup> Ibid., pp. 47-50; Jennifer M. Welsh, ‘Implementing the ‘Responsibility to Protect’: Catalyzing Debate and Building Capacity’ in Alexander Betts and Phil Orchard (eds.), *Implementation and World Politics: How International Norms Change Practice* (Oxford: Oxford University Press, 2014), pp. 128-129.

<sup>72</sup> ICISS, *The Responsibility to Protect*, p. 6,37

<sup>73</sup> Ayoob, ‘Humanitarian intervention and state sovereignty’.

<sup>74</sup> Bellamy, *A Responsibility to Protect: The Global Effort to End Mass Atrocities*, p. 76.

<sup>75</sup> Pollentine, ‘Constructing the Responsibility to Protect’.

In signing the Charter of the United Nations, States not only benefit from the privileges of sovereignty but also accept its responsibilities. Whatever perceptions may have prevailed when the Westphalian system first gave rise to the notion of State sovereignty, today it clearly carries with it the obligation of a State to protect the welfare of its own peoples and meet its obligations to the wider international community<sup>76</sup>.

The 2005 World Summit marked the sixtieth anniversary for the UN and was widely attended by heads of government and state to recognize the achievements of the UN and negotiate potential UNSC and wider institutional reform. Leading into the final stages of the World Summit, the General Assembly President at the time, Gabon's Jean Ping, "with strong encouragement from Kofi Annan, a small group from the Secretariat worked throughout the night playing Solomon – in essence removing brackets or making compromises on proposed language"<sup>77</sup>. Continuing work on the initial draft to reflect changes with the ongoing discourse and debates among delegations, paragraphs within the final proposed *Outcome Document* included a modified R2P that reflected negotiations and stronger consensus surrounding the norm's meaning<sup>78</sup>. As an outlined period of normative contestation, the draft's articulation drew upon the ICISS report, but shaped the norm aligned with the argumentation of international actors reflective of international beliefs and values. These actors ensured that the norm was addressed and embedded in the normative architecture of an international order through entrepreneurship amongst international leaders, affirmed through widespread consensus surrounding the norm's clarified meaning. As Thomas Weiss highlights, what emerged

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<sup>76</sup> The Secretary-General's High-Level Panel on Threats, Challenges and Change, 'A more secure world: Our shared responsibility: Report of the Secretary-General's High-level Panel on Threats, Challenges and Change', UN Doc. A/59/565 (New York: United Nations, 2004), para, 203.

<sup>77</sup> Stephen John Stedman, 'UN transformation in an era of soft balancing', *International Affairs* 83(5) (2007), 941.

<sup>78</sup> Pollentine, 'Constructing the Responsibility to Protect', p. 157.

was ‘R2P light’, yet, even still, “R2P was one of the few substantive items to survive relatively intact the negotiations at the World Summit”<sup>79</sup>. Specifically addressed in two core paragraphs of the 2005 World Summit *Outcome Document* (SOD):

138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit

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<sup>79</sup> Thomas G. Weiss, *Humanitarian Intervention: Ideas in Action* (Cambridge: Polity Press, 2007), p. 117.

ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out<sup>80</sup>.

Unanimously endorsed at the largest gathering of international heads of government and state to date, the SOD was later adopted by the General Assembly with the paragraphs directly referenced and unanimously endorsed by the UNSC six months later in Resolution 1674 (2006). As the UN Secretary General's 2009 Report on *Implementing the Responsibility to Protect* would later outline, what emerged was an institutionally recognized and unanimously endorsed norm framed within three equally weighted non-sequential pillars<sup>81</sup>. The first pillar outlines that states have a responsibility to protect their own populations from specific mass atrocity crimes including genocide, ethnic cleansing, war crimes, and crimes against humanity, and from their incitement – defined by the Secretary General as the 'bedrock' of R2P derived from existing international law<sup>82</sup>. The second pillar relates to the international responsibility to 'assist and encourage' member states in meeting their responsibilities to protect through international assistance and capacity building. Measures under pillar two could include the entire spectrum of foreign policy tools but only with 'an active partnership between the international community and the state' situating pillar two explicitly in state consent<sup>83</sup>. Pillar three outlines the international community's responsibility to take timely and decisive action in response to the four crimes specified in pillar one, through appropriate diplomatic, humanitarian and other peaceful means and on a case-by-case

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<sup>80</sup> UN General Assembly, '2005 World Summit Outcome Document', UN GAOR, 60<sup>th</sup> Sess., UN Doc. A/RES/60/1, 24 October 2005.

<sup>81</sup> UN Secretary-General, 'Implementing the Responsibility to Protect: Report of the Secretary-General', UN GAOR, 63<sup>rd</sup> Sess., UN Doc. A/63/677, 12 January 2009, p. 2.

<sup>82</sup> *Ibid.*, p. 8.

<sup>83</sup> *Ibid.*, p. 15; Alex J. Bellamy, 'A chronic protection problem: The DPRK and the Responsibility to Protect', *International Affairs* 91(2), 226.

basis ‘should peaceful means be inadequate and national authorities are manifestly failing to protect their populations’, implement collective measures under Chapter VII of the UN Charter<sup>84</sup>.

### **Institutionalization and Normative Impact**

R2P and humanitarian intervention as a practice serve as distinct concepts. However, the two, as Carsten Stahn outlines, “coincide in their rejection of sovereignty as a shield against the principle of non-intervention”<sup>85</sup>. The argued influence of R2P has been heralded by many as an erosion of traditional conceptions of sovereignty, with expansive normative obligations that embrace the language of global responsibility that transcends international borders. Tim Dunne and Jess Gifkins assert, the normative evolution of R2P “has made non-intervention in the face of mass atrocity crimes *less* likely. The legitimacy accorded to R2P is sufficiently broad and deep to mean that it is more difficult for states to continue with ‘business as usual’ when mass atrocity crimes are occurring”<sup>86</sup>. While the UN’s Office of the Special Advisor on R2P boldly asserts: “Sovereignty no longer exclusively protects States from foreign interference; it is a charge of responsibility that holds States accountable for the welfare of their people”<sup>87</sup>. This has also expanded to international legal scholarship. As Ruti Teitel echoes, R2P serves as evidence of and continues to advance a paradigm shift toward ‘Humanity’s Law’ in which the normative undergirding of international order has transitioned from state security to conceptions of human security<sup>88</sup>.

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<sup>84</sup> UN General Assembly, ‘2005 World Summit Outcome Document’.

<sup>85</sup> Carsten Stahn, ‘Between Law-breaking and Law-making: Syria, Humanitarian Intervention and “What the Law Ought to Be”’, *Journal of Conflict and Security Law*, 19(1) (2014), 30.

<sup>86</sup> Dunne, T., & Gifkins, J. (2011). Libya and the state of intervention. *Australian Journal of International Affairs* 65(5), 519.

<sup>87</sup> UN Office of the Special Adviser on the Prevention of Genocide, ‘The Responsibility to Protect’, *United Nations*, accessed 5 July 2015, <http://www.un.org/en/preventgenocide/adviser/responsibility.shtml>.

<sup>88</sup> Ruti Teitel, *Humanity’s Law* (Oxford: Oxford University Press, 2011), p. 4.

However, while R2P has permeated international discourse, its inconsistent implementation in terms of intervention has been a sign for many critics of its inability to build effective responses to mass atrocity crimes. Thus, R2P has been framed as largely failing through the Darfur Region of Sudan, Syria and slower-burning structural atrocities globally, with many scholars and policymakers questioning its actual impact<sup>89</sup>. As Aidan Hehir asserts, “While the term ‘Responsibility to Protect’ and its abbreviation ‘R2P’ have very quickly pervaded political discourse, both lack substance and are little more than slogans employed for differing purposes shorn of any real meaning or utility”<sup>90</sup>. While R2P might have some distant or nominal normative value, without meaningful institutional change to separate humanitarian aims from the political will of the P5, or development of an independent military force, R2P’s enforcement ‘remains a matter of political will which is by definition transitory and context specific’<sup>91</sup>. R2P’s track record for acting as a ‘moral lever’ has then been questionable and likely to be heavily impacted by the rise of Russia, China, and other BRICS (i.e. Brazil, India, and South Africa)<sup>92</sup>. The ‘politicization’ of the UNSC, and lack of military resources then highlight a continued failure of existing institutions to consistently address international requirements for international peace and security<sup>93</sup>. However, while the projection of force internationally does reflect politicized decisions, an independent judiciary or military force to address such crises would arguably emerge through the recognition that existing institutions continue to deliver illegitimate outcomes. If cases of interventionary practice aligned with

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<sup>89</sup> Alex De Waal, ‘Darfur and the failure of the responsibility to protect’, *International Affairs* 83(6) (2007), 1039-1054; Rhoda E. Howard-Hassmann, ‘Mugabe’s Zimbabwe, 2000-2009: Massive human rights violations and the failure to protect’, *Human Rights Quarterly* 32(4) (2010), 898-920.

<sup>90</sup> Aidan Hehir, ‘The Responsibility to Protect: “Sound and fury signifying nothing”?’’, *International Relations* 24(2) (2010), 219.

<sup>91</sup> Aidan Hehir and Anthony F. Lang, ‘The Impact of the Security Council on the Efficacy of the International Criminal Court and the Responsibility to Protect’, *Criminal Law Forum* 26(1) (2015), 162.

<sup>92</sup> Robert W. Murray and Aidan Hehir, ‘Intervention in the emerging multipolar system: Why R2P will miss the unipolar moment’, *Journal of Intervention and Statebuilding* 6(4) (2012), 387-406.

<sup>93</sup> Hehir and Lang Jr., ‘The Impact of the Security Council on the Efficacy of the International Criminal Court and the Responsibility to Protect’, 157.

R2P delivered outcomes reflective of international values and beliefs, or noninterventions failed to ensure conceptions of order and justice, then R2P could arguably gain further momentum. As the UN's first Special Advisor on R2P outlined:

[R2P's] greatest contribution over time may lie less in setting rules and guidelines for inter-governmental mechanisms of follow and more in influencing the conceptions of interests, doctrine and strategy within national capital, and hence voting patterns in international bodies. If influential states do not reconsider their national interests and values because of the growing prominence of R2P in public and political circles, then posting rules for the Security Council and other inter-governmental bodies to follow would make little difference. If national values and perspectives change because of R2P, however, the rules and guidelines would hardly be needed<sup>94</sup>.

As normative beliefs change overtime, institutionalized rules lag behind and often conflict with perceptions of legitimacy. As Andrew Loomis highlights, "beliefs about acceptability of behavior evolve according to a different schedule than the law, percolating from the collective conscious of the body politic"<sup>95</sup>. This underlines a link between natural law and the development of positive law – formalized recognition of acceptance or 'institutionalization' and means of bestowing legitimacy to norms<sup>96</sup>. Outlining R2P's progression over the decade from the report's emergence from 2001-2010, Jutta Brunée and Stephen J. Toope highlight that R2P could be argued as an

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<sup>94</sup> Edward C. Luck, 'Sovereignty, choice, and the Responsibility to Protect', *Global Responsibility to Protect* 1(1) (2009), 21.

<sup>95</sup> Andrew J. Loomis, 'Legitimacy Norms as Change Agents: Examining the Role of Public Voice' in Richard Falk, Mark Juergensmeyer and Vesselin Popovski, (eds.), *Legality and Legitimacy in Global Affairs* (Oxford: Oxford University Press, 2012), p. 88.

<sup>96</sup> Christine Chinkin, 'Rethinking Legality/Legitimacy after the Iraq War' in Richard Falk, Mark Juergensmeyer and Vesselin Popovski, (eds.), *Legality and Legitimacy in Global Affairs* (Oxford: Oxford University Press, 2012), p. 220.

emerging legal norm through a recurrent mixture of state practice and *opinio juris* (recognition of legally binding character) – embedding R2P in customary international law. Specifically approaching ‘generality, clarity, consistently and constancy over time’ as a means to approach its legal development, they conclude that “if there is no congruence between norm and action, no practice of legality, we will have to conclude that the responsibility to protect has not yet emerged as a legal norm”<sup>97</sup>. In similar vein, Theresa Reinhold asserts that because of lack of conceptual clarity and inconsistent practice ‘the responsibility to protect has clearly not evolved into a norm’<sup>98</sup>. Echoing Hedley Bull’s 1984 discussion of humanitarian intervention, even the refinement of the threshold principles to the four mass atrocity crimes has done little to articulate the exact thresholds levels are or what constitutes ‘manifest failure’ of human rights<sup>99</sup>. Similarly, Monica Serrano and Thomas Weiss assert, relating the substantive (textual) and procedural (institutional) clarity surrounding actors and actions required in which the current regime of R2P falls short which may impact its future cascade requiring clearer operational specificity<sup>100</sup>. However, the fact that it has not been recognized as a customary legal norm or positive legal development does not mean it has lacked emergence or been devoid of legal character as a ‘social fact’<sup>101</sup>.

Drawing from Finnemore and Sikkink’s ‘life cycle’ norms, R2P ‘emerged’ with the entitled ICISS report in 2001 and was ‘institutionalized’ within the 2005 World Summit

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<sup>97</sup> Jutta Brunnée and Stephen T. Toope, ‘The Responsibility to Protect and the use of force: Building legality?’, *Global Responsibility to Protect* 2(3) (2010), 209.

<sup>98</sup> Theresa Reinhold, ‘The responsibility to protect – much ado about nothing?’, *Review of International Studies* 36(S1) (2010), 74.

<sup>99</sup> Hedley Bull, ‘Conclusion’ in Hedley Bull (ed.), *Intervention in World Politics* (Oxford: Clarendon Press, 1984), p. 195; Adrian Gallagher, ‘What constitutes a “Manifest Failing”? Ambiguous and inconsistent terminology and the Responsibility to Protect’, *International Relations* 28(4) (2014), 428-444.

<sup>100</sup> Monica Serrano and Thomas G. Weiss, ‘R2P’s unfinished journey’ in Monica Serrano and Thomas G. Weiss (eds.), *The International Politics of Human Rights: Rallying to the R2P Cause?* (New York: Routledge, 2014), p. 243.

<sup>101</sup> Welsh, ‘Implementing the ‘Responsibility to Protect’, p. 135.



outcome document<sup>102</sup>. The ICISS report forwarded a set of criteria and rules – introducing specific wording and recognition of R2P. Between 2001 and 2005, the process of negotiation and then formal acceptance of the Outcome Document can be seen as having enabled states to provide greater clarity surrounding the norm’s content, scope, and what procedures could be used to coordinate more effective responses<sup>103</sup>. With consecutive works tracing the norm’s emergence and impact on the decisionmaking of states and institutional organs through humanitarian atrocities, as Western and Goldstein outline, “The doctrine has become integrated into a growing tool kit of conflict management strategies that include today’s most robust peacekeeping operations and increasingly effective international criminal justice mechanism”<sup>104</sup>. Through its unanimous endorsement, permeation of international discourse surrounding human rights protection, and implementation, the norm has been ‘nested’ within the normative architecture of international order. The normative influence of R2P has increased the international attention given to mass atrocity crises, contributing to early-warning mechanisms, institutional developments in the UN, and informed actors internationally surrounding their responsibilities for international populations rather than simply their own. Meaning, when an imminent or ongoing crisis is recognized, the international community has a responsibility to appraise the contextual nature and level of atrocities and decide – most centrally in the UNSC, regional organizations, and those with the potential to influence civilian protection measures – the viable and politically acceptable policy options. In this respect, the norm has served as a doctrinal framework and resource to address mass atrocity crimes – a ‘discretionary entitlement’ to appraise imminent or

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<sup>102</sup>Finnemore and Sikkink, ‘International Norm Dynamics and Political Change’.

<sup>103</sup> Jennifer, M. Welsh, ‘Norm contestation and the Responsibility to Protect’, *Global Responsibility to Protect* 5(4) (2013), 379.

<sup>104</sup> Jon Western and Joshua S. Goldstein, ‘Humanitarian intervention comes of age: Lessons from Somalia to Libya’, *Foreign Affairs* 90 (2011), 49.

ongoing mass atrocities and respond through those measures authorized by the UNSC<sup>105</sup>. From this approach, R2P can be seen to have gained a high level of attention and legitimacy at the international level in terms of what states are responsible for as well as the obligations of the wider international community within existing institutions<sup>106</sup>.

Rather than institutionalization at the end of a linear pathway, my theoretical assumptions aligned with critical constructivism and contestation ties R2P's salience to its appraised legitimacy at the international level, whereby the norm's salience is a function of "establishing the normative quality of a practice"<sup>107</sup>. The Responsibility to Protect as a doctrine has multiple proscriptions to different actors relating to the First pillar responsibility of individual states to protect their populations from genocide, ethnic cleansing, crimes against humanity, and war crimes, Second pillar relating to the international community's responsibility to aid states in the early identification and defusing of potential atrocities, and the third pillar of the international community to respond on a case-by-case basis through the UNSC under state's 'manifest failure' to secure its population from such egregious abuses<sup>108</sup>. This distinction between an institutionalization approach and one based on contestation serves as a particularly relevant framework surrounding R2P due to its character and 'complexity' as a norm, from which "there is continuing contestation within international society about how and to what degree R2P should be operationalized, and – more fundamentally – about the legitimacy of R2P's content"<sup>109</sup>. Along this line, Antje Wiener frames R2P's influence through contestation between different types of norms. Where 'fundamental norms' such

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<sup>105</sup> Frank Berman, 'Moral versus legal imperatives' in Charles Reed and David Ryall (eds.), *The Price of Peace: Just War in the Twenty-First Century* (Cambridge: Cambridge University Press, 2007), 161; Luke Glanville 'Syria Teaches Us Little About Questions of Military Intervention', in Robert W. Murray and Alasdair McKay (eds.), *In the Eleventh Hour: R2P, Syria, and Humanitarianism in Crisis* (Bristol, UK: E-International Relations, 2014), p. 47.

<sup>106</sup> Bellamy, 'A chronic protection problem'.

<sup>107</sup> Antje Wiener, *A Theory of Contestation* (London: Springer, 2014), p. 67.

<sup>108</sup> Welsh, 'Implementing the 'Responsibility to Protect'', p. 137.

<sup>109</sup> *Ibid.*, p. 124.

as widely-shared human rights norms, and ‘standardized procedures’ relating to specific procedural rules such as Article 2(4) at times conflict highlight ‘legitimacy gaps’ where contestation fills the space and ‘organizational principles’ such as R2P arise as resources which may be applied to bridge the gap on a ‘case by case basis’<sup>110</sup>. The contestation processes through the invocation of organizational principles then serves a practical purpose with ‘meta-organizing’ utility and as a useful way to frame R2P as a resource used when actors have ‘different understandings of the norm of nonintervention’<sup>111</sup>. R2P’s Third Pillar articulation that intervention serves as a legitimate response in the most severe cases of mass atrocity crimes pits the normative structures against each other – with contestation highlighting clashing normative beliefs or values surrounding the content of an international order.

### **The Contestation of Nonintervention**

The contestation of nonintervention serves as an underutilized lens in relation to the emergence and implementation of R2P. Across domestic, regional, and international orders, nonintervention has been shaped in its meaning, which can be traced through social discourses – elucidating the boundaries of legitimate behavior at the international level. Through recent periods of egregious human rights abuses, the norm of R2P has been argued as failing to build consistent responses, with the politicized decision of the UNSC and lack of a standing military force to address such crises contributing to a failure to intervene in cases of mass atrocity crimes<sup>112</sup>. This has been largely attributed to political or alliance interests and lack of material motivations of states to risk lives and

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<sup>110</sup> Wiener, *A Theory of Contestation*, p. 37.

<sup>111</sup> *Ibid.*, p. 3.8

<sup>112</sup> Aidan Hehir, *Responsibility to Protect: Rhetoric, Reality, and the Future of Humanitarian Intervention* (New York: Palgrave Macmillan, 2012), 217.

economic resources to save foreign populations<sup>113</sup>. However, this dynamic may also reflect an enduring salience of the norm of nonintervention. The challenge is to parse through the complex considerations of individual cases and trace how normative factors have informed the behavior of state actors.

From a regional perspective, as Amitav Archarya outlines, the norm of nonintervention within Southeast Asia has served ‘the single most important principle underpinning ASEAN regionalism’<sup>114</sup>. Plagued historically by weak state constructs and ethnic conflict, the source of regional instability has largely been seen as permeating from within states, with foreign interference from global powers and neighbors historically seen to decrease regional stability. “No framework for regional security cooperation could be meaningful for ASEAN unless it countered the internal enemy and enhanced regime security”<sup>115</sup>. In contrast, the detrimental impact of coup d’états and genocides among other intra-state atrocities within Africa have been seen to have a detrimental effect on regional stability, propelling recognition of a normative order which accepts more expansive articulations of regional authority to address intra-state crises<sup>116</sup>. In the Constitutive Act of the African Union adopted in July 2000, Article 4h outlines a right of the AU to intervene ‘in respect of grave circumstances: war crimes, genocide, and crimes against humanity’. Thus, the boundaries of nonintervention may vary contextually, weighing heavily on how norms are interpreted and applied. How this norm is promoted at the international level provides insight into constraints or strategic empowerment norms place on the decisions of states, which has been reflective of international behavior surrounding R2P.

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<sup>113</sup> Chesterman, *Just War or Just Peace?*, p. 231; Welsh, ‘Implementing the ‘Responsibility to Protect’, p. 137.

<sup>114</sup> Amitav Acharya, *Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order* (Abingdon, UK: Routledge, 2009), 57.

<sup>115</sup> Ibid.

<sup>116</sup> Paul D. Williams, ‘From Non-Intervention to Non-Indifference: The origins and development of the African Union’s security culture’, *African Affairs* 106(423) (2007), 253-279.

Tracing the interaction between these norms highlights how the norm of nonintervention has persisted – informing the behavior of states through continued cases of mass atrocity crimes in which R2P has been invoked. From the very beginning of R2Ps development, the norm has faced normative friction from nonintervention as an internalized norm. The International Commission on Intervention and State Sovereignty’s name had to be changed along with its promoted conception of ‘R2P’ reflecting the influence of nonintervention. Proposed by Canada’s Foreign Minister Lloyd Axworthy as the ‘Commission on Humanitarian Intervention’, the emphasis had to be shifted to the responsibilities of states to transcend aversion fostered by a majority of international actors<sup>117</sup>. Once introduced in 2001, the report was met with a range of responses from skepticism to outright hostility. However, aversion was not widely attached to the conception that states have a responsibility to protect their populations from egregious abuses, or that the international community has a responsibility to assist and help states address the root causes of such crises. What was widely contentious related to the potential projection of force, threshold criteria, and authority that could be legitimate to carry out protection measures at the international level<sup>118</sup>. With too expansive a set of criteria in the ICISS report to include threats to populations from natural disasters, diseases, or non-democratic forms of government, R2P was framed as a catchall and potentially dangerous provocation of global instability<sup>119</sup>. Permanent members of the Security Council showed a high level of suspicion, while members of the global South within the G77 and Non-Aligned Movement vehemently opposed any normative development that enabled the potential for unilateral intervention even for humanitarian purposes – widely casting R2P as a neo-imperial shroud even if framed in terms of

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<sup>117</sup> Brunnée and Toope, ‘The Responsibility to Protect and the use of force’, 194; Bellamy, *A Responsibility to Protect: The Global Effort to End Mass Atrocities*, p. 36.

<sup>118</sup> Bellamy, *A Responsibility to Protect: The Global Effort to End Mass Atrocities*, p. 36.

<sup>119</sup> Robert A. Pape, ‘When duty calls: A pragmatic standard of humanitarian intervention’, *International Security* 37(1) (2012), 41-80.

human rights<sup>120</sup>. This dynamic can be attributed to a range of factors reflecting not only the norm of nonintervention, but also the pragmatic desire of states to limit obligations to intervene under R2P or provide an expansive normative basis for intervention by stronger international powers.

In 2002, after the report was initially discussed by the Security Council, the US among others were ‘noticeably unenthusiastic’, while “there was widespread opinion in the meeting that if new situations emerged... the five permanent members of the broader Council would lack the political will to deliver troops and would limit themselves to condemnatory resolution”<sup>121</sup>. The concerns of many states seemed to be affirmed with the illegal invasion of Iraq in 2003, which was justified in part by Western powers through humanitarian rationale<sup>122</sup>. This created what many framed as a ‘poisonous atmosphere’ with timing playing a major role in how R2P was shaped and constrained<sup>123</sup>. The Indian Ambassador to the UN challenged the concept’s title of R2P as ‘patronizing and offensive’, China announced its ‘deep reservations’, while Russia followed with its condemnation of an idea that it argued was already covered within existing law and institutions<sup>124</sup>. In January 2005, the 115 Member States of the Non-Aligned Movement asserted their “rejection of the ‘right’ of humanitarian intervention, which has no basis either in the UN Charter or in international law”<sup>125</sup>. Even more assertive proponents of civilian protection at the international level such as the United States, echoed concerns surrounding any responsibility that implied a duty for states to intervene – asserting that

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<sup>120</sup> Ayoob, ‘Humanitarian intervention and state sovereignty’.

<sup>121</sup> Jennifer M. Welsh, ‘Conclusion: The Evolution of Humanitarian Intervention in International Society’ in Jennifer M. Welsh (ed.), *Humanitarian Intervention and International Relations* (Oxford: Oxford University Press, 2006), pp. 185, 210.

<sup>122</sup> Michael Ignatieff, ‘Why are we in Iraq?; (And Liberia? And Afghanistan?)’, *The New York Times*, 7 September 2003, accessed 7 April 2015, <http://www.nytimes.com/2003/09/07/magazine/why-are-we-in-iraq-and-liberia-and-afghanistan.html>; Gareth Evans, ‘When is it right to fight?’, *Survival* 46(3) (2004), 63.

<sup>123</sup> Weiss, *Humanitarian Intervention: Ideas in Action*, p. 125.

<sup>124</sup> Bellamy, *Global Politics and the Responsibility to Protect*, p. 23.

<sup>125</sup> Olivier Corten, *The Law Against War: The Prohibition on the Use of Force in Contemporary International Law* (Portland, OR: Hart Publishing, 2010), p. 521.

any responsibility to protect should be framed as a moral responsibility rather than legal obligation<sup>126</sup>. This illustrates the two sides of the R2P argument in that some actors were concerned for the potential expansion of international law which provided a right to intervene, while others seemed apprehensive surrounding any potential obligation that required risking lives and resources—in part, illustrating the normative basis of nonintervention as a rule and shaping the articulation of R2P. Where these dynamics was particularly influential was through negotiations leading up to the 2005 World Summit and its articulation in the SOD.

While unanimously endorsed by global heads of state and government at the 2005 World Summit, negotiations and strategic bargaining recast a roughly 80-page document into a few consolidated paragraphs. Criteria surrounding the use of armed force and just war principles were entirely dropped with the idea of General Assembly or regional organizational authorization (any authority outside of the UN) to legitimize coercive military measures, unambiguously removed. Furthermore, those just cause threshold criteria were changed from ‘large scale loss of life’ under the two wider categories, to genocide, war crimes, ethnic cleansing, and crimes against humanity. It is important to note that the crimes of genocide, war crimes, and crimes against humanity were already embedded in existing international law before the SOD negotiations – with ethnic cleansing widely constituting one of the other three crimes<sup>127</sup>. Thus, while framed as ‘revolutionary’, R2P’s inclusion in the SOD was widely endorsed “precisely because it was not seen as transformational”<sup>128</sup>. Removing much of the ICISS report’s substance, the exclusion of the just war criteria, refinement of the ‘threshold requirements’, and affirmation of existing institutional framework meant that the norm articulated little

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<sup>126</sup> John R. Bolton, ‘Letter from the Representative of the United States of America to the United Nations regarding 2005 World Summit Outcome Document’, 30 August 2005, accessed 16 May 2015, <http://www.responsibilitytoprotect.org/index.php?module=uploads&func=download&fileId=219>.

<sup>127</sup> UN Secretary-General, ‘Implementing the Responsibility to Protect’, p. 5.

<sup>128</sup> Welsh, ‘Norm contestation and the Responsibility to Protect’, 373.

diminution of nonintervention. Even still, as Alex Bellamy outlines, much of the international community remained skeptical after 2005 – seen to having only ‘mimicked’ support at the World Summit or having believed that it had been ‘watered down so much as to make it practically meaningless’ – affirming the Security Council as the only legitimate authority while addressing crimes already seen as existing within international law<sup>129</sup>.

Immediately following the World Summit, several states, particularly within the G77 and Non-Aligned Movement echoed their outright hostility. India, Cuba, Sudan, Venezuela, Pakistan and Nicaragua among others argued after the World Summit that they had not in-fact endorsed the norm, but rather agreed for further discussion<sup>130</sup>. As Olivier Corten highlights surrounding the SOD:

A review of the debates over the adoption of the text further confirms the extreme reluctance of States to admit the possibility of a right of humanitarian intervention. Upon examination it can be observed that the balance of power at the turn of the century has not only not been challenged but has become accentuated in the sense of insistence on compliance with the collective security mechanisms provided for by the Charter<sup>131</sup>.

While the spectrum of non-coercive measures including diplomatic condemnation, economic sanctions, and peacekeeping or other activism with regime consent have been widely embraced in a number of cases with invocation of R2P. However, as humanitarian crises have emerged, the international community has recurrently disputed the legitimacy

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<sup>129</sup> Bellamy, *Global Politics and the Responsibility to Protect*, p. 25.

<sup>130</sup> Alex J. Bellamy, ‘The Responsibility to Protect- Five years on’, *Ethics and International Affairs* 24(2) (2010), 143-169.

<sup>131</sup> Corten, *The Law Against War*, 521.



of intervention, asserting the necessity for peaceful resolutions tied to government consent. Although at times blurred particularly surrounding ‘coerced consent’ or failed governance in which the state-authority is unclear, recent cases of implementation have largely affirmed nonintervention through requiring the consent of the recognized state authorities<sup>132</sup>. The consensus underwriting the 2005 SOD as well as state behavior since affirms this interpretation – through making economic sanctions and peace operations with government consent or diplomatic measures more decisive through early warning mechanisms. As Alex Bellamy highlights, although the UN has only recently begun to develop more explicit mechanisms bringing ‘atrocities prevention and human protection lenses to bear in policymaking’, there is some evidence that the “establishment of modern early-warning, assessment and convening capacities can have a positive effect on policy planning and decisionmaking”<sup>133</sup>. Furthermore, Alexandra Stefanopoulos and George Lopez outline, through R2P’s development, there has been an evolutionary shift of targeted sanctions – becoming smarter in what and whom they target as well as directed in scope at the four mass atrocity crimes outlined in the SOD since 2005<sup>134</sup>. Ongoing contestation has then served as a means of functionary shaping and clarifying the norm’s meaning and scope across international society, which has been reflective of state behavior.

Through this lens, the invocation of R2P outlines a seeming solidarist acceptance of the first and second pillars. In many ways, the first pillar is an affirmation of nonintervention, articulating that responsibility to protect exists firmly with the state. This illustrates a

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<sup>132</sup> Ian Johnstone, ‘Managing consent in contemporary peacekeeping operations’, *International Peacekeeping* 18(2) (2011), 168-182; Alex J. Bellamy and Paul D. Williams, ‘The new politics of protection? Côte d’Ivoire, Libya and the responsibility to protect’, *International Affairs* 87(4) (2011), 825-850.

<sup>133</sup> Alex J. Bellamy, ‘Libya and the Responsibility to Protect: The exception and the norm’, *Ethics and International Affairs* 25(3) (2011), 264.

<sup>134</sup> Alexandra Dos Reis Stefanopoulos and George A. Lopez, ‘From coercive to protective tools: The evolution of targeted sanctions’ in Monica Serrano and Thomas G. Weiss (eds.), *The International Politics of Human Rights: Rallying to the R2P Cause?* (New York: Routledge, 2014), p. 48-66.

thick acceptance of state government's obligation to protect their populations from egregious abuses of their human rights – at least in the specific area of mass atrocity crimes defined as genocide, ethnic cleansings, crimes against humanity and war crimes attached not only to the moral value in limiting such behaviors, but their detrimental impact to wider international order through their spillover effects. Furthermore, aligned with Pillar two, when states have requested outside assistance from the international community in response to atrocities committed within its borders, the projection of force has been arguably less politically contentious as Mali and Yemen among others have illustrated, with international support mirroring force contributions from regional and international powers. Among those cases in which R2P has been invoked within UNSC resolutions, almost all of its roughly thirty explicit references have been in categorical resolutions, or when dealing in specific cases relating to Pillar one with iterations of 'primary responsibility rests with the state'<sup>135</sup>. Several have also emerged under Pillar two, with the UNSC invoking R2P with the authorization of several international peace missions - in South Sudan under Resolution 1996 (2011), in Mali under Resolution 2085 (2012), and the Central African Republic under Resolution 2149 (2014) tied to recognized state authority consent<sup>136</sup>. The principle third pillar applications have been addressed perhaps most clearly through diplomatic and economic sanctions to include ICC referrals with the only explicit case of UNSC authorized intervention under Pillar three Libya in 2011, and to a lesser extent 'reaffirming the primary responsibility of each state to protect its civilians' in Resolution 1975 (2011) authorizing civilian protection measures for an existing peacekeeping force in response to an emergent crisis in Cote D'Ivoire in 2011. However, contestation has continued to encircle arguments against expansive normative developments creating permissive expansion of rules regarding the

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<sup>135</sup> Global Centre for the Responsibility to Protect, 'UN Security Council Resolutions Referencing R2P', last modified 28 May 2015, <http://www.globalr2p.org/resources/335>.

<sup>136</sup> See S/Res/1996 8 July 2011; S/RES/2085 19 December 2012, S/RES/2149 10 April 2014.

projection of force – highlighting how the norm of nonintervention may serve as a lens to address inconsistent protection measures under R2P.

The first case of mass atrocity crimes to fall under the purview of R2P was Sudan in 2003. R2P was argued by the Sudanese regime as a ‘Trojan Horse’ or in essence a neo-imperial form of interference in sovereign affairs laundered in the terminology of human rights<sup>137</sup>. Even still, international actors widely condemned the regime for its failure to protect and responded with a spectrum of measures including UNSC resolutions directly invoking R2P, economic sanctions, and referral of the situation to the International Criminal Court (ICC). Under the weight of unheralded domestic activism through NGOs such as the Save Darfur Coalition with millions of supporters and leading public figures, the United States and other Western powers were cited for having failed to halt the crisis<sup>138</sup>. However, Sudan did reflect growing legitimacy of R2P through vocal condemnation and a spectrum of coercive measures. The US in particular played a major role in implementing sanctions, pushing within the UNSC and other bodies for greater coercive action, and playing an important mediating role in the conflict<sup>139</sup>. While the lack of humanitarian intervention in Sudan has been attributed to political alliance interests, concerns for wider destabilization in regional countries bordering Sudan, and Western troop contributions already worn thin across Afghanistan and Iraq, the norm of nonintervention can also be seen as pushing back on the emerging norm of R2P – with the projection of military force for humanitarian purposes devoid of regime consent argued as an illegitimate behavior by a wide body of international actors<sup>140</sup>. When the UNSC did authorize a peacekeeping mission citing R2P in Resolution 1706 (2006), the

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<sup>137</sup> Alex J. Bellamy, ‘Responsibility to Protect or Trojan horse? The crisis in Darfur and humanitarian intervention after Iraq’, *Ethics and International Affairs* 19(2) (2005), 31-54.

<sup>138</sup> De Waal, ‘Darfur and the failure of the responsibility to protect’.

<sup>139</sup> Lee J. M. Seymour, ‘Let’s bullshit! Arguing, bargaining and dissembling over Darfur’, *European Journal of International Relations* 20(3) (2014), 572.

<sup>140</sup> Evans, *The Responsibility to Protect: Ending Mass Atrocities Once and For All*, p. 62.

deployment of troops was marked as conditional on government consent, which was not forthcoming. A year later, the UNSC adopted Resolution 1796 (2007). While this resolution did bring about a joint UN-AU peacekeeping mission to end violence in Darfur, it was only with acceptance from the Sudanese government. Under the opposition of China and Russia in the UNSC and wider number of international powers to the foreign projection of military force, the crisis in Sudan resulted in mass atrocity crimes, with the UNSC authorized lacking consensus for intervention under R2P.

International responses to humanitarian crises in which R2P has been invoked illustrates more than a failure of norms to influence state behavior, but rather outlines how R2P exists alongside both normative and non-normative considerations<sup>141</sup>. Whether intervention occurs in cases of egregious human rights violations is subject to a host of factors attached to the parallel elements of political resolve and military capability. The force requirement to intervene internationally is crucially limited to a number of powerful states concentrated around the P5 as well as institutional actors and regional bodies relative to each case. One comprehensive study found that “even when there is political will, forces capable of humanitarian intervention missions may not be available”<sup>142</sup>. Military overstretch of those powers with international force projection capabilities then provides contextual constraints to individual cases. While the AU, EU, US, ECOWAS, NATO, and UN in particular have more recently developed greater operational planning strategies for intra-state peacemaking and civilian protection operations – in itself a sign of R2P’s salience – the nature of the current international system places very real physical constraints on humanitarian intervention<sup>143</sup>. Furthermore, even when military capacity and political will are met at the international level, there are cases in which

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<sup>141</sup> Chesterman, *Just War or Just Peace?*, p. 231; Welsh, ‘Implementing the ‘Responsibility to Protect’, p. 137.

<sup>142</sup> Victoria K. Holt, *The Responsibility to Protect: Considering the operational capacity for civilian protection* (Washington D.C.: Stimson Centre, 2005), p. 10.

<sup>143</sup> Weiss, *Humanitarian Intervention: Ideas in Action*, p. 19.

imminent or ongoing mass atrocity crimes would not lead to an alleviation of human suffering and perhaps make the situation worse. As Roland Paris outlines, any interpretation of case-by-case basis and manifest failure must address each crisis independently. Even with removal of the Just War principles from the SOD, any intervention under R2P is inherently linked to considerations of proportionality and reasonable prospects, in which “faithful application of the R2P principles may entail decisions to *forgo* intervention, even in the case of a looming or ongoing mass atrocity. A measure of selectivity, based on the calculations of expected consequences, already seems to be built into the doctrine”<sup>144</sup>. The decision to intervene then must reflect a consequentialist approach that requires a level of implicit inconsistency and recognition that projecting military force will not solve every case of imminent or ongoing mass atrocity crimes. As Kudrat Virk highlights, “the matter – to intervene or to not intervene – is not reducible to a stark, dogmatic choice between sovereignty and human rights, but also concerns the best means to achieve humanitarian outcomes”<sup>145</sup>. From this approach, intervention serves as a ‘false test’ of diffusion, with even the norm’s internalization far from a causal factor in agent’s response to mass atrocities<sup>146</sup>.

Addressing recurrent cases of imminent or ongoing mass atrocities highlights the expansive normative and non-normative considerations surrounding the projection of force. With domestic factors, alliance interests, material power considerations, and norms such as R2P, various contextual elements influence conditions leading to specific policy decisions. However, tracing the social discourses through recurrent cases has provided a

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<sup>144</sup> Roland Paris, ‘The “Responsibility to Protect” and the structural problems of preventive humanitarian intervention’, *International Peacekeeping* 21(5) (2014), 578.

<sup>145</sup> Kudrat Virk, ‘India and R2P’s burdens of dissent and accommodation’ in Monica Serrano and Thomas G. Weiss (eds.), *The International Politics of Human Rights: Rallying to the R2P Cause?* (New York: Routledge, 2014), p. 133.

<sup>146</sup> Martha Finnemore, ‘Constructing Norms of Humanitarian Intervention’ in Peter Katzenstein (ed.), *The Culture of National Security: Norms and Identity in World Politics* (New York: Columbia University Press, 1996), p. 158.

lens to address how specific norms have informed the decision of international actors. Through these cases, R2P has been articulated as a normative practice, reflective of a new normative architecture in which imminent and ongoing mass atrocity crimes have been addressed and matched with international responses. However, these cases also highlight how nonintervention as a norm has also been invoked, with force projection without regime consent argued as a practice that would not yield positive humanitarian outcomes or secure wider international order as a standard of behavior. Normative contestation between the two has illustrated discrete periods of legitimation in which the boundaries of specific norms within a normative architecture have been illuminated in relation to each other. This helps provide insight into how norms are shaped through the interaction with conflicting structures, behavior as well as outcomes shaping future interactions.

## **Conclusion**

The Responsibility to Protect exists as a modern manifestation of international conceptions surrounding the moral basis of the state and legitimacy of international protection measures. As many scholars have outlined, this development may illustrate the erosion of traditional conceptions of sovereignty through a refined scope of the norm of nonintervention<sup>147</sup>. However, while the emergence of R2P has been highlighted by its incredible speed – gaining a substantive hold within the popular political lexicon surrounding human rights protections – the contestation of nonintervention has reciprocally shaped R2P’s meaning and serves as a lens to address ongoing state practice. Focusing on the post-2005 period after the inclusion of R2P in the SOD with more clarified institutionalized meaning, several major cases illustrate egregious violations of

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<sup>147</sup> See: Jamnejad and Michael Wood, ‘The principle of non-intervention’, p. 348; Joel P. Trachtman, *The Future of International Law: Global Government* (Cambridge: Cambridge University Press, 2013), p. 118. Carsten Stahn, *The Law and Practice of International Territorial Administration: Versailles to Iraq and Beyond* (Cambridge: Cambridge University Press, 2008), p. 31; Jack Donnelly, *Universal Human Rights in Theory and Practice (2<sup>nd</sup> Ed.)* (Ithaca: Cornell University Press, 2003), p. 250.

one or more of the four mass atrocity crimes. While Sri Lanka, Libya, and Syria are far from the only cases of global human rights violations, they serve as a relevant cross section with cases of both action and inaction in various global regions with definite cases of mass atrocity crimes. Tracing the contestation of nonintervention through these recurrent cases illustrates the norm's continued salience, informing the decisions of state actors amongst other complex considerations and outlining the modern conceptual boundaries of R2P.

## Chapter 3: Sri Lankan Tigers

Addressing the contestation of nonintervention, this chapter serves as the first empirical case study of anticipated or ongoing mass atrocity crimes in which NGO's and Member States have invoked the international responsibility to protect. In early 2009, the Sri Lankan government waged the final stages of its three decade long civil war against the Liberation Tigers of Tamil Eelam (LTTE or Tamil Tigers) with unrestricted warfare leading to the death of an estimated 40-70,000 civilians<sup>1</sup>. Focusing on the period of concentrated civilian atrocities from January to May 2009, the Sri Lankan Army used high-caliber weaponry and widespread shelling against civilian and humanitarian positions as well as within consecutive government demarcated No-Fire Zones<sup>2</sup>. While the necessity for civilian protection was emphasized by member states throughout the

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<sup>1</sup> Norah Niland, *Inhumanity and Humanitarian Action: Protection Failures in Sri Lanka* (Medford: Feinstein International Center, Tufts University, 2014), p. 1.

<sup>2</sup> U.S. Department of State, 'Report to Congress on Incidents During the Recent Conflict in Sri Lanka', 22 October 2009, <http://www.state.gov/documents/organization/131025.pdf>.



final months, UN institutional organs never formally addressed the atrocities during the crisis. This chapter first outlines the background to the conflict and nature of human rights violations through the final stages of the government's campaign – setting the stage surrounding those domestic factors that contributed to the government's final campaign and positions of international actors. The chapter then transitions to address the international response. Tracing potential justifications for how nonintervention was so firmly sustained as an international norm, the chapter highlights the limited knowledge of conditions on the ground, UN institutional failures, and political environment of the Global War on Terror (GWOT) with greater-regional support for the government's campaign. Apathy and opposition in the UNSC paralleled limited discourse surrounding R2P, with international failure to address the crisis in terms of substantive protection measures.

### **Historical Background to the Conflict**

Sri Lanka has roughly twenty million inhabitants representing four of the major world religions and indigenous populations tracing their roots across the globe. In the last complete census carried out by the Sri Lankan government in 1981, the majority of Sri Lankans (74 percent), were Sinhalese-speaking Buddhists, with a further 18 percent Tamil-speaking Hindus, and the remainder mainly Tamil-speaking Muslims and Christians<sup>3</sup>. While Sri Lanka's insecurity is often framed in terms of historic ethnic antagonism, conflict generated by the process of postcolonial state building is in many ways more pervasive – illustrating decades of sectarian discrimination, clientelism, and majoritarian consolidation of government power<sup>4</sup>.

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<sup>3</sup> Sarah Holt, *Aid, Peacebuilding and the Resurgence of War: Buying Time in Sri Lanka* (New York: Palgrave Macmillan, 2011), p. 49.

<sup>4</sup> Edward Newman, *Understanding Civil Wars: Continuity and Change in Intrastate Conflict* (New York: Routledge, 2014), p. 147.

Following independence in 1948, Sri Lanka was heralded as a success story for peaceful transformation to a postcolonial democracy – gradually devolving into a conflict-affected state<sup>5</sup>. As Professor Sumantra Bose outlines, “the post-colonial Sri Lankan state advanced the idea of a monolithic, unitary sovereignty, but without a corresponding development of equal rights over the exclusive right of the ‘majority community’”<sup>6</sup>. The limited constitutional mechanisms that had existed to secure minority rights were removed as new constitutions, constitutional amendments, and laws were shaped to majority Sinhalese’ interests<sup>7</sup>. Individual laws were particularly contentious, serving to limit Tamil employment and place a quota on the number of Tamil students in national universities<sup>8</sup>. The ‘Sinhala Only Act’ emerged in 1956, changing the official language from English to Sinhalese, while a further Prevention of Terrorism Act in 1978 removed civil liberties and allowed long-term detentions under emergency regulations<sup>9</sup>. Serious outbreaks of ethnic rioting in 1977, 1979, and 1983 led to thousands of Tamil deaths, which paralleled government-imposed regulations that removed civil liberties, as well as the burning of the Jaffna Public Library in 1981 that contained over 90,000 volumes of rare Tamil manuscripts<sup>10</sup>. “For the Tamils it was the beginning of a systematic cultural genocide which has continued to the present with the destruction or occupation by the military of Tamil schools, colleges, and other academic institutions”<sup>11</sup>. Political marginalization and

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<sup>5</sup> K.M. De Silva, *Reaping the Whirlwind: Ethnic Conflict, Ethnic Politics in Sri Lanka* (New Delhi: Penguin Books, 1998), pp. 5-6.

<sup>6</sup> Sumantra Bose, *States, Nations, Sovereignty: Sri Lanka, India, and the Tamil Eelam Movement* (New Delhi: Sage Publications, 1994), p. 47.

<sup>7</sup> Ananda Wickremeratne, *Buddhism and Ethnicity in Sri Lanka: A Historical Analysis* (Kandy: International Centre for Ethnic Studies, 1995), p. xxxi.

<sup>8</sup> Jack D. Eller, *From Culture to Ethnicity: An Anthropological Perspective on International Ethnic Conflict* (Ann Arbor: University of Michigan Press, 1999), p. 120.

<sup>9</sup> Wickremeratne, *Buddhism and Ethnicity in Sri Lanka*, xxxi.

<sup>10</sup> Bose, *States, Nations, Sovereignty*, 73.

<sup>11</sup> A. Jeyaratnam Wilson, *Sri Lankan Tamil Nationalism: Its Origins and Development in the Nineteenth and Twentieth Centuries* (London: Hurst and Company, 1994), p. 160.

targeted violence began to shift the nature of Sri Lanka's domestic struggle with the formation of increasingly violent Tamil nationalist insurgency.

The civil war between Sri Lankan government forces and Tamil separatists gained momentum in 1983<sup>12</sup>. Known as Black July, the ambush of 13 government soldiers outside the northern city of Jaffna resulted in a wave of anti-Tamil violence that spread across the island 'shaking the moral foundations' of Sri Lankan civil society<sup>13</sup>. Tamils were openly targeted in the streets, ripped from cars and their homes by Sinhalese mobs and security forces across the island as well as the capital Colombo. Not only did these actions fully expose ethno-national fissures within Sri Lankan society, but marked the turn towards overt militarism and guerrilla insurgency.

Emerging as the principle opposition group through the 1980-90s, the LTTE used a mix of traditional military and terrorist tactics, which enabled its troops to hide amongst the population and launch devastating attacks. Suicide bombings were widespread and consistent, against targets including military bases, government buildings, public busses, train stations, and airports. Contrary to the perception that Islamic fundamentalists used the first suicide terror tactics, Robert Pape highlights that it was in fact the LTTE with their contingent known as the Black Tigers that first began the practice of 'tactical suicide bombings' as early as 1987 against a wide range of targets for political gains<sup>14</sup>. Between the first attack in 1987 and 2009, the Tiger's launched 273 suicide attacks – not including

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<sup>12</sup> Mahinda Deegalle, 'Sinhala Ethno-nationalism and Militarization in Sri Lanka' in Vladimir Tikhonov and Torkel Brekke (eds.), *Violent Buddhism: Militarism and Buddhism in Modern Asia* (New York: Routledge, 2012), p. 24.

<sup>13</sup> Daniel W. Kent, 'Onward Buddhist Soldiers: Preaching to the Sri Lankan Army' in Michael K. Jerryson and Mark Juergensmeyer (eds.), *Buddhist Warfare* (Oxford: Oxford University Press, 2010), p. 160.

<sup>14</sup> Robert A. Pape, 'The Strategic Logic of Suicide Terrorism', *American Political Science Review* 97(3) (2003), 4.

the reported waves launched against SLA positions in the final months<sup>15</sup>. Among the most note-worthy include an attack on Colombo's International Airport in 2001, and the 1996 bombing of Colombo's Central Bank which killed ninety-one and injured almost 1,500<sup>16</sup>. Political assassinations were also widespread, including several leaders at the international level - Indian Prime Minister Rajiv Gandhi in 1991 and Sri Lankan President Ranasinghe Premadasa in 1993.

By early 2001, the LTTE claimed nearly a third of the territory of Sri Lanka - establishing a near military parity with government forces – building up a large army, navy, merchant fleet and were the first insurgency to have a nominal air force with Czech-made light aircraft<sup>17</sup>. With an administrative capital in Kilinochchi, border guards, customs officials, offices in London and Paris, and international NGO's, the LTTE began building institutions mirroring that of a de facto state:

The Tigers built a parallel system of government that included courts of law, municipal administration, a police force, a customs service, a tax and legislative code, a banking system, and a television and radio network. They sought recognition for their homeland, and took heart from the internationally backed independence movement for Timor Leste and Kosovo<sup>18</sup>.

These military and political gains were leveraged for greater autonomy under a Norwegian-backed Cease Fire Agreement (CFA) beginning in 2001. A group of Western powers known as the Tokyo Donor Group pegged \$4.5 billion in development aid to

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<sup>15</sup> Gordon Weiss, *The Cage: The Fight for Sri Lanka and the Last Days of the Tamil Tigers*. (London: Vintage Books, 2011), p. 77.

<sup>16</sup> Francis Harrison, F. (2012) *Still Counting the Dead: Survivors of Sri Lanka's Hidden War*. London: Portobello Book, 2012), p. xx.

<sup>17</sup> Kristian Stokke, 'Building the Tamil Eelam state: emerging state institutions and forms of governance in LTTE-controlled areas in Sri Lanka', *Third World Quarterly* 27(6) (2006), 1022.

<sup>18</sup> Weiss, *The Cage*, 8.

positive advancement of the peace process<sup>19</sup>. While initially successful in promoting cooperation, fractures began to emerge in late-2003 after a prolonged period of negotiations failed to bring what the LTTE viewed as substantive change. While the Sri Lankan government viewed the CFA and negotiations as a means to transform the LTTE into a more political organization – disarming, demobilizing, and returning to the government’s fold – the Tigers were never committed to a federal solution and desired more substantive autonomy<sup>20</sup>. The LTTE largely left negotiations in 2003-2004 – with the government functionally following suit, while not formally abrogating the peace process until January 2008<sup>21</sup>.

However, a number of internal and international developments set the stage for the government’s pursuit of a military victory. The 2004 defection of the LTTE’s Eastern Commander with six thousand cadre contributed to the loss of roughly 50 percent the LTTE’s territorial resource base, a large portion of its standing military, and widespread intelligence losses<sup>22</sup>. Furthermore, in 2005, an LTTE-ordered boycott in the north and east contributed to the relatively narrow national electoral victory of Mahinda Rajapaksa<sup>23</sup>. A rural politician from the country’s southern coast, Rajapaksa was supported by a political base of hardline Sinhalese nationalists and Buddhist clergy, building a quasi-autocratic regime through expanded executive powers and close political appointments. “Rajapaksa’s centralization of power, erosion of the judiciary’s independence, and lethal harassment of media personnel who are not pro-government,

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<sup>19</sup> Amita Shastri, ‘Ending Ethnic Civil war: The Peace Process in Sri Lanka’, *Commonwealth & Comparative Politics* 47(1) (2009), 86.

<sup>20</sup> Jonathan Goodhand and Oliver Walton, ‘The limits of liberal peacebuilding? International engagement in the Sri Lankan peace process’. *Journal of Intervention and Statebuilding* 3(3) (2009), p. 319.

<sup>21</sup> Shastri, ‘Ending Ethnic Civil War’, 95.

<sup>22</sup> René M. Bakker, Jörg Raab, and H. Brinton Milward, ‘A Preliminary Theory of Dark Network Resilience’, *Journal of Policy Analysis and Management* 31(1) (2012), 49.

<sup>23</sup> M.D. Nalapat, ‘Defeating Terrorism – Why the Tamil Tigers lost Eelam – And How Sri Lanka Won the War’, *The Sentry*, 28 March 2011, accessed 18 October 2014, <http://www.jinsa.org/publications/global-briefing/defeating-terrorism-why-tamil-tigers-lost-eelamand-how-sri-lanka-won-wa>.

transformed Sri Lanka's particular style of democracy into what is, effectively, a move towards elected tyranny"<sup>24</sup>. Beginning expansive military investment, Colombo increased its defense expenditure and cross-border military ties focusing on elite training and the acquisition of new military technology that dominated the national budget<sup>25</sup>. Using an ultra-nationalist narrative, the Rajapaksa government branded opponents as well as critical journalists 'terrorists' with widespread detention, disappearance, torture, and sexual assault paralleled a violent decline of civil liberties and freedom of the press in the government's aims to defeat the LTTE<sup>26</sup>. In July 2006, the Tigers closed the sluice gates to a reservoir in the Eastern Province that provided irrigation water to thousands of farmers in government-held areas. Launching air and ground attacks in response, the entire Eastern Province was back in government control by mid-2007 with wider conflict imminent<sup>27</sup>.

### **Final Stages of the Sri Lankan Civil War**

The Sri Lankan Government officially began their final campaign against Tamil separatists in January 2008, when some 50,000 elite members of the Sri Lankan army began a methodical offensive, reducing the area of Tiger control in the North-East of the island from seven thousand square miles to some thirty square miles by the end of 2008<sup>28</sup>. Surrounded in a shrinking corner with the Sri Lankan air force overhead and naval forces offshore, the LTTE retreated deeper into the northern Vanni region – drawing more than

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<sup>24</sup> Niland, *Inhumanity and Humanitarian Action*, 8.

<sup>25</sup> Panel of Experts, 'Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka', 31 March 2011, [http://www.un.org/News/dh/infocus/Sri\\_Lanka/POE\\_Report\\_Full.pdf](http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf), p. 43.

<sup>26</sup> International Press Freedom and Freedom of Expression Mission, 'Media Under Fire: Press Freedom Lockdown in Sri Lanka', December 2008, [http://www.rsf.org/IMG/pdf/rapport\\_sri\\_Lanka.pdf](http://www.rsf.org/IMG/pdf/rapport_sri_Lanka.pdf).

<sup>27</sup> Weiss, *The Cage*, 94.

<sup>28</sup> Richard D. Kaplan, *Monsoon: The Indian Ocean and the Future of American Power* (New York: Random House, 2010), p. 203.

360,000 civilians in tow<sup>29</sup>. Denying access to international media, INGO staff, or international UN workers into the conflict zone, the government unilaterally announced the formation three consecutive government-demarcated No-Fire Zones (NFZs) - widely broadcasted safe-areas for civilians to seek refuge<sup>30</sup>. On 20 January, the Sri Lankan government announced the creation of a first NFZ<sup>31</sup>. Driving further into the conflict zone, and while claiming to carry out a 'humanitarian rescue operation', the Sri Lankan Army used high-caliber weaponry and widespread shelling against civilian and humanitarian positions including within NFZs<sup>32</sup>. As the UN Panel of Experts would later conclude:

From as early as 6 February 2009, the SLA continuously shelled within the area that became the second NFZ, from all directions, including land, sea and air. It is estimated that there were between 300,000 and 330,000 civilians in that small area. The SLA assault employed aerial bombardments, long-range artillery, howitzers and MBRLs [Multi Barrel Rocket Launchers] as well as small mortars, RPGs [Rocket Propelled Grenades] and small arms fire<sup>33</sup>.

Withholding water, food, and particularly medical aid from entering the conflict zone, the Sri Lankan government brought untold suffering while continuing to pound LTTE as well as humanitarian positions in an effort to claim further territory. Gordon Weiss, a UN Spokesman in Sri Lanka at the time, highlighted: "Hospitals and medical points were struck so often during these months, and with such repeated accuracy, that Tamil

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<sup>29</sup> Panel of Experts, 'Report of the Secretary-General's Panel of Experts on Accountability', 28.

<sup>30</sup> Ibid.

<sup>31</sup> Associated Press, 'Military declares civilian safety zone in rebel area', *The Guardian*, 21 January 2009, accessed 2 July 2015, <http://www.theguardian.com/world/2009/jan/22/sri-lanka-military>.

<sup>32</sup> Jon Lee Anderson, 'Death of the Tiger: Sri Lanka's brutal victory over its Tamil insurgents', *The New Yorker*, 17 January 2011, accessed 6 October 2015, <http://www.newyorker.com/magazine/2011/01/17/death-of-the-tiger>.

<sup>33</sup> Panel of Experts, 'Report of the Secretary-General's Panel of Experts on Accountability', Para. 100.

government doctors busy stemming the loss of life asked the ICRC to conceal the coordinates of the make-shift medical tents from the government”<sup>34</sup>. For their part, the LTTE were implicated in holding the population captive, at times through the use of force – placing artillery, soldiers and, supplies near civilian positions as human shields, while forcibly-recruiting the Tamil population, including children as young as twelve to fight on the front lines<sup>35</sup>. “Civilians trapped in the fighting faced a double peril: if they fled, they risked being killed by the LTTE; if they stayed, they were in danger of succumbing to the government’s bombardment”<sup>36</sup>. Caught between and within belligerent forces, civilians were killed as a result of actions from both sides, yielding an estimated 1,000 casualties per day in the final month<sup>37</sup>. Unrestricted warfare was left un-answered and even facilitated the regime’s defeat of the LTTE. Regaining territorial control of the entire Sri Lankan landmass, the government declared victory on 19 May after Velupillai Prabhakaran, the leader of the LTTE, was found dead on the beach of the Vanni<sup>38</sup>. Funneled those that did escape from the conflict zone into government-ran internally displaced population (IDP) camps functioned as a means of limiting international access to the population and vetting those that escaped of LTTE members – with the camps well documented for torture, sexual abuse, and widespread disappearances.

## **International Response**

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<sup>34</sup> Weiss, *The Cage*, 183

<sup>35</sup> U.S. Department of State, ‘Report to Congress on Incidents During the Recent Conflict in Sri Lanka’, 41.

<sup>36</sup> Alex J. Bellamy, *Global Politics and the Responsibility to Protect: From Words to Deeds* (New York: Routledge, 2011), p. 60.

<sup>37</sup> Louis Charbonneau, ‘World “may never know” how many died in civil war’, *Die Welt*, 30 May 2009, accessed 6 January 2015, <http://www.welt.de/english-news/article3831743/World-may-never-know-how-many-died-in-civil-war.html>.

<sup>38</sup> Matthew Weaver and Gethin Chamberlain, ‘Sri Lanka declares end to war with Tamil Tigers’, *The Guardian*, 19 May 2009, accessed 8 August 2015, <http://www.theguardian.com/world/2009/may/18/tamil-tigers-killed-sri-lanka>.



The case of Sri Lanka marks a seminal moment for its lack of international protection measures. In the face of tens of thousands of civilian deaths, “Member States did not hold a single formal meeting on Sri Lanka, whether at the Security Council, the Human Rights Council or the General Assembly”<sup>39</sup>. The UN bodies responsible for collective security and the legality of the international use of force illustrated a forceful support against formal consideration by key members – even permeating through to many Western powers widely supportive of international civilian protection. Sir John Holmes, the UN Under Secretary for Humanitarian Affairs later articulated,

There was a bit of a diplomatic dance around all this, with everybody knowing that the end of this was going to be an inevitable military victory for the government and the inevitable defeat of the LTTE, and it was a question of waiting for that to happen, hoping it happened as quickly as possible and that it happened with as few civilian casualties as possible... That may sound a bit cynical, but that was the reality I was observing<sup>40</sup>

As Sri Lanka’s conflict fully kicked off with large-scale civilian deaths in January 2009, Israel’s month long siege of Gaza was coming to a close with roughly 1,000 total deaths. With Sri Lanka slower to evolve and spiking after three decades of near-steady conflict, it took several months for international diplomats to recognize the nature of atrocities. “From late 2008, a small group of non-permanent members of the Security Council had become deeply concerned by events and by early February 2009 wished the Security Council to formally consider the situation”<sup>41</sup>. When more reliable UN statistics emerged

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<sup>39</sup> Internal Review Panel, ‘Report of the Secretary-General’s Internal Review Panel on the UN’s Actions in Sri Lanka’, November 2012, accessed 10 May 2015, [http://www.un.org/News/dh/infocus/Sri\\_Lanka/The\\_Internal\\_Review\\_Panel\\_report\\_on\\_Sri\\_Lanka.pdf](http://www.un.org/News/dh/infocus/Sri_Lanka/The_Internal_Review_Panel_report_on_Sri_Lanka.pdf). Para. 33.

<sup>40</sup> Callum Macrae, ‘Sri Lanka’s Killing Fields’, *The Huffington Post*, 12 March 2012, accessed 18 June 2015, [http://www.huffingtonpost.co.uk/callum-macrae/sri-lankas-killing-fields\\_b\\_1339127.html](http://www.huffingtonpost.co.uk/callum-macrae/sri-lankas-killing-fields_b_1339127.html).

<sup>41</sup> Internal Review Panel, ‘Report of the Secretary-General’s Internal Review Panel’, 24-25.

in February 2009, the UN Secretary General Ban Ki-moon began a personal fight for protection among member states<sup>42</sup>. However, a lack of consensus from members of the UNSC resulted in the establishment of ‘informal interactive dialogue’ sessions as the primary medium for spreading information relating to atrocities and the UNSC’s responsibilities<sup>43</sup>. The briefings involved dialogue with the Under-Secretary General on Humanitarian Affairs and the Secretary General’s Chef de Cabinet following diplomatic visits to Colombo in Spring 2009. Although several delegations and Western leaders from the US, UK, Mexico, France, and Canada among others at the UN made calls for greater civilian protection in the final several months, it was evidently clear within UN bodies that there was not enough political backing for a resolution that would support any form of interference.

The recognized lack of consensus in the General Assembly and active stance against formal discussion at the Security Council led several delegations to turn towards Geneva – requesting a Special Session of the UN Human Rights Council (UNHRC). Advocating for greater information and humanitarian access to the conflict zone, a European and US-backed draft resolution sought a formal investigation of alleged human rights violations<sup>44</sup>. However, even with reliable reports of atrocities in the thousands and over 100,000 civilians trapped, it took over a month to garner the required 16 signatures to hold the Special Session – which didn’t occur until after the war had ended. Furthermore, the initial Western-backed draft resolution was set aside and replaced by one openly sympathetic to the regime and affirming nonintervention. “The 47-members body concluded the session with China joined by India, Russia, and others in passing a resolution authored by Sri Lanka (29 to 12, with 6 abstentions) that characterized the civil

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<sup>42</sup> Weiss, *The Cage*, 140.

<sup>43</sup> Internal Review Panel, ‘Report of the Secretary-General’s Internal Review Panel’, 24-25.

<sup>44</sup> Nilanthi Samaranyake, ‘Are Sri Lanka’s relations with China deepening? An analysis of economic, military, and diplomatic data’, *Asian Security* 7(2) (2011), 136.

war as a ‘domestic matter that doesn’t warrant outside interference’<sup>45</sup>. Directly outlining the salience of nonintervention as a norm, Sri Lankan sovereignty was argued as a normative shield to international actors even in their pursuit of greater information surrounding the nature of intra-state atrocities.

### **Limitations to Access and Institutional Failures**

Reliable reports of mass atrocities were restricted due to lack of access, while institutional failures led to limited initial clarity surrounding mass atrocities that could have been interpreted under R2P towards more coercive protection measures. In September 2008, the UN had made the decision to withdraw its international presence from the north after the Sri Lankan government issued an official statement that ‘it could no longer guarantee the safety of staff’ inside Tiger-controlled territory<sup>46</sup>. In actions later described as scare tactics, the main UN compound in the northern LTTE capital of Kilinochchi had been repeatedly targeted by air strikes in the lead up to government’s ground campaign through the summer of 2008<sup>47</sup>. UN national staff members were forced to remain by the LTTE, while some Tamil medical staff, and NGO staff remained with limited access. Only the International Committee of the Red Cross (ICRC) and Caritas staff maintained some international presence<sup>48</sup>. While weekly aid convoys for the World Food Program (WFP) were negotiated from October 2008 through January 2009, international UN access was entirely cutoff by February 2009.

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<sup>45</sup> Ibid.

<sup>46</sup> Internal Review Panel, ‘Report of the Secretary-General’s Internal Review Panel’, 24-25. Para. 49.

<sup>47</sup> Ibid., 48-50.

<sup>48</sup> Norah Niland, John Holmes, and Miriam Bradley, ‘Policy Debate - Humanitarian Protection in the Midst of Civil War: Lessons From Sri Lanka’, *The Graduate Institute of International and Development Studies, Geneva*, 5 February 2014, accessed 6 January 2015, <http://poldev.revues.org/1629>, para. 22.

Even with decreased access, information began to emerge in the final months pointing to a high level of civilian casualties caught amongst belligerent forces<sup>49</sup>. In late January 2009, the final WFP convoy allowed in the conflict zone became trapped with international staff documenting conditions with photographic evidence for nearly two weeks. A New York Times article highlighted: “Both sides are egregiously flouting humanitarian norms and principles, and as a result civilians are dying”<sup>50</sup>. As more severe reports started coming in from the Vanni, the UN established a Crisis Operations Group (COG) starting in February 2009 – collecting casualty data and other statistics in large part by telephone in Colombo that had to be triangulated - verified by three independent sources including a national UN employee. As the Internal Review Panel later found,

When the UN began to collate information through the COG, reports pointed to the large majority of civilian killings as being the result of Government shelling and aerial bombardment, with a smaller proportion of killings resulting from the LTTE actions. UN staff in Colombo and UNHQ had no doubt that Government attacks were killing many civilians – as demonstrated by internal correspondence and meeting minutes<sup>51</sup>

Not including casualty figures from the final week, the UN estimated 7,721 civilians killed and 18,479 injured from August 2008 to 13 May 2009<sup>52</sup>. These statistics would be later underlined as both highly contentious and overly conservative with Frances Harrison, a BBC correspondent in Sri Lanka at the time, highlighting: “The death toll

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<sup>49</sup> Human Rights Watch, ‘Sri Lanka: Stop Shelling “No Fire Zone”’: UN Security Council action needed to avert humanitarian catastrophe’, 9 April 2009, accessed 2 August 2015, <https://www.hrw.org/news/2009/04/09/sri-lanka-stop-shelling-no-fire-zone>.

<sup>50</sup> Somini Sengupta, ‘U.N. staff and hospital come under shelling as Sri Lanka fights cornered rebels’, *The New York Times*, 27 January 2009, accessed 18 October 2014, <[http://www.nytimes.com/2009/01/28/world/asia/28lanka.html?\\_r=0](http://www.nytimes.com/2009/01/28/world/asia/28lanka.html?_r=0).

<sup>51</sup> Internal Review Panel, ‘Report of the Secretary-General’s Internal Review Panel’, 19-20.

<sup>52</sup> Panel of Experts, ‘*Report of the Secretary-General’s Panel of Experts on Accountability*’, 40.

could be 55,000 if the population figure for January 2009, given by a senior Tamil civil servant, is used. A Tamil Catholic bishop did the sums using the government's own population data for late 2009 and found 146,679 people unaccounted for"<sup>53</sup>. Médecins Sans Frontières staff working in hospitals and aid clinics located just south of the conflict zone documented 'waves of civilians' and thousands of amputees in late March, with 150,000 it estimated were still in the conflict zone<sup>54</sup>. The LTTE had an incentive to inflate the numbers for increased aid and international condemnation, while the government had the opposite motivations to reduce international condemnation or the potential of foreign interference. Credible population numbers largely relied on NGO estimates and loose calculations created with population growth projections based on the last official census in 1981 – years before the mass outflow of the 1983 riots and steady stream in the war immediately following.

While international actors lacked consistent access or verifiable population statistics, the conservative estimates outlining thousands of confirmed atrocities didn't reach international media, member states, or were even discredited – limiting international momentum towards greater protection measures. After the COG began collecting detailed casualty data, the evidence was left off reports and presentation slides to embassy staff, press, and NGOs within Sri Lanka that could have spread the information globally<sup>55</sup>. While frustrating diplomatic staff and even UN officials working in Colombo, challenging the regime was known to bring even less access for aid staff - particularly within the IDP-camps. 'Trading advocacy for access' then served to benefit the regime

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<sup>53</sup> Harrison, *Still Counting the Dead*, 27.

<sup>54</sup> Médecins Sans Frontières (2009). 'Situation in rainy Sri Lanka deteriorates', 27 March 2009, accessed 10 October 2015, <http://www.msf.org.uk/article/situation-rainy-sri-lanka-deteriorates>.

<sup>55</sup> Internal Review Panel, 'Report of the Secretary-General's Internal Review Panel', 72.

and hurt the potential for protection measures<sup>56</sup>. This combination of limited access and minimal reporting meant that the only international organization with a protection mandate reduced information to press or member states – even discrediting details that did emerge in exchange for greater access. In early March 2009, the UN High Commissioner for Human Rights Navi Pillay, expressed alarm: “The current levels of civilian casualties are truly shocking, and there are legitimate fears that the loss of life may reach catastrophic levels”<sup>57</sup>. Using conservative estimates, she cited civilian deaths and population numbers for the Vanni collected by the COG. However, UN staff in Sri Lanka continued to limit international exposure to collected information - and weirdly, discredit their own numbers in the face of Sri Lankan government indictments. Immediately following Pillay’s statements, the of UN in Sri Lanka issued a statement on its website discounting the accuracy: “these figures were drawn from an internal working document which is based on information that cannot be fully, reliably, and independently assessed...”<sup>58</sup>. Institutional failures to spread accurate statistics and portray the nature of atrocities existed at the highest levels, including the UNSC within the ‘informal interactive dialogue’ sessions. Even as greater information from the COG became available to UN officials – the extent of government responsibility or breaches of international law were not communicated to member delegations. Within the UNSC, “prepared briefings made some references to international human rights and humanitarian law and political concerns but these were largely focused on the humanitarian situation. Briefings did not emphasize the responsibilities of the Government”<sup>59</sup>. As some representatives later commented, this lack of communication regarding responsibility of

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<sup>56</sup> David Keen, ‘Compromise or capitulation? Report on WFP and the Humanitarian Crisis in Sri Lanka’ in World Food Programme, *Humanitarian Assistance in Conflict and Complex Emergencies* (Rome: United Nations World Food Programme, 2009), p. 53.

<sup>57</sup> United Nations Office of the High Commissioner for Human Rights, ‘Serious violations of international law committed in Sri Lanka conflict: UN human rights chief’, 13 March 2009, accessed 2 September 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9499&>.

<sup>58</sup> Internal Review Panel, ‘Report of the Secretary-General’s Internal Review Panel’, 74.

<sup>59</sup> *Ibid.*, 81.

the government and international humanitarian law meant that the Security Council was limited in its knowledge of legal responsibility on the part of the regime that could have driven formal consideration for greater action.

The ICRC was perhaps the only internationally credible agency with knowledge of international human rights law with consistent involvement throughout the conflict. Harking back to their knowledge of Nazi concentration camps and non-disclosure during WWII, the ICRC remains an apolitical and distinctly neutral actor in cases of humanitarian crises. “In the face of inevitable brutality, and with the guarantee that they will remain silent about what they see, protagonists generally respect the neutral role of the ICRC, as well as their physical presence in the conflict theater”<sup>60</sup>. While ICRC staff exemplified selfless bravery in several cases to reduce human suffering, for those looking for greater protection measures in Sri Lanka, ‘neutrality as a form of moral bankruptcy’ perhaps rang true<sup>61</sup>. The ICRC was able to evacuate 14,000 wounded civilians and their families with small aid ships docked in shallow water off the coast through early May – but only those channeled through an LTTE ‘pass system’ with voyages approved by the government<sup>62</sup>. What is often not mentioned, is that while the ICRC avoided any type of plea for intervention, several press statements were released - particularly in cases of egregious violations of the Geneva Conventions paired with direct threats to its own staff operating in the conflict zone – providing insights as to what conditions were like on the ground. The ICRC released several press releases regarding consecutive deaths of international staff members, as well as details regarding hospital shelling, restriction of aid access, and shelling of an ICRC ship evacuating wounded in the final days of

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<sup>60</sup> Weiss, *The Cage*, 136.

<sup>61</sup> David P. Forsythe, *The Humanitarians: The International Committee of the Red Cross* (Cambridge: Cambridge University Press, 2005), p. 100.

<sup>62</sup> Panel of Experts, ‘*Report of the Secretary-General’s Panel of Experts on Accountability*’, 32.

conflict<sup>63</sup>. In the final moments of conflict, the ICRC's international director of operations, Pierre Krähenbühl, released a press statement: "our staff are witnessing an unimaginable humanitarian catastrophe... No humanitarian organization can help them in the current circumstances. People are left to their own devices"<sup>64</sup>. However, the very nature of the ICRC meant that perhaps the only humanitarian actor with consistent access, reliable data, and knowledge of internal law surrounding war crimes could not provide more formal evidence.

### **Terrorist Organization and Regime Stability**

While the Sri Lankan government's poor human rights record was used as justification for trade restrictions from Western actors, the LTTE's continued terrorist attacks post-9/11 and designation as a terrorist organization made condemnation of government actions increasingly problematic with a shifting political climate under the Global War on Terror (GWOT). Highlighting how wider international context can influence the application or influence of specific norm, the GWOT and expansive Western forces fighting across the Middle East shaped the international response to Sri Lanka's civil war. As early as 17 September 2001, Sri Lanka's then-President, Chandrika Kumaratunga, spoke out regarding disparities in reactions to terrorism between the West and developing countries – urging western powers 'to change their double standards' and support a more global-focused fight against terrorist organizations. Having lost her own right eye in a 1999 terrorist attack, she commented: "When countries like Sri Lanka fought against terrorists, developed nations worried only about human rights of terrorist

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<sup>63</sup> International Committee of the Red Cross, 'Sri Lanka: staff member killed in the conflict area', News Release No. 48/09, 5 March 2011, accessed 8 January 2015, <https://www.icrc.org/eng/resources/documents/news-release/2009-and-earlier/sri-lanka-news-050309.htm>; See also, 09/103 and 34/09 among others.

<sup>64</sup> International Committee of the Red Cross, 'Sri Lanka: humanitarian assistance can no longer reach civilians', News Release No. 09/103, 14 May 2015, accessed 8 January 2015, <https://www.icrc.org/eng/resources/documents/news-release/2009-and-earlier/sri-lanka-news-140509.htm>.



organizations”<sup>65</sup>. As a long-established and founding member of the Non-Aligned Movement, Sri Lanka used its position to highlight disparities in international rhetoric and build support for its domestic anti-terror struggle.

When details of civilian casualties were published, the Sri Lankan regime vehemently denied allegations – constructing a narrative that it was carrying out ‘the world’s largest humanitarian-rescue operation’, denying its use of heavy weaponry, while also purposefully underestimating the number of civilians trapped in the battle space<sup>66</sup>. The Sri Lankan government was seen as “anxious to deflect calls for a ceasefire and avoid a Responsibility to Protect (R2P) military intervention that, he argued, would likely result in civilian casualties”<sup>67</sup>. During a 2 March BBC *Hardtalk* interview, the Sri Lankan minister for human rights, Mahinda Samarasinghe, repeated the regime’s narrative that the army was engaged in a ‘humanitarian operation’ and was not using heavy weaponry in operations which, contrary to reports, were actually resulting in ‘zero civilian deaths’<sup>68</sup>. “Again and again throughout the following months, it denied using heavy or indiscriminate weapons and tactics, or that civilians were dying as a result... if civilians were dying at all, it was because the Tamil Tigers were shelling and shooting their own people”<sup>69</sup>. Creating consecutive NFZs, several periods of semi-observed ceasefires for ICRC evacuations from the coast, and allowing some humanitarian to trickle into the conflict zone provided the regime an aura of limited credibility. In an interview on 29 April to CNN-India, Sri Lankan President Rajapaksa commented:

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<sup>65</sup> Agence France-Press, ‘Sri Lanka wants end to “double standards” in fighting terrorism’, 17 September 2001, accessed 7 October 2014, <http://www.infolanka.com/ubb/Forum1/HTML/004404.html>.

<sup>66</sup> Keen, ‘Compromise or capitulation?’, 55.

<sup>67</sup> Niland, Holmes, and Bradley, *Policy Debate - Humanitarian Protection*, para. 10.

<sup>68</sup> Mahinda Samarasinghe, *BBC Hardtalk* by Stephen Sackur, BBC News, 3 March 2009, <http://news.bbc.co.uk/1/hi/programmes/hardtalk/7921185.stm>.

<sup>69</sup> Weiss, *The Cage*, 141.

It's proceeding like a ceasefire only. Yes, our soldiers are moving forward. So when you view all this, it looks like a real war. But we are not using our heavy weapons... Whatever we did, the government, we had a plan. Clear this area, defeat terrorism in this country, then give them a political solution<sup>70</sup>.

Outlining his desire to capture the Tiger leadership alive and allow trials including in India for the assassination of its prime minister, the Sri Lankan president confirmed the government's continued care to limit Tamil deaths and rescue Sri Lankan civilians. "Colombo thus disingenuously engaged in endless discussion of access to humanitarian aid in order to 'demonstrate good intentions', enabling it to distract the relief system while simultaneously presenting its military campaign as a 'humanitarian hostage rescue' exercise"<sup>71</sup>. Recurrently framing the conflict as a liberation struggle against terrorism, every speech delivered by President Rajapaksa between the beginning of 2008 and May 2009 contained mention of the battle against the terrorist threat<sup>72</sup>. Through this effort to publicize the status of the LTTE as a terrorist group, the government highlighted the link between the LTTE and the GWOT on an international level.

Pegging the LTTE as a terrorist organization rather than the legitimate representative of the Tamil population served as a means to delegitimize the group at the international stage, propelling international support and embedding the Sri Lankan military campaign within the wider political context of the GWOT. This made it harder for Western states to challenge the Sri Lankan Army, while insulating the regime from foreign interference.

The then-US Ambassador to Sri Lanka, Robert Blake, later commented: "The Sri

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<sup>70</sup> The Hindu, 'Freeing the civilians held hostage is my duty: Rajapaksa', 29 April 2009, accessed 10 January 2015, <http://www.thehindu.com/todays-paper/tp-opinion/freeing-the-civilians-held-as-hostages-is-my-duty-rajapaksa/article319237.ece>.

<sup>71</sup> Niland, Holmes, and Bradley, *Policy Debate - Humanitarian Protection*, para. 20.

<sup>72</sup> Molly Wallace, 'Confronting wrongs, creating wrongs: Official discourses and the legitimation of violence in Sri Lanka', paper presented at the annual meeting of International Studies Association, New Orleans, 17 February 2010, <https://repository.library.brown.edu/studio/item/bdr:11110/>.

Lankans, not without reason, argued that the LTTE was really never interested in peace and that they had always used ceasefires as a way to regroup and rearm themselves, so they essentially refused any efforts to resume the peace process”<sup>73</sup>. By 2006, over 30 countries including Canada, Australia, the US, and European Union classified the LTTE as a terrorist organization<sup>74</sup>. Continued suicide bombings, political assassinations, and attacks against ‘soft’ civilian targets, increasingly turned Western powers against the LTTE and in support of Colombo<sup>75</sup>. “Whereas in the 1980s the Tamil cause attracted considerable support from the liberal, ‘like-minded’ community of governments, analysts and pundits, relationships and reputations had become severely compromised by the consistency of reports regarding the use of child soldiers and suicide bombers”<sup>76</sup>. While Western powers still restricted military aid to the regime due to Sri Lanka’s poor human rights record, the post 9-11 political environment drove support for the regime politically and well as substantively in terms of limited military and intelligence gains while also leading Tamil diaspora populations and Tamil NGO’s abroad to be treated with increased suspicion<sup>77</sup>.

During the final months of conflict, members of the Tamil diaspora population made rallying-cries in Western capitals including Ottawa, Washington D.C., London, and Paris. The ‘very vocal’ Tamil diaspora population in London at the time totaled over 300,000<sup>78</sup>. France’s Foreign Minister, Bernard Kouchner, along with David Miliband both travelled

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<sup>73</sup> Asian Policy Studies, ‘US State Department’s Robert Blake wants Sri Lanka to probe civilian deaths in its war against separatist Tamil Tigers’, 28 January 2010, accessed 15 January 2015, <http://asianpolicystudies.org/aps-news/us-state-departments-robert-blake-wants-sri-lanka-to-probe-civilian-deaths-in-its-war-against-separatist-tamil-tigers>.

<sup>74</sup> Newman, *Understanding Civil Wars*, 146.

<sup>75</sup> Audrey Kurth Cronin, *How Terrorism Ends: Understanding the Decline and Demise of Terrorist Campaigns* (Princeton: Princeton University Press, 2009).

<sup>76</sup> Chris Smith, ‘The military dynamics of the peace process and its aftermath’ in Jonathan Goodhand, Jonathan Spencer and Benedikt Korf (eds.), *Conflict and Peacebuilding in Sri Lanka: Caught in the peace trap?* (Abingdon, UK: Routledge, 2011), p. 77.

<sup>77</sup> Anderson, ‘Death of the tiger’, 48.

<sup>78</sup> Julian Borger, ‘Wikileaks cables: David Miliband focused on Sri Lankan war “to win votes”’, *The Guardian*, 1 December 2010, accessed 6 January 2015, <http://www.theguardian.com/world/2010/dec/01/wikileaks-david-miliband-sri-lanka>.

to Colombo in a French military plane to deliver a mobile field hospital. “Both men sought and received assurances from the president that the Sri Lankans were not using heavy weaponry. Their choice was to accuse him of lying, or accept his word. They unloaded the French field hospital and departed the island”<sup>79</sup>. Although Western states faced varied degrees of domestic pressure to protect Tamil diaspora populations, the LTTE’s own detailed history of human rights atrocities and state building through conflict were invoked in the international political climate for having destabilizing the state and greater region<sup>80</sup>. Canadian officials illustrated this dynamic clearly. On 15 April 2009, in response to demonstrators around Parliament Hill in Ottawa, Minister Jason Kenney outlined, “The Tamil Tigers are responsible for suicide bombings and the deaths of thousands of civilians... We have done everything that these protesters are asking Canada to do – namely call for a ceasefire”<sup>81</sup>. This highlights the apparent reluctance of the international community to act against a government fighting a terrorist group, despite the civilian casualties incurred.

Through suicide bombings, forced recruitment of children, widespread acts of brutality and intimidation against the population is claimed to protect – in the final months of conflict, the LTTE’s own use of ‘human shields’ was used a justification of government abuses of civilian rights<sup>82</sup>.

While the US dealt with the issue of Guantanamo Bay, the Abu-Ghraib prison scandal, and two international conflicts to fight terrorism, it became increasingly hard and

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<sup>79</sup> Human Rights Watch, ‘Sri Lanka: trapped and under fire’, 15 April 2009, accessed 10 January 2015, <http://www.hrw.org/features/sri-lanka-trapped-and-under-fire>.

<sup>80</sup> Newman, E. (2014) *Understanding Civil Wars*, 144.

<sup>81</sup> Jason Kenny, ‘Canada won’t budge on banning Tamil Tigers’, *The Globe and Mail*, 15 April 2009, accessed 5 October 2014, <http://www.theglobeandmail.com/news/national/ottawa-wont-budge-on-banning-tamil-tigers/article4419170/>.

<sup>82</sup> David Keen, “‘The camp’ and ‘the lesser evil’: Humanitarianism in Sri Lanka”, *Conflict, Security and Development* 14(1) (2014), 6.

contradictory to politically challenge foreign powers such as Sri Lanka, Russia, Israel, and China, among others that used the opportunity to consolidate their own positions against ‘terrorists’<sup>83</sup>. With Western powers were stretched thin by the 2008 economic collapse and nearly a decade of war in the Middle East, the GWOT functioned to hinder political resolve for protection measures that might benefit a known terrorist organization abroad. Many of the international actors that turned against the LTTE under the GWOT remain some of the most active ‘norm entrepreneurs’ in asserting R2P and are among the few countries with the military capacity to project force globally. However, military sales and political support at the UN also reflected a transition in political alliances in the lead-up to the government’s military campaign.

### **Greater Regional Involvement: Material and Normative Considerations**

With limited economic or strategic interests in Sri Lanka, the US and several other Western powers supported peace negotiations through the CFA from roughly 2001-04. But as the peace process failed, Western powers were seen to distance themselves from the regime due to their poor human rights record, and the LTTE due to their linkages to global terrorist networks<sup>84</sup>. With the disintegration of the peace process, the government faced a parallel process of condemnation with continued reports of illegal detentions, torture, sexual assaults, and violent restrictions on press freedoms. Reports from organizations such as Human Rights Watch, Amnesty International, and International Crisis Group, paralleled a steady flow of international UN officials highlighting continued government human rights abuses<sup>85</sup>. While maintaining limited anti-terror

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<sup>83</sup> Harrison, *Still Counting the Dead*, 7.

<sup>84</sup> Jeffrey Lunstead, ‘Superpowers and small conflict: The United States and Sri Lanka’ in Jonathan Goodhand, Jonathan Spencer and Benedikt Korf (eds.), *Conflict and Peacebuilding in Sri Lanka: Caught in the peace trap?* (Abingdon, UK: Routledge, 2011), p. 55.

<sup>85</sup> G.H. Peiris, *Twilight on the Tigers: Peace Efforts and Power Struggles in Sri Lanka*, (Oxford: Oxford University Press, 2009), p. 249.

intelligence, by 2007 the United States and various other Western states cited government human rights abuses as rationale for wide-ranging restrictions. US AID alone declined over 75 percent between 2004 and 2009<sup>86</sup>. Almost all UK and US aid halted by 2008, with much of the European Union, Canada, Australia, and Japan embracing similar positions<sup>87</sup>. However, such distance led to a transition in diplomatic ties from West to East. ‘Take aid from China and take pass on human rights’ marked a transition to new partnerships with Sri Lanka’s Foreign Secretary, Palitha Kohona, stating bluntly in 2008: “The new donors are neighbors; they are rich; and they conduct themselves differently. ‘Asian’s don’t go around teaching each other how to behave’”<sup>88</sup>. China, Pakistan, Iran, and to a large extent India, picked up the residual slack – aligning aid and political backing with the regime’s desire for a military victory. As Goodhand and Korf highlight,

The Rajapaksa government essentially redefined the ‘ethnic question’ as an internal security problem with the LTTE becoming the overarching threat and enemy to the Sri Lankan polity and society... To this end, Rajapaksa consciously diluted the influence of Western international actors by strengthening alliances with regional players such as India, China, and Pakistan, who were less attached to an interventionist, liberal model of peacebuilding<sup>89</sup>.

This transition in aid and political partnerships highlights the shifting political context regionally and internationally as the regime began its pursuit of a military option to

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<sup>86</sup> Lunstead, ‘Superpowers and small conflict’, 64.

<sup>87</sup> Tom Nicholson, ‘Slovak ministries defend Sri Lankan arms deal’, *The Slovak Spectator*, 25 May 2009, accessed 16 January 2015, [http://spectator.sme.sk/articles/view/35369/2/slovak\\_ministries\\_defend\\_sri\\_lanka\\_arms\\_deal.html](http://spectator.sme.sk/articles/view/35369/2/slovak_ministries_defend_sri_lanka_arms_deal.html). [Accessed 16 Jan 2015]; Lunstead, ‘Superpowers and small conflict’, 71.

<sup>88</sup> Somini Sengupta, ‘Take Aid from China and Take Pass on Human Rights’, *The New York Times*, 9 March 2008, accessed 10 January 2015, [http://www.nytimes.com/2008/03/09/weekinreview/09sengupta.html?\\_r=0](http://www.nytimes.com/2008/03/09/weekinreview/09sengupta.html?_r=0).

<sup>89</sup> Jonathan Goodhand and Benedikt Korf, ‘Caught in the peace trap?’ in Jonathan Goodhand, Jonathan Spencer and Benedikt Korf (eds.), *Conflict and Peacebuilding in Sri Lanka: Caught in the peace trap?* (Abingdon, UK: Routledge, 2011), p. 2.

ending its civil war. These actors providing the military aid necessary to carry out the final stages of the civil war, and political overhead to ensure the regime had the necessary political space without foreign interference. Pakistan provided arms sales, political support, and even direct military involvement – allegedly launching its own air sorties against LTTE bases in August 2008 with Pakistani planes and pilots operating from Colombo<sup>90</sup>. In the final year of conflict, Pakistan supplied Sri Lanka’s main 22 Al-Khalid battle tanks, and other advanced arms and ammunition with sales totaling over \$190 million including an emergency delivery of 60mm, 81mm, 120mm, 130mm mortars, and hand grenades that were in short supply during the final months<sup>91</sup>. Throughout the lead-up to the final stages of civil war, India also maintained intelligence and military ties with the regime, as well as close economic ties through development projects<sup>92</sup>. With linguistic, religious, and cultural ties to the trapped population in its own region of Tamilnadu, India justified its past involvement in the 1980s through human rights protections for the Tamil population. Often referred to as India’s Vietnam, the Indian Peace Keeping Force (IPKF 1987-1990) ultimately failed with Indian forces alienating themselves from both the Sri Lankan Tamils and the Sri Lankan government - resulting in the death of 1,155 Indian soldiers, nearly 3,000 wounded at the cost of \$1.25 billion and the post-conflict assassination of its Prime Minister<sup>93</sup>. As it became clear that the LTTE would not negotiate a peaceful solution for a federal structure or greater internal political rights within the Sri Lankan state, Indian support shifted entirely to the Sri Lankan government. Indian policymakers and analysts have emphasized that the transformation in Indian policy did not reflect changes in end game, but strategy with the view that “whatever solution is found has to be within the framework of constitutional

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<sup>90</sup> The Indian Express. ‘Pak Played key role in Lanka’s victory over Tamil Tigers’, 30 May 2009. Accessed 6 January 2015, <http://archive.indianexpress.com/story-print/467482/>>.

<sup>91</sup> Ibid.

<sup>92</sup> Sandra Destradi, ‘India and Sri Lanka’s civil war: The failure of regional conflict management in South Asia’, *Asian Survey* 52(3) (2012), 597-598.

<sup>93</sup> Bose, *States, Nations, Sovereignty*, 132.

arraignments which preserves Sri Lanka's territorial unity and integrity, a logic which India applies to its own violent separatist movements in different parts of the country"<sup>94</sup>. This shift can also be described in terms of India's regionally dominant position and necessity to align aid with Colombo in order to retain economic and diplomatic linkages. With China and Pakistan increasing their investments, India was faced with either losing its bilateral partnership with the Sri Lankan government set on a military victory, or back a known terrorist organization that had ties to its own population in the south.

While Indian and Pakistani military support and assistance in Sri Lanka marks a historic pattern of regional relationships in trade and military cooperation, from 2007 onward "the huge economic investments made by China and Iran in particular have marked a significant departure from Sri Lanka's previous reliance on the more traditional donors of Japan, the West, and multilateral international lending institutions"<sup>95</sup>. In March 2007, Sri Lanka and China signed an agreement that China would fund 85 percent of a deep-water port project at Hambantota on the island's southern coast including a fuel bunkering facility, power plant, oil refinery, and airport<sup>96</sup>. After signaling these development agreements, in April 2007 China provided a secret \$37.5 million worth of sophisticated weaponry and ammunition<sup>97</sup>. According to the Stockholm International Peace Research Institute (SIPRI), by 2007 China became Sri Lanka's largest military supplier - over 80 percent of total supplies and \$1 billion in military sales of ammunition, aircraft and other advanced weaponry systems<sup>98</sup>. "Military assistance, including six F-7 fighter jets free of

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<sup>94</sup> Tarun Mathur, 'India-Sri Lanka relations: Failure of conflict management mechanism in South Asia' in R. Sidda Goud and Manisha Mookherjee (eds.), *India-Sri Lanka Relations Strengthening the SAARC* (New Delhi: Allied Publishers, 2013), p. 87.

<sup>95</sup> Simon Harris, *Humanitarianism in Sri Lanka: Lessons learned?* (Medford: Feinstein International Center, Tufts University, 2010), <http://fic.tufts.edu/assets/Sri-Lanka-Briefing-Paper.pdf>. p. 6.

<sup>96</sup> Jeremy Page, 'Chinese billions in Sri Lanka fund battle against Tamil Tigers', *The Times*, 2 May 2009, accessed 7 January 2015, <http://www.thetimes.co.uk/tto/news/world/asia/article2610230.ece>.

<sup>97</sup> Ian Townsend, Claire Mills, and Jon Lunn, 'War and Peace in Sri Lanka', briefing paper for UK House of Commons, 09/15, 5 June 2009, <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/RP09-51>.

<sup>98</sup> Destradi, S. 'India and Sri Lanka's Civil War', 614.



charge, was crucial in ending the military stalemate with the Tamil rebels in favor of the Sri Lankan government”<sup>99</sup>. Building a trade and political partnership, Iran also provided a \$1.5 billion soft-loan package to Sri Lanka, delivering oil as well as beginning several development projects including an oil refinery and hydropower project in 2008<sup>100</sup>.

Various scholars and defense reports have emphasized China’s involvement in South Asia as a means of hard-power alignment – an exertion of regional dominance and subversion of India’s authority<sup>101</sup>. Through this lens, China is “continuously making inroads into every country neighboring India... sufficiently for China to be the dominant player in Asia in the next century”<sup>102</sup>. However, a more realistic assessment highlights China’s regional trade partnerships and port access along its major strategic trade routes as a means of solidifying its greater-regional security and economic interests. A well-cited security report from Booz Allen Hamilton (2004), labeled this Chinese expansion its ‘String of Pearls’ or ‘encirclement strategy’ in South Asia - “defensive and offensive positioning to protect China’s energy interests but also to serve its broader security objectives”<sup>103</sup>. The rise of the Beijing Consensus and focus on investment in countries such as Pakistan, Burma, and Sri Lanka may serve as a means of building partnerships stretching along strategic trade routes for oil and other resources from Africa and the Middle East across to the South China Sea. China has its own fears of internal separatist conflicts in Tibet and in the far western region of Muslim Xinjiang. But China’s greater strategic interests likely lie in its ability to supply raw materials to sustain economic growth. Through this lens, China has more to gain through Sri Lankan stability and close

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<sup>99</sup> Kaplan, *Monsoon*, 196.

<sup>100</sup> Ariel Farrar-Wellman and Robert Frasco, ‘Sri Lanka-Iran foreign relations’, *AEI Iran Tracker*, 6 July 2010, accessed 7 January 2015, <http://www.irantracker.org/foreign-relations/sri-lanka-iran-foreign-relations>.

<sup>101</sup> Destradi, ‘India and Sri Lanka's Civil War’, 595-616.

<sup>102</sup> Major General Vinod Saigal, *Restructuring South Asian Security* (New Delhi: Manas Publications, 2004), p. 90, 132.

<sup>103</sup> Juli A. MacDonald, Amy Donahue, and Bethany Danyluk, *Energy Futures in Asia: Final Report* (McLean, VA: Booz-Allen & Hamilton Report, 2004), p.15.

diplomatic linkages – widely averse to R2P and interventions that fail to address root causes perpetuating regime instability.

Unlike other humanitarian crises in the Middle East, Africa, or Europe, Sri Lanka highlights a lack of regional organizational involvement. In terms of security constructs, the South Asian Association of Regional Cooperation (SAARC) with India, Pakistan, Afghanistan, Sri Lanka, Bhutan, Maldives, Nepal, and Bangladesh never formally addressed the crisis in the final stages of war against the LTTE. “Chronic tension, occasional conflict, and perennial absence of trust between India and Pakistan and periodic hiccups in relations with other neighbors have contributed to uneven progress on multilateral bodies like SAARC”<sup>104</sup>. The population and power disparity of India dominating the regional order, as well as cross-border ethno-national linkages India shares with each of its neighbor’s underlines perennial tensions and perception of cross-border meddling<sup>105</sup>. “Haunted by old mindsets and prejudices, South Asian power elites who come from various backgrounds (military, dominant ethnicity, and so on) have not been able to free themselves from religious, ethnic, regional and separatist trends”<sup>106</sup>. Pervasive regional insecurities and cross-border ethnic disputes have served to consolidate and continually highlight the powerful internalization of the norm of nonintervention in South Asia as a regional order<sup>107</sup>. The final months were particularly critical through Indian, Pakistani, and even the Maldives’ support for nonintervention<sup>108</sup>.

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<sup>104</sup> Charu Lata Hogg, ‘India and its neighbours: Do economic interest have the potential to build peace?’, report by Chatham House Report in association with International Alert (London: The Royal Institute of International Affairs and International Alert, 2007), <https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Asia/r1107india.pdf>, 8.

<sup>105</sup> Lok Roj Baral, ‘Cooperation with Realism: The future of South Asian regionalism’, *South Asia Survey* 13(2) (2006), 273.

<sup>106</sup> Ibid.

<sup>107</sup> T.V. Paul, ‘Regional transformations in international relations’ in T.V. Paul (ed.), *International Relations Theory and Regional Transformation* (Cambridge: Cambridge University Press, 2012), p. 15.

<sup>108</sup> Harrison, *Still Counting the Dead*, 28.

While India has been ‘traditionally suspicious of Western interference in its neighborhood’, it would have been a likely candidate for intervention as well as canvassing international support for protection measures<sup>109</sup>. While having to play a subdued role due to upcoming elections and large Tamil population in the state of Tamilnadu, had the final stages of conflict sparked violent protests in India, or led to waves of refugees – such as the over 100,000 that poured into India after the 1983 riots – India might have been forced into greater calls for protection. According to the Calcutta based Telegraph, India’s National Security Advisor, M.K. Naryanan’s ‘main concern’ was “a possible fall out on the Lok Sabha [India’s lower parliament] elections as the result of an evacuation without explicit approval of the LTTE and any consequent spilling of Tamil blood”<sup>110</sup>. In parallel, the Minister of Foreign Affairs, argued that Indian spectatorship in any rescue attempt would damage its reputation as a regional power, while any intervention would also serve in undermining Colombo’s strategic aims for peace<sup>111</sup>. Nonintervention was contested as the necessary policy decision to maintain positive relations with an important regional partner, while not getting stuck in another protracted peacekeeping operation that it framed as something that was not desired by the Sri Lankan government, and could potentially lead to a continued conflict through Tamil deaths and survival of the LTTE. Widely conservative surrounding foreign interference, India has been openly averse to R2P’s third pillar in the past, with a pluralist conception of international order driving its normative position aligned with nonintervention<sup>112</sup>. What made India’s support for a military solution all the more incompatible for humanitarian intervention rests on its regional power and ties to Western states. Most

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<sup>109</sup> Hogg, *India and Its Neighbors*, 3.

<sup>110</sup> K.P. Nayar, ‘US taps Delhi on Lanka foray – Washington to sound out Menon on evacuation mission’, *The Telegraph*, 8 March 2009, accessed 15 January 2015, [http://www.telegraphindia.com/1090308/jsp/fronpage/story\\_10642588.jsp](http://www.telegraphindia.com/1090308/jsp/fronpage/story_10642588.jsp).

<sup>111</sup> Ibid.

<sup>112</sup> Urvashi Aneja, ‘India, R2P and Humanitarian Assistance’, *Global Responsibility to Protect* 6(2) (2014), 227-245; Kudrat Virk, ‘India and the responsibility to protect: A tale of ambiguity’, *Global Responsibility to Protect* 5(1) (2013), 56-83.

crucially, recognition of India's regional sphere of influence and past involvement within Sri Lanka made it a widely 'deferred to actor' on the part of Western powers such as the United States and UK<sup>113</sup>.

### **Apathy in the UN Security Council and Opposition amongst Major Powers**

No South Asian state was in the Security Council at the time, but aligned with norm localization and nonintervention with East Asia, all Asian members on the Council at the time including Japan, Vietnam, and China, only agreed to discuss the situation informally if the Sri Lankan delegation did not object and were reluctant to issue any official statement even into late April<sup>114</sup>. As the principle South Asian regional actor and 'deferred to' actor for appraising the nature of atrocities and potential for coercive measures in response to government atrocities, India's stance did play a major role within UN bodies through close diplomatic communication. As the final months of conflict yielded increased atrocities, several Indian politicians including its Minister of Foreign Affairs made calls to limit civilian deaths<sup>115</sup>. However, reports lacked consequence and India continued its silence at the UN<sup>116</sup>. India's Minister of Foreign Affairs, Pranab Mukherjee, 'stressed' to Western powers in diplomatic cables: "military victories offer a political opportunity to restore life to normalcy in the Northern Province and throughout Sri Lanka, after twenty-three years of conflict. The President has assured me that this was his intent"<sup>117</sup>.

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<sup>113</sup> Lunstead, 'Superpowers and small conflict', 56.

<sup>114</sup> See: Asia-Pacific Centre for the Responsibility to Protect, 'Update report: Japan and the crisis in Sri Lanka', 14 May 2009, accessed 1 September 2015, [http://www.r2pasiapacific.org/docs/R2P%20Reports/APCRP\\_Japan\\_SriLanka\\_UpdateReport.pdf](http://www.r2pasiapacific.org/docs/R2P%20Reports/APCRP_Japan_SriLanka_UpdateReport.pdf).

<sup>115</sup> Nirupama Subramanian, 'How India kept pressure off Sri Lanka', *The Hindu*, 17 March 2011, accessed 26 January 2015, <http://www.thehindu.com/opinion/lead/how-india-kept-pressure-off-sri-lanka/article1544202.ece>.

<sup>116</sup> UN, 'Report of the Secretary-General's Internal Review Panel on the UN's Actions in Sri Lanka', New York, November 2012. 84.

<sup>117</sup> Subramanian, 'How India kept pressure off Sri Lanka'.

After the first informal interactive dialogue session in the UNSC in February 2009, the UK's Ambassador to the UN, Sir John Sawers, commented to the press: "The United Kingdom was in favor of receiving a briefing on Sri Lankan humanitarian aspect, but the UK has a clear position that Sri Lanka is not on the formal agenda of the Security Council and it is not that kind of situation"<sup>118</sup>. America's Ambassador to the UN, Susan Rice, did comment in March in that "the United States feels strongly about Sri Lanka and we support a provision of it to the Council – a full and updated information on the humanitarian situation"<sup>119</sup>. However, leaked cables from the US Ambassador to Sri Lanka at the time, indicate that even while the government's denial of heavy shelling and civilian deaths was discounted as inaccurate, calling the situation a genocide or deserving of similar classification was pushed back as "an overstatement" meaning that such deaths were not determined of sufficient threshold or character deserving of R2P type classification<sup>120</sup>. Western powers may have been concerned surrounding the civilian atrocities, but did not have detailed knowledge of the nature of atrocities until the final several months, with the LTTE's designation as a terrorist organization limiting any arguments for intervention that would only support the aims and ongoing existence of the LTTE. When greater pressure was exerted in late April and May to push for greater international transparency surrounding the nature of atrocities for potential protection measures, the Sri Lankan government pushed for a decisive victory with political overhead.

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<sup>118</sup> Daya Gamage, 'U.N. Ambassadors unanimous LTTE laying down arms, releasing civilians to Sri Lankan government', *Asian Tribune*, 28 February 2009, accessed 11 January 2015, <http://www.asiantribune.com/node/15821>.

<sup>119</sup> Matthew Russell Lee, 'On Sri Lanka, US' Rice Joins Call for UN Council Briefing', *Inner City Press*, 30 March 2009, accessed 14 October 2014, <http://www.innercitypress.com/unsri4lanka032009.html>.

<sup>120</sup> Together Against Genocide, 'US cables show how international silence enables Sri Lanka's genocide', 13 Sept 2011, accessed 11 January 2015, <http://www.tamilsgainstgenocide.org/read.aspx?storyid=57>.

In terms of the norm of nonintervention, the fact that it was upheld so firmly provides a level of insight regarding how it informed the behavior of international actors. While Russia has its own terrorist insurgencies in the Northern Caucasuses, it has remained overtly conservative in its views of humanitarian intervention and seemingly skeptical of any R2P promotion in Sri Lanka. While holding no real strategic or economic interests in Sri Lanka, Russia's UN Ambassador at the time, Vitaly Churkin, maintained: "This is an internal situation against a terrorist group which the Government is trying to handle through military and political means"<sup>121</sup>. Russia's continued stance of nonintervention in cases of intra-state conflict meant that as the rotating chair of the UN Security Council in May 2009 it was placed in a position that it could continue to keep Sri Lanka off the formal agenda. The first Official Statement from the UNSC did not emerge until 13 May with estimated tens of thousands already dead and only days left in the conflict. While expressing deep concern for government shelling and necessity for greater humanitarian assistance, the UNSC statement affirmed: "Members of the Council strongly condemn the LTTE for its act of terrorism over many years, and for its continued use of human shields and acknowledge the legitimate right to the Government of Sri Lanka to combat terrorism"<sup>122</sup>. Similarly, as conflict mounted towards the final weeks in May 2009, China provided explicit political cover for the Sri Lankan government, actively subverting allegations of human rights violations, and keeping the topic away from formal bodies at the UN and discourse that could have led to any kind of substantive resolution. A spokeswoman for the Chinese Foreign Ministry at a press briefing in Beijing on April 2009 expressed China's backing of the Sri Lankan government "to safeguard their sovereignty, independence and territorial integrity and to maintain national stability to

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<sup>121</sup> Gamage, 'U.N. Ambassadors unanimous LTTE laying down arms'.

<sup>122</sup> UN New Centre, 'Security Council voices "grave" concern over Sri Lanka humanitarian crisis', 13 May 2009, accessed 2 September 2015, <http://www.un.org/apps/news/story.asp?NewsID=30785#.VhV710sx9uY>.

economic development”<sup>123</sup>. Taking a strict stance with the Sri Lankan government and mirroring its ongoing economic investments, the Chinese delegation pushed against any international momentum towards intervention.

### **Too Little, Too Late: The Responsibility to Protect**

In terms of the content or applied meaning of R2P in the case of Sri Lanka, the 2001 ICISS report did seemingly little to articulate the exact procedural obligations of the UN international actors in terms of the responsibility to protect. A consensus-based definition and strategic period of norm contestation affirming a more clear and arguably legitimate understanding of the norm of R2P in 2005 within the SOD – later unanimously endorsed by the UNGA and UNSC. However, the SOD placed continued development of R2P within the hands of the UNGA, with several powers citing this fact as R2P was invoked post-2005, contributing to a seemingly limited invocation of the norm’s precepts. Expansive understandings of the norm seemed to be echoed in international politics as well as scholarship. However, the UN Secretary General’s report in 2009 on ‘Implementing the Responsibility to Protect’ then served as a means to further clarify and build consensus surrounding what the norm procedurally and substantively entailed<sup>124</sup>. With Sri Lanka’s crisis occurring before the 2009 debate and UN Secretary-General’s report, the articulated meaning of R2P could be argued as less-diffuse than the post-2009 context, with Sri Lanka and the Secretary General’s report serving as periods of contestation which shaped greater recognition of the norm and clarity surrounding its meaning aligned with the SOD. As Alex Bellamy outlines through 2015, Sri Lanka is the “only case in which R2P language was used by actors other than NGOs but where there

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<sup>123</sup> Jiang Yu, ‘Foreign Ministry Spokesperson Jiang Yu’s Regular Press Conference on April 21, 2009’, *Embassy of the People’s Republic of China in the United Kingdom of Great Britain and Northern Ireland*, 21 April 2009, accessed 3 September 2015, <http://www.china-un.org/eng/fyrth/t558550.htm>.

<sup>124</sup> UN Secretary-General, ‘Implementing the Responsibility to Protect: Report of the Secretary-General’, UN GAOR, 63<sup>rd</sup> Sess., UN Doc. A/63/677, 12 January 2009.

was a clear failure to act”<sup>125</sup>. In April and May 2009, the Global Centre for R2P penned two open letters to the UNSC, imploring them to take the necessary action to protect the civilians of Sri Lanka, affirming paragraph 138 and 139 of the SOD. The letters emphasized the responsibility of the Security Council to act in with ““timely and decisive measures’ to prevent or halt mass atrocities” and take a more assertive stance against atrocities from both sides<sup>126</sup>. Further NGO calls for action included the International Crisis Group, the Global Action to Prevent War, Minority Rights Group and MEDACT under the worsening situation<sup>127</sup>.

Institutionally, the UN’s Special Advisor on the Prevention of Genocide, Francis Deng, called in April and May for both sides to respect humanitarian law, addressing both the LTTE and government in his statement<sup>128</sup>. While Deng began tracking the crisis closely by March 2009, he allegedly limited any pressure or further steps to promote more coercive protection measures due to his knowledge that the US and India both supported the government’s campaign even with a level of civilian casualties in the cross fire<sup>129</sup>. It was not until April that several non-permanent members of the Security Council including Mexico and Costa Rica placed more pressure on the UN for the atrocities to be formally addressed. Critically, R2P was invoked, including Mexico’s Permanent Representative to the UNSC, Claude Heller, telling reporters at the beginning of April: “in the case of Sri Lanka there is concern of the responsibility to protect the

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<sup>125</sup> Alex J. Bellamy, *The Responsibility to Protect: A Defense* (Oxford: Oxford University Press, 2015), p. 145.

<sup>126</sup> Global Centre for the Responsibility to Protect (2009) ‘Open Letter to the Security Council on the situation in Sri Lanka’. 15 April 2009, accessed 17 August 2015, <http://www.globalr2p.org/media/files/openlettersrilanka.pdf>. p. 1. Global Centre for the Responsibility to Protect (2009) ‘Open Letter to the Security Council on the situation in Sri Lanka’, 11 May 2009 [Online]. 17 August 2015, from: [http://www.globalr2p.org/media/files/sri\\_lanka\\_sc\\_letter\\_may\\_11\\_2009.pdf](http://www.globalr2p.org/media/files/sri_lanka_sc_letter_may_11_2009.pdf).

<sup>127</sup> Global Action to Prevent War *et al.*, ‘NGO Letter to the UNSC, UN Member States, and OCHA Concerning the Crisis in Sri Lanka’, 22 April 2009 accessed 19 August 2015, <http://responsibilitytoprotect.org/Sri%20Lanka%20NGO%20letter%2022%20April%202009%20FINAL.pdf>.

<sup>128</sup> Deng, F. (2009) *Statement on Sri Lanka of the Special Advisor of the Secretary-General on the Prevention of Genocide*. 15 May 2009 [Online] Retrieved on 17 August 2015, from: [http://www.un.org/en/preventgenocide/adviser/pdf/Spec\\_Adviser\\_Deng\\_Statement\\_on\\_Sri\\_Lanka.pdf](http://www.un.org/en/preventgenocide/adviser/pdf/Spec_Adviser_Deng_Statement_on_Sri_Lanka.pdf).

<sup>129</sup> Together Against Genocide, ‘US cables show how international silence enables Sri Lanka’s genocide’.



population”<sup>130</sup>. India’s Minister of Foreign Affairs released a press release on 23 April articulating India’s bottom line and articulation interaction between R2P and nonintervention: “the Sri Lankan government has a responsibility to protect its own citizens and the LTTE must stop its barbaric attempt to hold civilians hostage” however, “there is no military solution to this ongoing humanitarian crisis, and all concerned should recognize this fact”<sup>131</sup>. While India has since 2009 echoed support for R2P in principle, it remained highly skeptical surrounding the projection of force under the third pillar, with Sri Lanka an example of feared meddling within its own sphere of interests, in which foreign intervention was seen as likely to contribute to further instability and survival of the LTTE – further protracting conflict and human rights abuses long term. Civilian protection was emphasized as an important pursuit, but not one that promoted a normative advancement for intervention against a recognized government fighting for internal order. However, while nonintervention remained firmly held as a regional norm and by a number of important international actors, the extent of political bargaining meant that Sri Lanka’s crisis in many ways highlights a shift in acceptance of R2P.

As Damien Kingsbury concluded, the failure to invoke R2P’s precepts were attached to international division surrounding R2P’s legitimacy, LTTE’s wide proscription as a terrorist organization, acknowledgement that economic sanctions would be too late and intervention would likely cause greater harm with limited chance of success, and lack of endorsement at the UNSC, which was “blocked by China and actively opposed by Russia”<sup>132</sup>. These factors paint a holistic picture of the international dimension, which was largely compounded by limited international access and UN institutional failures that

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<sup>130</sup> Matthew Russell Lee, ‘On Sri Lanka, Mexico Invokes Responsibility to Protect, Rebukes Colombo’s “inaccuracies”’ *Inner City Press*, 13 April 2009, accessed 16 October 2014, <http://www.innercitypress.com/unscsri8lanka041309.html>.

<sup>131</sup> The New Indian Express, ‘Stop killings of Tamil civilians: India’, 23 April 2009, accessed 10 January 2015, <http://www.newindianexpress.com/nation/article61147.ece>.

<sup>132</sup> Damien Kingsbury, *Sri Lanka and the Responsibility to Protect: Politics, ethnicity, and genocide* (New York: Routledge, 2012), p. 152.

limited the spread of information and traded ‘advocacy for access’ on the ground. While the United States, United Kingdom, India, and perhaps other international or greater-regional actors had the means to exert greater pressure including military intervention, the regime was somehow seen as justified enough to carry out the final stages of conflict. As Madeline Albright and Richard Williamson highlight “the case of Sri Lanka exemplifies a challenge for implementing R2P when sovereign governments confront an internal threat from a group that is designated as a terrorist organization”<sup>133</sup>. The LTTE’s close association with terrorism meant that a means versus ends argument could be constructed by the regime and within wider international rhetoric surrounding the Global War on Terror (GWOT). An Economist article launched at the conflict’s height, perhaps highlighted the central argument for nonintervention with its title: ‘Dark Victory: But the imminent end of war offers an historic chance to make peace’<sup>134</sup>. Framing the conflict as a domestic struggle against a violent insurgency, the Sri Lankan regime “depicted human rights as a tool of Western hegemony, discredited by double standards, and a threat to national sovereignty”<sup>135</sup>. These factors in part magnified the norm of nonintervention or enabled actors to invoke it pragmatically with the regime seen as justified in its internal pursuit of stability regardless of civilian atrocities. Thus, while R2P was addressed through a level of global discourse, the Sri Lankan regime’s articulation of its first pillar authority to maintain sole control of the crisis paralleled the international context of the GWOT, helping to solidify a case of nonintervention that would later be highlighted as a failure of international responsibility.

## Conclusion

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<sup>133</sup> Madeleine K. Albright and Richard S. Williamson, *The United States and R2P: From Words to Action* (Washington: United States Institute of Peace, the United States Holocaust Memorial Museum, and the Brookings Institution, 2013), p.19

<sup>134</sup> The Economist, ‘Dark Victory: But the imminent end of war offers an historic chance to make peace’. 23 April 2009, accessed 10 January 2015, <http://www.economist.com/node/13527366>.

<sup>135</sup> Niland, Holmes and Bradley, *Policy Debate - Humanitarian Protection*, para. 10.

The final campaign has been highlighted regionally and internationally by references to the Sri Lankan Option or Rajapaksa Model – which functionally turns the hearts and minds counter-insurgency strategy on its head. The Indian Defense Review outlined: “Terrorism has to be wiped out militarily and cannot be tackled politically. That’s the basic premise of the Rajapaksa Model”<sup>136</sup>. The Sri Lankan Army’s Director of Operations and leading General of the 58<sup>th</sup> Division that spearheaded many of the final operations in 2009, was appointed as Sri Lanka’s Deputy Permanent Representative to the UN in 2010 and was even nominated by Asian states to sit on the UN Secretary-General’s Special Advisory Group on Peacekeeping Operations<sup>137</sup>. Far from being condemned, “hawkish generals and politicians from Colombia to Israel seem to be using Sri Lanka’s experience to justify harsher anti-terror operations”<sup>138</sup>. Instead of creating incentives for the population to transform against the insurgency from the top down, the Sri Lankan government effectively decapitated the leadership of the LTTE and pacified the Tamil population through overwhelming force.

International apathy towards civilian atrocities in the final months mirrored articulations from actors such as China, Russia, and India that such domestic behaviors did not normatively warrant intervention. These positions were strengthened by international context of the GWOT, material interests of regional powers, and failures inside the UN that prevented the scope of atrocities becoming widely recognized until the final several weeks. While the nature of the domestic conflict within the wider international context of the GWOT and pragmatic interests of regional powers could be argued as principle

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<sup>136</sup> V.K. Shashikumar, ‘Lessons from Sri Lanka’s War’, *Indian Defense Review* 24(3) (2009), accessed 12 January 2014, <http://www.indiandefencereview.com/spotlights/lessons-from-the-war-in-sri-lanka/>.

<sup>137</sup> Charles Haviland, ‘UN role for Sri Lanka ex-army General Shavendra Silva’. *BBC News*, 27 January 2012, accessed 10 January 2015, <http://www.bbc.com/news/world-asia-16763509>.

<sup>138</sup> The Economist, “‘The Sri Lanka Option’: Friends Like These’, 20 May 2010, accessed 10 January 2015, <http://www.economist.com/node/16167758>.

driving factors for inaction, norm localization of nonintervention regionally and amongst a number of key international powers illustrated its substantive persistence. Invocations of nonintervention emphasized the long-term necessity for regimes to maintain a monopoly of force and secure their populations - affirming the state's sovereign right to pursue domestic stability even when a high level of civilian deaths are recognized. Through this lens, the norm of nonintervention contributed to apprehension to even address potential protection measures let alone the threat of force to limit atrocities with R2P barely echoed and civilian protection measures never formally addressed. However, relative to R2P, Sri Lanka marked a potential turning point in the acceptability of the level of inaction globally in response to similar crises.

Where misapplications of the norm of R2P have been outlined through expansive interpretations to include environmental catastrophe or 'disingenuous and geopolitically-driven' disproportionate use of force<sup>139</sup>, Sri Lanka reflected a misapplied lapse in protection. This reflected not only limited knowledge of what the norm of R2P's precept's proscribed to particular actors, but it's limited salience relative to the norm of nonintervention surrounding mass atrocities, which seems to match the sentiment of the time. As the UN Internal Review Panel later assessment:

The concept of a 'Responsibility to Protect' was raised occasionally during the final stages of the conflict, but to no useful result. Differing perceptions among Member States and the Secretariat of the concept's meaning and use had become so contentious as to nullify its potential value. Indeed, making reference to the Responsibility to Protect was seen to weaken rather than strengthen UN action<sup>140</sup>

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<sup>139</sup> Cristina G. Badescu and Thomas G. Weiss, 'Misrepresenting R2P and advancing norms: An alternative spiral?', *International Studies Perspectives* 11(4) (2010), 354-374.

<sup>140</sup> Internal Review Panel, 'Report of the Secretary-General's Internal Review Panel', 26.

Only after the conflict ended did a large amount of information about the nature of the atrocities become available, and therefore the response across the globe has been considerable and deemed widely as an illegitimate exertion of sovereign power. In May 2010, President Rajapaksa launched a domestic Lessons Learnt and Reconciliation Commission to investigate ‘the matters that may have taken place’ during the last seven years of the war<sup>141</sup>. Under continued reports of mass atrocity crimes committed in early 2009, the Secretary-General commissioned a Panel of Experts to report on the accountability of the war in Sri Lanka in 2011, which challenged the partiality of the Sri Lankan Commission and condemned both the LTTE and government of Sri Lanka for their actions during the conflict<sup>142</sup>. The Panel of Experts also called for a review of the actions of the UN during and after the conflict, leading to the commission in November 2012 of the Secretary-General’s Internal Review Panel, which concluded, “the events in Sri Lanka mark a grave failure of the UN to adequately respond to early warnings and to the evolving situation during the final stages of the conflict and its aftermath, to the detriment of hundreds of thousands of civilians and in contradiction with the principles and responsibilities of the UN”<sup>143</sup>. Although Sri Lanka highlights the failure of the international community to take any substantive action to protect the civilians of a state causing the atrocities, the response of the international community during the aftermath shows in part the illegitimacy of nonintervention or at the very least greater efforts to address the crisis within formal institutions with greater levels of accountability for the protection of their civilians. As Alex Bellamy highlights, “while it is important to highlight Sri Lanka as a glaring sin of omission and to redouble efforts to ensure that this is not repeated, the failure to protect there was not a typical case of double standards at work. What is more, far from being complicit in the failure, R2P

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<sup>141</sup> Presidential Secretariat of Sri Lanka, ‘National Plan of Action to Implement the Recommendations of the LLRC’, 26 July 2012, accessed 10 August 2015, [http://www.priu.gov.lk/news\\_update/Current\\_Affairs/ca201207/20120726national\\_plan\\_action.htm](http://www.priu.gov.lk/news_update/Current_Affairs/ca201207/20120726national_plan_action.htm).

<sup>142</sup> Panel of Experts, ‘*Report of the Secretary-General’s Panel of Experts on Accountability*’, 34.

<sup>143</sup> Internal Review Panel, ‘Report of the Secretary-General’s Internal Review Panel’.

served as one of the foremost vehicles of critique”<sup>144</sup>. Institutionally, the failure of Sri Lanka contributed towards a number of initiatives including the establishment of Inter-Agency Standing Committee (IASC) principles that seek to ensure ‘The Centrality of Projection in Humanitarian Action’, and UN ‘Rights Up Front’ action plan emphasizing the importance of civilian protection to address conflicting incentives such as the advocacy vs. access’ dichotomy between UN institutions within countries’<sup>145</sup>. This has contributed to the creation of a ‘convening mechanism’ to bring the UN Under Secretary Generals together during crisis situations and a UN-wide ‘contact group’ on R2P<sup>146</sup>.

Since the end of the conflict, the international community shifted from welcoming peace, to reviewing and condemning the actions of both the LTTE and Sri Lankan government, and increasing pressure for accountability for those responsible. This shift is best highlighted when examining the stance of the UNHRC from the end of the war. On 26 May 2009, just after the end of the conflict, the UN Human Rights Council held a Special Session on Sri Lanka, in which they passed a resolution that “welcomes the continued commitment of Sri Lanka to the promotion and protection of all human rights”<sup>147</sup>. This resolution is a far cry from the more recent action of the Human Rights Council with respect to Sri Lanka. In March 2014, the Human Rights Council of the UN declared that an investigation into the claims that the government of Sri Lanka and the LTTE committed war crimes during the conflict<sup>148</sup>. The report is, at the time of writing, yet to be published having been postponed from March 2015 to September 2015 after

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<sup>144</sup> Bellamy, *The Responsibility to Protect: A Defense*, 145.

<sup>145</sup> Niland, *Inhumanity and Humanitarian Action*, 2.

<sup>146</sup> Edward C. Luck, ‘From Promise to Practice: Implementing the Responsibility to Protect’ in Jared Genser and Irwin Cotler (eds.), *The Responsibility to Protect: The Promise of Stopping Mass Atrocities in our Time* (Oxford: Oxford University Press, 2012), pp. 85-108; Panel of Experts, ‘*Report of the Secretary-General’s Panel of Experts on Accountability*’, 34.

<sup>147</sup> UN Human Rights Council (2009) ‘Assistance to Sri Lanka in the promotion and protection of human rights’, 11<sup>th</sup> Special Session, A/HRC/S-11/2, 26-27 May 2009, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/144/09/PDF/G0914409.pdf?OpenElement>.

<sup>148</sup> UN News Centre, ‘UN rights council approves inquiry into alleged abuses in Sri Lanka war’, 27 March 2014, accessed 8 August 2015, <http://www.un.org/apps/news/story.asp?NewsID=47447#.VcYaJJe4mPk>.

Rajapaksa's government was replaced after the national elections in January 2015, and the new government appears willing to be increase transparency and work with the international community to aid investigations<sup>149</sup>. The shift highlights the powerful transition of the international community during the aftermath of the conflict with Sri Lanka as a case study shaping the normative context away from inaction as an acceptable international response.

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<sup>149</sup> Ankit Panda, 'With UN war crimes report delay, Sri Lanka must deliver on post-war accountability', *The Diplomat*, 18 February 2015, accessed 8 August 2015, <http://thediplomat.com/2015/02/with-un-war-crimes-report-delay-sri-lanka-must-deliver-on-post-war-accountability/>.

## Chapter 4: Libya's Jamahiriya

Following Sri Lanka, few anticipated the swift and decisive response that would emerge two years later in Libya during the Arab Spring. On 19 March 2011, the United States, France, and United Kingdom began strikes in Libya as part of a coalition that would include nearly twenty states imposing a no-fly zone, arms embargo, and civilian protection mandate under Operation Unified Protector. In the weeks leading up to the intervention, the UN Security Council passed consecutive Resolutions 1970 and 1973, invoking R2P and mandating the entire spectrum of coercive instruments against the regime of Colonel Muammar Qaddafi including 'all necessary measures' to protect the civilian population. While calling a ceasefire moments after the UN's authorization of force, loyalist forces barreled through the desert reclaiming rebel areas, with an anticipated bloodbath in the city of Benghazi. Outlining the events and actors surrounding Libya's humanitarian crisis and international response, this chapter first examines the background surrounding the Arab Spring and Libya's humanitarian crisis.



Second, it addresses international response through regional organizational involvement, the UN, and projection of military force for civilian protection from March to October 2011. Third, this chapter examines the implementation of R2P and how nonintervention continued to inform the choices of actors in the face of mass atrocity crimes. While the case illustrates an unprecedented example of R2P's Third Pillar, I argue that the Libyan case illustrates a rare confluence of factors, which enabled a decisive response and softened the normative salience of nonintervention.

### **Background: The Arab Spring and Libya**

In early 2011, a wave of revolutionary movements engulfed the Arab world. Beginning in Tunisia, violent and non-violent protests spread throughout Egypt, Libya, Bahrain, and Syria with more minor protests across Algeria, Jordan, Kuwait, Saudi Arabia, Morocco, and Iraq. Prior to the revolutions, many countries maintained a high level of economic growth, with authoritarian regimes ruling under relative stability. Bellow the surface, decades of despotic leadership led to widespread resentment surrounding the stunted political process and squandered national resources<sup>1</sup>. Whereas the autocrats of Tunisia and Egypt were forced down with a level of restraint and the military working alongside the transitional governments, the Libyan regime quickly declared war on the revolution – exposing tribal and regional cleavages that have plagued the country for decades<sup>2</sup>. While later reports would confirm protesters as the first to turn violent with security forces responding with widespread brutality, the revolution received a nearly unprecedented level of international attention<sup>3</sup>.

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<sup>1</sup> Lin Noueihed and Alex Warren, *The Battle for the Arab Spring: Revolution, Counter-Revolution and the Making of a New Era* (New Haven: Yale University Press, 2012).

<sup>2</sup> Lisa Anderson, 'Demystifying the Arab Spring: Parsing the differences between Tunisia, Egypt, and Libya', *Foreign Affairs* 90(3) (2011), 2-7.

<sup>3</sup> Alan J. Kuperman, 'A model humanitarian intervention? Reassessing NATO's Libya campaign' *International Security*, 38(1) (2013), 105-136.

Libyan protesters took to the streets in the eastern city of Benghazi on 15 February and within hours demonstrations erupted across the country, resonating regional chants for popular rule. The protests quickly turned violent with amateur video released of government forces and foreign mercenaries attacking protesters with knives, guns, and cleavers – literally hacking their way through demonstrations<sup>4</sup>. On 18 February, soldiers opened fire on a funeral procession of several killed demonstrators – sparking what one witness called a ‘volcano’ of dissent with rebels burning police stations, army barracks, and looting government arsenals<sup>5</sup>. Further reports emerged of aircraft bombings, artillery, and rocket fire within civilian areas with protesters jumping from bridges to avoid government forces<sup>6</sup>. A French doctor operating in eastern part of the country alleged 2,000 deaths in the area between 17 and 20 February<sup>7</sup>. Residents of the capital Tripoli reported on 21 February, “Warplanes and helicopters are indiscriminately bombing one area after another. There are many, many, dead. Our people are dying. It is the policy of scorched earth”<sup>8</sup>. Internationally, the Libyan state faced a mass exodus of defecting ambassadors, its UN mission, several domestic leaders, and air force pilots landing with their planes in Malta following orders to target civilians. Libya’s deputy permanent minister to the UN, Ibrahim Dabbashi, called for the regime to step down in New York asserting, “We are sure what is going on now in Libya is crimes against humanity and

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<sup>4</sup> Richard Spencer, ‘Libya: civil war breaks out as Gaddafi mounts rearguard fight’, *The Telegraph*, 23 February 2011, accessed 15 May 2015, <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8344034/Libya-civil-war-breaks-out-as-Gaddafi-mounts-rearguard-fight.html>.

<sup>5</sup> Ethan Chorin, *Exit the Colonel: The Hidden History of the Libyan Revolution* (New York: Public Affairs, 2012), p. 194.

<sup>6</sup> Nick Meo, ‘Libyan protests: 140 “massacred” as Gaddafi sends in snipers to crush dissent’, *The Telegraph*, 20 February 2011, accessed 29 May 2015, <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8335934/Libya-protests-140-massacred-as-Gaddafi-sends-in-snipers-to-crush-dissent.html>.

<sup>7</sup> BBC World News, ‘Libya protests: Gaddafi embattled by opposition gains’, 24 February 2011, accessed 16 January 2015, <http://www.bbc.co.uk/news/mobile/world-africa-12564104>.

<sup>8</sup> Richard Spencer, ‘Libya: Muammar Gaddafi’s fires on his own people’ *The Telegraph*, 21 Feb 2011, accessed 27 January 2015, <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8339347/Libya-Muammar-Gaddafi-fires-on-his-own-people.html>.

crimes of war”<sup>9</sup>. Foreign workers and diplomatic staff quickly evacuated the country, while a media, humanitarian aid, and domestic communications blackout was imposed by the regime.

As NATO surveillance and intelligence assets flew overhead, Qaddafi’s security forces barrelled through the desert with continued reports of human rights atrocities. From 5-15 March, government forces reclaimed the Western part of the country and solidified their position in the capital of Tripoli. In the east, a National Transitional Council (NTC) emerged as a rival authority, announcing its formation in late February and on 5 March issuing a declaration as the ‘only legitimate body representing the people of Libya and Libyan state’. Believing that Western troops’ involvement in Afghanistan and decade long war in Iraq would limit political resolve for the use of force, the Qaddafi went on the offensive, determined to finish the rebellion with a decisive blow<sup>10</sup>. While the rebel militias and NTC quickly rose in recognition and international support, their subsequent military losses and poor organization placed rebel-held cities at risk. By 18 March, loyalist forces pushed through the city of Misrata, Ajdabigya, and closed within one hundred miles of the rebel stronghold of Benghazi. In a chilling address, Colonel Qaddafi issued a now infamous threat – vowing to cleanse the city house by house ‘without mercy or pity’<sup>11</sup>.

## **The International Response**

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<sup>9</sup> Colin Moynihan, ‘Libya’s U.N. diplomats break with Qaddafi’, *The New York Times*, 21 February 2011, accessed 14 May 2015, <http://www.nytimes.com/2011/02/22/world/africa/22nations.html>.

<sup>10</sup> Alison Pargeter, *Libya: The Rise and Fall of Qaddafi* (New Haven: Yale University Press, 2012), p. 226.

<sup>11</sup> David D. Kirkpatrick and Kareem Fahim, ‘Qaddafi warns of assault on Benghazi as U.N. vote nears’, *The New York Times*, 17 March 2011, accessed 27 February 2015, [http://www.nytimes.com/2011/03/18/world/africa/18libya.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2011/03/18/world/africa/18libya.html?pagewanted=all&_r=0); Ian Black, ‘Qaddafi threatens retaliation in Mediterranean as UN passes resolution’, *The Guardian*, 18 March 2011, accessed 28 May 2015, <http://www.theguardian.com/world/2011/mar/17/gaddafi-retaliation-mediterranean-libya-no-fly-zone>.

International focus on the Arab Spring and violence in Libya brought a wave of media attention and institutional focus with ‘human rights up front’, with both regional and international condemnation from initial violence in late February laying the groundwork for subsequent protection measures. On 22 February, the Security Council issued a press release deploring the civilian deaths and regime responsibility, with the UN’s High Commissioner on Human Rights, Navi Pillay, further criticizing the attacks and asserting that ongoing strikes against civilians may amount to crimes against humanity<sup>12</sup>. The UN’s Under Secretary General on the Prevention of Genocide and R2P issued a joint-statement reiterating the government’s 2005 commitment to protect the population from egregious violations of international humanitarian and human rights law<sup>13</sup>. Regionally, the Gulf Cooperation Council (GCC), Organization of Islamic Conference (OIC), and League of Arab States (LAS), all issued statements of condemnation. On 23 February, the Peace and Security Council of the African Union (AU) issued a communiqué on the situation in Libya condemning the indiscriminate and excessive use of force against demonstrators in response to the ‘legitimate’ “aspiration of the people of Libya for democracy, political reform, justice and socio-economic development”<sup>14</sup>. Several days later, the UN Human Rights Council convened for a Special Session, calling for an International Commission of Inquiry on Libya.

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<sup>12</sup> UN Office of the High Commissioner for Human Rights, ‘Pillay calls for international inquiry into Libyan violence and justice for Victims’, 22 February 2011, accessed 30 May 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10743&LangID=E>.

<sup>13</sup> UN Office of the Special Adviser on the Prevention of Genocide, ‘UN Secretary-General Special Advisor on the Prevention of Genocide, Francis Deng, and Special Advisor on the Responsibility to Protect, Edward Luck, on the Situation in Libya’, 22 February 2011, accessed 30 May 2015, <http://www.un.org/en/preventgenocide/adviser/pdf/OSAPG,%20Special%20Advisers%20Statement%20on%20Libya,%2022%20February%202011.pdf>.

<sup>14</sup> African Union Peace and Security Council, ‘Communiqué of the 261st Meeting of the Peace and Security Council’, PSC/PR/COMM(CCLXI), 23 February 2011, accessed 9 October 2015, <http://www.au.int/en/sites/default/files/PSC%20Communique%20on%20the%20situation%20in%20Libya.pdf>; Paul D. Williams, ‘Briefing The Road to Humanitarian War in Libya’, *Global Responsibility to Protect* 3 (2011), 251.

On 26 February, the UNSC debated the situation in Libya and unanimously adopted Resolution 1970 – condemning systematic violation of human rights against peaceful demonstrators and recalling the Libyan authorities’ “responsibility to protect its population”<sup>15</sup>. Highlighting the earlier statements of regional organizations, the Security Council called for an immediate end to hostilities, invoking its Chapter VII powers with an arms embargo, travel ban, and asset freeze for a number of Libyan authorities, and referral of the situation to the International Criminal Court. The resolution also called for a progress review in 120 days surrounding the implementation of coercive measures. In response to the uniquely robust and swift measures, the Libyan regime responded in early March with a statement that the UNSC’s actions were premature, requesting a suspension of sanctions until conditions could be confirmed<sup>16</sup>. However, conditions within Libya remained violent and targeted against revolutionary forces and civilian protesters.

With ongoing conflict on the ground in early March, regional and international actors solidified their stance. The European Union implemented further sanctions calling for an end to hostilities and regime change<sup>17</sup>. France’s Nicholas Sarkozy and UK’s David Cameron were particularly active in promoting recognition of the NTC and working to move intelligence and naval assets into the region in early March. The African Union embraced a more conservative approach. Issuing a further communiqué on 10 March, the AU established an *ad-hoc* High Level Committee composed of five heads of state including Mauritania, the Democratic Republic of the Congo, Mali, South Africa, Uganda, as well as the Chairperson of the commission to engage with (i) the immediate cessation of all hostilities, (ii) the cooperation of the competent Libyan authorities to

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<sup>15</sup> United Nations Security Council, ‘Resolution 1970’, UN SCOR 66<sup>th</sup> Sess., 6491<sup>st</sup> Mtg., UN Doc. S/RES/1970, 26 February 2011.

<sup>16</sup> Williams, ‘Briefing The Road to Humanitarian War in Libya’, 252.

<sup>17</sup> European Parliament, ‘European Parliament resolution of 10 March 2011 on the Southern Neighbourhood, and Libya in particular’, Doc. P7\_TA(2011)0095, 10 March 2011, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=//EP//TEXT+TA+P7-TA-2011-0095+0+DOC+XML+V0//EN>.

facilitate the timely delivery of humanitarian assistance to the needy populations, (iii) the protection of foreign nationals, including the African migrants living in Libya, and (iv) the adoption and implementation of political reforms necessary for the elimination of the cause of the current crisis'<sup>18</sup>. The ad-hoc committee was charged with working to facilitate dialogue between domestic authorities and wider regional and international organization towards domestic reforms at the root of the crisis. Calling for international protection measures under the weight of continued atrocities, the GCC on 7 March requested the Security Council to 'take all necessary measures to protect civilians, including enforcement of a no-fly zone over Libya' with the OIC echoing their call for a no-fly zone the following day, while expressly ruling out foreign ground operations<sup>19</sup>. Crucially, on 12 March, the LAS also issued a further resolution calling on the Security Council to,

Assume its responsibilities with regard to the situation in Libya, including taking the necessary measures to impose a no-fly zone; the establishment of safe areas, especially in places that have been struck by aircraft; and measures to ensure the protection of the Libyan people and foreign citizens<sup>20</sup>.

The Arab League's resolution emphasized that the regime had lost all legitimacy while seeking international support to 'cooperate and communicate' with the NTC towards

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<sup>18</sup> African Union Peace and Security Council, 'Communiqué of the 265<sup>th</sup> Meeting of the Peace and Security Council', PSC/PR/COMM.2(CCLXV), 10 March 2011, accessed 9 October 2015, [http://www.au.int/en/sites/default/files/COMMUNIQUE\\_EN\\_10\\_MARCH\\_2011\\_PSD\\_THE\\_265TH\\_MEETING\\_OF\\_THE\\_PEACE\\_AND\\_SECURITY\\_COUNCIL\\_ADOPTED\\_FOLLOWING\\_DECISION\\_SITUATION\\_LIBYA.pdf](http://www.au.int/en/sites/default/files/COMMUNIQUE_EN_10_MARCH_2011_PSD_THE_265TH_MEETING_OF_THE_PEACE_AND_SECURITY_COUNCIL_ADOPTED_FOLLOWING_DECISION_SITUATION_LIBYA.pdf), para. 7.

<sup>19</sup> Alex J. Bellamy and Paul D. Williams, 'The new politics of protection? Côte d'Ivoire, Libya and the responsibility to protect', *International Affairs* 87(4) (2011), 841.

<sup>20</sup> Council of the Arab League, 'The outcome of the Council of the League of Arab States meeting at the ministerial level, 12 March 2011', Res. No. 7360, 12 March 2011, [http://responsibilitytoprotect.org/Arab%20League%20Ministerial%20level%20statement%2012%20march%202011%20-%20english\(1\).pdf](http://responsibilitytoprotect.org/Arab%20League%20Ministerial%20level%20statement%2012%20march%202011%20-%20english(1).pdf).

humanitarian aid and protection measures<sup>21</sup>. With continued calls for action and recognition of the limited timeframe with Qaddafi forces nearing eastern rebel cities, France and the UK drafted a resolution with a more expansive protection mandate. Initially skeptical surrounding the projection of further coercive measures, the United States made a last minute decision to back the no-fly zone, coordinating with European and Middle Eastern powers to build international support. In the Security Council on 17 March, a Lebanon, France, UK, and US-backed draft for Resolution 1973 passed under a vote of ten in favor and five abstentions (India, China, Germany, Russia, and Brazil). Widely supported to end violence on the ground and lead to a negotiated ceasefire, the resolution deplored the failure of Libyan authorities to comply with resolution 1970 while recalling both African and Middle Eastern regional organization statements. Strengthening the travel ban, arms embargo, and targeted sanctions, the resolution demanded an immediate ceasefire and end to human rights violations. Again invoking its Chapter VII powers, the Security Council authorized a no-fly zone and ‘all necessary measures’ for member states “to protect civilians and civilian populated areas under threat of attacking the Libyan Arab Jamahiriya, including Benghazi, while excluding a foreign occupation force of any form on any part of Libyan territory”<sup>22</sup>. The resolution also established a panel of experts to examine and analyze mandated actions and their impact.

With the regime failing to heed calls for a ceasefire, the international community braced for an anticipated massacre. On 19 March, France hosted a crisis summit in Paris with diplomats from the US, EU, and Arab World. Hours later, naval and air force assets from coalition countries made the initial strikes against Qaddafi’s integrated air defense system, air force bases, command and control centers, and ground forces moving toward

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<sup>21</sup> Williams, ‘Briefing The Road to Humanitarian War in Libya’, 254.

<sup>22</sup> UN Security Council, ‘Resolution 1970’.

Benghazi. The United States at first coordinated operations from naval assets in the Mediterranean and AFRICOM headquarters in Stuttgart, Germany – reducing forces and transferring command to NATO in late March. A coalition of roughly twenty countries ultimately contributed towards the air and sea mission including non-NATO members Qatar, Jordan, Sweden, and the United Arab Emirates. Within the first several days, the city of Benghazi was protected, with the no-fly zone and arms embargo firmly in place and Qaddafi's air force and air defense system shattered.

While coalition strikes were noted for their decisiveness and 'clinical accuracy', loyalist forces and their entrenchment in the west showed greater resilience than expected. The NTC would not accept any political result that kept Qaddafi in power, and the regime would not negotiate with a rebel movement that they 'believed (not without some basis in fact) to be inspired by radical Islam'<sup>23</sup>. Even with government defections in some its most prestigious brigades, loyalist forces were able to hold off rebel fighters and even mount assaults despite the coalition bombings. In cases where NATO forces failed to provide air cover such as Misrata in mid-April, the rebel's complained that the airstrikes were erratic and inconsistent, forced to retreat under the government attacks<sup>24</sup>. The revolutionary's poorly organized and trained factions of militia were pushed into a deadlock. Fearing a protracted conflict reminiscent of Iraq or Afghanistan, coalition actors became increasingly convinced that under government resistance, the only means to ultimately secure the resolution's mandate was to directly target the regime<sup>25</sup>. The question then became how far the resolution's mandate could be interpreted to directly target the

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<sup>23</sup> Christopher S. Chivvis, 'Libya and the future of liberal intervention', *Survival* 54(6) (2012), 76.

<sup>24</sup> Rod Nordland, 'Many Libyan rebels blaming NATO, flee city in the east', *The New York Times*, 18 April 2011, accessed 5 March 2015, <http://www.nytimes.com/2011/04/18/world/africa/18libya.html>; C.J. Chivers and David D. Kirkpatrick, 'Libyan rebels complain of deadly delays under NATO's command', *The New York Times*, 4 April 2011, accessed 5 March 2015, <http://www.nytimes.com/2011/04/05/world/africa/05libya.html>.

<sup>25</sup> North Atlantic Treaty Organisation, 'Statement on Libya: Following the Working lunch of NATO Ministers of Defence with non-NATO Contributors to Operation Unified Protector', Press Release (2011) 071, 8 June 2011, [http://www.nato.int/cps/en/natohq/news\\_75177.htm](http://www.nato.int/cps/en/natohq/news_75177.htm).



regime and its infrastructure<sup>26</sup>. While calls for the regime's removal echoed from many states even before the intervention, the mandated enforcement measures were stretched beyond the resolution progressively through the conflict – what Jennifer Welsh accurately frames as NATO's 'creep towards partiality'<sup>27</sup>.

Ultimately with foreign intelligence, funding, arming, and air support, rebel factions made decisive progress on the ground throughout the summer, taking Tripoli in August 2011. The UNSC passed Resolution 2009 on 16 September, lifting the asset freeze for several corporations, the arms embargo, flight ban for commercial aircraft, and establishing a mandate for a UN Support Mission in Libya (UNSMIL). The mission was designed to help restore public order, security and build legal capacity for political institutions through the National Transitional Council. By October 2011, rebel forces held almost all of Libyan territory, removing the last pockets of resistance including Qaddafi's hometown of Sirte. During the final stages of conflict, French aircraft attacked a lone convoy exiting the town. Rebel forces closed in on those escaping on foot – ultimately finding Col. Qaddafi wounded in a drainage pipe. Thrown around a group of rebels, the leader was tortured, shot, and ultimately put on display to the public in a refrigerated meat locker<sup>28</sup>.

### **Implementation of the Responsibility to Protect**

The ongoing attacks of government-aligned forces against civilians were recognized as illegitimate assertions of sovereign power – driving international condemnation and

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<sup>26</sup> Spencer Zifcak, 'The Responsibility to Protect after Libya and Syria', *The Melbourne Journal of International Law* 13 (2012), 66.

<sup>27</sup> Jennifer M. Welsh, 'Civilian protection in Libya: Putting coercion and controversy back into RtoP', *Ethics & International Affairs* 25(3) (2011), 259.

<sup>28</sup> Andrew Malone, 'A gruesome tourist attraction: Hundreds (including young children) queue to gawp at Gaddafi's body', *The Daily Mail*, 24 October 2011, accessed 30 May 2015, <http://www.dailymail.co.uk/news/article-2052248/Gaddafi-dead-pictures-Hundreds-queue-gawp-body-meat-locker.html>.

coercive sanction that ultimately included the use of military force. But as Aiden Hehir outlines, “The mere fact that R2P exists and that the P5 sanctioned action against Libya does not mean there is a causal relationship between the two”<sup>29</sup>. However, there is evidence throughout the crisis to suggest that R2P was used as a framework to address mass atrocity crimes as well as to drive international support through its permeation of international discourse. This dynamic can be seen in the focus of global actors to define the crimes within the lenses of ‘crimes against humanity’ and ‘war crimes’ as well as direct invocations or statements of global leaders surrounding the Libyan and international ‘responsibility to protect’ the population.

Statements surrounding R2P, war crimes, and crimes against humanity were repeatedly echoed by the UN’s Special Advisors on the Prevention of Genocide and Responsibility to Protect, the UN Secretary-General, and Commissioner on Human Rights. On 22 February, the Security Council’s first press release called on the regime ‘to meet its responsibility to protect its population and to act with restraint, to respect human rights and international humanitarian law, and to allow immediate access for international human rights monitor and humanitarian agencies’<sup>30</sup>. Several calls of regional organizations for action were also cast in terms of responsibilities to protect. The Gulf Cooperation Council asserted on 7 March, ‘We call on the international community, especially the UN Security Council, to face their responsibilities...’ framed in terms of human rights protections in an intra-state crisis<sup>31</sup>. Furthermore, the League of Arab States statement on 12 March explicitly called on the Security Council to ‘assume its responsibilities with regard to the situation in Libya’ which included an interpreted

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<sup>29</sup> Aidan Hehir, ‘The permanence of inconsistency: Libya, the Security Council, and the Responsibility to Protect’, *International Security* 38(1) (2013), 137-159.

<sup>30</sup> UN Security Council, ‘Security Council Press Statement on Libya’, Press Release SC/10180-AFR/2120, 22 February 2011, accessed 29 May 2015, <http://www.un.org/press/en/2011/sc10180.doc.htm>.

<sup>31</sup> Agence France-Press, ‘AFP Report: Statement by the GCC Concerning Libya, 7 March 2011’, 7 March 2011, accessed 9 October 2015, [http://www.lcil.cam.ac.uk/sites/default/files/LCIL/documents/arabspring/libya/Libya\\_13\\_AFP\\_Report.pdf](http://www.lcil.cam.ac.uk/sites/default/files/LCIL/documents/arabspring/libya/Libya_13_AFP_Report.pdf).

necessity to establish a no-fly zone and safe-area for the population. Resolution 1970 and 1973 recalled ‘the Libyan authorities responsibility to protect its population’ and then the ‘responsibility of the Libyan authorities to protect the Libyan population’<sup>32</sup>. During deliberations surrounding Resolution 1970, the French Ambassador outlined, “The text, unanimously adopted today, recalls the responsibility of each State to protect its own population and of the international community to intervene when States fail in their duty”<sup>33</sup>. For Resolution 1973, the Colombian Ambassador outlined that the Libyan government “through its actions and statements, has shown that it is not up to the international responsibility of protecting its populations”<sup>34</sup>. Through this lens, legitimacy of the Libyan state and its sovereign rights were then argued as contingent, with the authority of the UNSC affirmed and extended to address human rights abuses in an intra-state conflict.

Canadian officials at the beginning of the crisis and within its House of Commons in March, June, and September widely framed their response in terms of a responsibility to react when governments egregiously target their own populations. As Canada’s Foreign Secretary John Baird outlined, “We have a responsibility to act when we can, when our objectives are right, when our objectives are clear, to protect and to assist those who share the values”<sup>35</sup>. Although the norm was arguably ‘misused’ through parliamentary interpretation implying that it could be used for the promotion of democracy, the intervention was met with overwhelming consensus in voting and debates with

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<sup>32</sup> UN Security Council, ‘Resolution 1970’ and UN Security Council, ‘Resolution 1973’, 6498<sup>th</sup> Mtg., UN Doc.S/RES/1973, 17 March 2011.

<sup>33</sup>UN Security Council, UN SCOR, 66<sup>th</sup> Sess., 6491<sup>th</sup> Mtg., UN Doc. S/PV.6491, 26 February 2011, p. 4.

<sup>34</sup> Timothy Dunne and Jess Gifkins, ‘Libya and the state of intervention’, *Australian Journal of International Affairs* 65(5) (2011), 521; UN Security Council, UN SCOR, 6498<sup>th</sup> Mtg., UN Doc. S/PV.6498, 17 March 2011.

<sup>35</sup> Kim Richard Nossal, ‘The Use – and Misuse – of R2P: The Case of Canada’ in Aidan Hehir and Robert Murray (eds.), *Libya, the Responsibility to Protect and the Future of Humanitarian Intervention* (Basingstoke, UK: Palgrave Macmillan, 2013), pp. 116-117.

widespread sentiment that the intervention was of R2P character<sup>36</sup>. Similarly, R2P was invoked throughout UK parliamentary debate. On 21 March in a six hour long deliberation, opposition leader Edward Miliband outlined:

Debate is often conducted about rights to intervene, but this debate is not about rights but responsibilities. The decade-long debate about the ‘responsibility to protect’ speaks precisely to this question. As the House will know, the responsibility to protect was adopted in 2005 at the world summit and was endorsed by the United National General Assembly and the United Nations Security Council, and it should help frame our debate today...<sup>37</sup>.

The argued ‘meaning-in-use’ of R2P’s application illustrated a variance of interpretations across Western actors involved in the intervention as well as within broader global articulations of what the protection mandate entailed. The UK’s principle legal advisor for the government, Attorney General Dominic Grieve, provided an assessment outlined in parliamentary debate that an intervention could be accomplished legally in the most severe cases without a UN mandate in cases of imminent or ongoing mass atrocity crimes<sup>38</sup>. In parallel, French leaders publically stressed the importance of UNSC authorization; however, in private, French President Sarkozy allegedly told NTC delegates in France before the UNSC vote that without authorization, France and the UK would go forward with a mandate from the EU, LAS, and AU<sup>39</sup>. This serves as an important point to illustrate that R2P was invoked, interpreted, and employed by actors

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<sup>36</sup> Ibid., pp. 110-129.

<sup>37</sup> UK Houses of Parliament, ‘United Nations Security Council Resolution 1973’, House of Commons Debate Column 700, 21 March 2011, accessed 12 June 2015, <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110321/debtext/110321-0001.htm#1103219000001>.

<sup>38</sup> Patrick Wintour and Ewen MacAskill, ‘Is Muammar Gaddafi a target? PM and military split over war aims’, *The Guardian*, 22 March 2011, accessed 31 May 2015, <http://www.theguardian.com/world/2011/mar/21/muammar-gaddafi-david-cameron-libya>.

<sup>39</sup> Steven Erlanger, ‘By his own reckoning, one man made Libya a French cause’, *The New York Times*, 2 April 2011, accessed 1 June 2015, [http://www.nytimes.com/2011/04/02/world/africa/02levy.html?\\_r=0](http://www.nytimes.com/2011/04/02/world/africa/02levy.html?_r=0).

with a variance of given meanings to address their appraisals of the purpose of the intervention and how the protection mandate ‘should’ be applied. What the Libyan case also illustrates around R2P are how institutional mechanisms have developed to build awareness of mass atrocities and the promotion of protection measures as both indication of normative change and a means of building greater international support. Although the UN has only recently begun to develop more explicit mechanisms ‘to bring an atrocity prevention and human protection lens to bear in policymaking’, the Libya cases does provide some evidence that the ‘establishment of modern early-warning, assessment and convening capacities can have a positive effect on policy planning and decisionmaking’<sup>40</sup>. R2P in Libya then functioned as a means to frame and build political and legal consensus for coercive measures that included intervention. As Alex Bellamy and Paul Williams outline, “those Council members that remained skeptical about the use of force abstained because they believed that they could not legitimize inaction in the face of mass atrocities”<sup>41</sup>. However, while R2P played a defining normative role, it ‘was still contested by some members of the Security Council as an appropriate rationale for military action’<sup>42</sup>. Much of the contentious encircled R2P’s relationship with regime change – potentially unseating the recognized authorities as an action of international humanitarianism – with the norm of nonintervention and more pragmatic application of the intervention norm articulated through R2P propelling arguments against military action.

### **The Influence of Nonintervention**

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<sup>40</sup> Alex J. Bellamy, ‘Libya and the Responsibility to Protect: The exception and the norm’, *Ethics and International Affairs* 25(3) (2011), 264.

<sup>41</sup> Alex J. Bellamy and Paul D. Williams, ‘The new politics of protection? Côte d’Ivoire, Libya and the responsibility to protect’, *International Affairs* 87(4) (2011), 844.

<sup>42</sup> Welsh, ‘Civilian protection in Libya’, p.255.

While war crimes and crimes against humanity were widely articulated as the basis for any coercive measures, the decision to authorize and project military force within domestic, regional, and international political spheres still illustrated the normative influence of nonintervention informing the foreign policy decisions of international actors relative to R2P. As evidence, Resolution 1970 remained relatively uncontroversial among members of the UNSC even with coercive economic and diplomatic instruments including the ICC referral. However, Brazil, India, Germany, and others were seen to affirm that these measures were only a coercive means to limit further violence and bring a ceasefire for political transition. Russia's UN Ambassador affirmed:

A settlement of the situation in Libya is possible only through political means. In fact, that is the purpose of the resolution adopted by the Council, which imposes targeted, clearly expressed, restrictive measures with regard to those guilty of violence against the civilian population. However, it does not enjoin sanctions, even indirect, for forceful interference in Libya's affairs, which could make the situation worse<sup>43</sup>.

Through Qaddafi's continued 'intransigence' through early March, member states and other regional actors became increasingly convinced that the regime would not end violence under the coercive measures put in place through Resolution 1970<sup>44</sup>. However, even with the acknowledgement of 1,000 to 10,000 estimated deaths and anticipated loyalist strike on Benghazi, the consensus underwriting any further coercive projection measures was minimal and highly contested. On 8 March, within the Organization of Islamic Cooperation issued their statement in support of the no-fly zone and the provision of humanitarian aid, but crucially emphasized the 'imperative' of 'non-interference in the

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<sup>43</sup> UN Security Council, UN Doc S/PV.6491, p. 4.

<sup>44</sup> Bellamy and Williams, 'The new politics of protection?', 840.

internal affairs stressing the principled and firm position of the OIC against any form of military intervention in Libya'<sup>45</sup>. Similarly, the African Union refused to send a delegate to the Paris crisis summit. Their communiqué on 10 March, expressed its concern for the humanitarian situation and urged authorities to move towards greater reform, but affirmed 'its rejection of any foreign military intervention, whatever its form'<sup>46</sup>. Individual diplomats echoed these points. Sam Kutesa, Uganda's Foreign Minister outlined, "We do not want foreign interference. We think that there should be an African solution to this"<sup>47</sup>. Furthermore, Youssef bin Alawi bin Abdullah, Oman's foreign minister who announced the League of Arab States call for a no-fly zone, reiterated on 12 March, "If the Arab League does not take responsibility to prevent a downward spiral, that could lead to internal fighting or unwanted foreign intervention"<sup>48</sup>. This underlined a very limited regional consensus for even the Arab League's call for action.

The negotiations surrounding Resolution 1973 provided a particularly relevant lens to address international opinions surrounding global responsibility for human rights protections and intervention not only because of the unprecedented speed of response, but the composition of the UNSC with all five BRICS powers (Brazil, Russia, India, China and South Africa). Membership reflected not only the vast majority of the global population, but most major economic powers including in the EU with Germany also present. An abstention for veto powers is a means of allowing the Security Council to proceed without direct endorsement while, for non-permanent members, abstentions are

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<sup>45</sup> Organisation of Islamic Cooperation, 'Final Communiqué Issued by the Emergency Meeting to the Committee of Permanent Representatives to the Organisation of the Islamic Conference on the Alarming Developments in Libyan Jamahiriya', 8 March 2011, accessed 5 June 2015, <http://reliefweb.int/report/libya/final-communique-issued-emergency-meeting-committee-permanent-representatives>.

<sup>46</sup> African Union Peace and Security Council, 'Communiqué of the 265<sup>th</sup> Meeting of the Peace and Security Council', para. 6.

<sup>47</sup> Sudan Tribune, 'AU's opposition to military intervention in Libya ignored by UNSC, Obama', 19 March 2011, accessed 2 June 2011, <http://www.sudantribune.com/spip.php?article38332>.

<sup>48</sup> Al Jazeera, 'Arab states seek Libya no-fly zone', 12 March 2011, accessed 6 June 2011, <http://www.aljazeera.com/news/africa/2011/03/201131218852687848.html>.

as Bruce Jones highlights, “simply non-positive votes, legally equivalent to ‘no’ votes”<sup>49</sup>. In the case of Libya, Russia and China’s abstentions marked a significant decision in overcoming both countries enduring un-ease surrounding R2P with both countries approving resolution 1970 and abstaining from 1973 – allowing the implementation of coercive civilian protection measures in response to actions taken by the regime. However, their abstentions were still underwritten by arguments questioning the legitimacy of intervention and lack of operational criteria – more fully outlined by several non-permanent members.

Affirming a strict application of nonintervention as a norm, the Chinese Ambassador asserted, ‘China is always against the use of force in international relations’<sup>50</sup>. However, the delegation embraced a seemingly pragmatic stance, with China’s Ambassador, then acting-president, outlining: “China has serious difficulties with parts of the resolution. Meanwhile, China attached great important to the relevant position by the 22-member Arab League... In view of this, and the special circumstances surrounding the situation in Libya, China abstained”<sup>51</sup>. Thus, China’s conservative approach to R2P and intervention was pitted against a critical regional backing from the Arab League and perhaps decision to not be the only veto power against a resolution halting impending massacre. Similarly, Russia emphasized that due to the severity of the situation, Libya required an immediate ceasefire in which Russia would abstain in order to address. However, the Russian Ambassador Vitaly Churkin warned that operational specificity was lacking in Resolution 1973, and could ultimately been accomplished through peaceful settlement that Russia had proposed in an earlier draft resolution. Illustrating the influence of individual statesmen in relation to specific norms and cases, the Libyan case in Russia was framed as a major point of contention and fissure point in the relationship between

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<sup>49</sup> Bruce D. Jones, ‘Libya and the responsibilities of power’, *Survival* 53(3) (2011), 54.

<sup>50</sup> UN Security Council, UN Doc. S/PV.6498, p. 10.

<sup>51</sup> *Ibid.*



then Prime-Minister Vladimir Putin and then-President Dmitri Medvedev. President Medvedev in 2011 was noted for close interaction with US President Obama. Following Russia's abstention on 21 March, President Medvedev asserted, "Russia did not use its veto power for the simple reason that *I do not* consider the resolution in question wrong.... This was a conscious decision on our part. Such were the instructions I gave the Foreign Ministry, and they were carried out"<sup>52</sup>. While Russian policy has been explicitly conservative in terms of R2P, the Libyan case signaled that in particular cases, Medvedev would not shield the regime in the UNSC.

The intervention was particularly challenged in the UNSC in terms of lacking operational criteria and potentially destabilizing outcome. Specificity surrounding operational targeting criteria, time scope, and other requirements from various members were seen as lacking in the resolution, with its ultimate humanitarian aim potentially damaged through any projection of force. Russia's Ambassador highlighted, "Questions raised by Russia and other members of the Council remained unanswered. Those questions were concrete and legitimate and touched on how the no fly zone could be enforced, what the rules of engagement would be, and what limits on the use of force there would be"<sup>53</sup>. Several non-permanent members echoed concerns – with their abstentions interpreted as an openly critical response to the resolution's mandate.

India and Brazil's abstentions in particular expressed concern surrounding the aggravation any military force projection could bring through a no-fly zone as well as the lack of operational specificity surrounding the measures outlined. Brazil's ambassador emphasized, "We are not convinced that the use of force as provided for in operative

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<sup>52</sup> Dmitry Medvedev, 'Statement by Dmitry Medvedev on the situation in Libya', *Presidential Executive Office of Russia*, 21 March 2011, accessed 27 July 2015, <http://en.kremlin.ru/events/president/news/10701>, (my emphasis).

<sup>53</sup> UN Security Council, UN Doc. S/PV.6498, p. 8.

paragraph 4 of the present resolution will lead to the realization of our common objective – the immediate end of violence and protection of civilians”. Furthermore, “We must take the greatest care to ensure that our actions douse the flames of conflict instead of stoking them”<sup>54</sup>. While Brazil within the Organization of American States has not been averse to democracy or human rights promotion, this case illustrated a particularly critical reflection of force to achieve the resolution’s mandate. These concerns were even more unfavorably addressed by India. Manjeev Singh Puri, India’s ambassador, emphasized that the UN had appointed a Special Envoy on the situation in Libya, whose report had not been seen, while the African Union’s High Level Panel was taking further efforts to resolve the crisis through peaceful means that might be negatively impacted through an immediate UNSC response. ‘We must stress the importance of political efforts’ arguing that the both the resolution’s mandate and potential impact had not been adequately addressed. “We must ensure that the measures will mitigate and not exacerbate an already difficult situation for the people of Libya. Clarity in the resolution on any spillover effects of these measures would have been very important”<sup>55</sup>. Thus, favoring a political rather than military response under lack of clarity of the enforcement measures and their projected impact, India chose to not support the resolution. It was not that sovereignty provided a normative barrier to intervention, but that the projection of force would not alleviate the civilian suffering or required greater clarity surrounding its mandated scope.

A particularly contentious abstention came from Germany, a prominent member of NATO. With a new UN Ambassador Peter Wittig, several critics of the abstention echoed that Germany must have had a lapse in judgment or didn’t understand ‘how the council

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<sup>54</sup> UN Security Council, ‘Security Council Approves “No-Fly Zone” over Libya, Authorising “All Necessary Measures” to Protect Civilians, by Vote of 10 in Favour with 5 Abstentions’, Meetings Coverage SC/10200, 17 March 2011, accessed 5 June 2015, <http://www.un.org/press/en/2011/sc10200.doc.htm>.

<sup>55</sup> UN Security Council, UN Doc. S/PV.6498, p. 5.

worked'<sup>56</sup>. The abstention was cited by several as a blunder for German policy and its pursuit of a permanent Security Council seat. However, the vote was later affirmed as a calculated decision, vocally insisting the necessity for multilateral action that would be best achieved through non-military means. Germany's UN Ambassador outlined:

We have very carefully considered the option of using military force – its implications as well as its limitations. We see great risks. The likelihood of large-scale loss of life should not be underestimated. If the steps proposed turn out to be ineffective, we see the danger of being drawn into a protracted military conflict that would affect the wider region. We should not enter a military confrontation on the optimistic assumption that quick results with few casualties will be achieved. Germany therefore decided not to support a military option, as foreseen particularly in paragraphs 4 and 8 of the resolution. Furthermore, Germany will not contribute to such a military effort with its own forces<sup>57</sup>.

Various reasons have been given for the abstention linked to Germany's historic aversion to projecting force following the two world wars, Eurozone crisis waging in 2011, and domestic political elections with popular sentiment against military action. However, Germany's involvement in Kosovo in 1999 with NATO's Operation Allied Force and later Afghanistan through ISAF's campaign showed a new side of Germany's activism in foreign affairs in which 2011 illustrated a further seminal moment. Rather than signaling acquiescence or acceptance with Resolution 1973, Germany separated itself from traditional allies and vocally raised a number of concerns against intervention. As Alister Miskimmon highlights, "These considerations focused on the risk of Germany forces

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<sup>56</sup> Richard Rousseau, 'Why Germany abstained on UN Resolution 1973 on Libya', *Foreign Policy Journal*, 22 June 2011, accessed 15 January 2015, <http://www.foreignpolicyjournal.com/2011/06/22/why-germany-abstained-on-un-resolution-1973-on-libya/>.

<sup>57</sup> UNSC, Security Council, S/PV.6498, p. 5.

becoming embroiled in extended conflict and Germany political assertions in German domestic politics that the crisis could be resolved through diplomatic and economic tools”<sup>58</sup>. Providing additional force contributions to Afghanistan to aid NATO’s pivot towards Libya, Germany remained critical of intervention in Libya.

These disputes over intervention also spread throughout global civil society between those in favor of a no-fly zone such as the Global Centre on the Responsibility to Protect and those opposed which included the International Crisis Group (ICG)<sup>59</sup>. Emphasizing that ongoing widespread and systemic ‘crimes against humanity’ placed the crisis firmly within R2P’s purview, the Global Centre on R2P highlighted that the League of Arab State’s call for action through the ‘responsibility’ of the UNSC as directly linked to the 2005 commitment, with a no-fly zone serving as a viable means to ensure that the regime would not use its air force against the population<sup>60</sup>. In contrast as Louise Arbour, then-President of the ICG in an open letter to the Security Council on 16 May, emphasized that the situation had evolved into a full scale civil war, in which: “The most urgent goal now must be to end the violence and halt further loss of life, while paving the way towards a political transition, objectives that require a different response. Imposing a no-flight zone, which many have been advocating, would, in and of itself, achieve neither of these”<sup>61</sup>. What this argued was that the nature of conflict and atrocities made the imposition of a no-fly zone inappropriate and at worst case unhelpful in moving towards a stabilized political climate. Outside foreign intervention and statebuilding, the preferable option forwarded by Arbour involved a ‘vigorous political effort’ towards a ceasefire and transition in government that could be accepted as legitimate by the

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<sup>58</sup> Alister Miskimmon, ‘German foreign policy and the Libya crisis’, *German Politics* 21(4) (2012), 396.

<sup>59</sup> Williams, ‘Briefing The Road to Humanitarian War in Libya’, 254.

<sup>60</sup> Global Centre for the Responsibility to Protect, ‘Libya: Time for a decision’, 14 March 2011, accessed 31 May 2015, [http://www.globalr2p.org/media/files/libya\\_time\\_for\\_decision\\_14\\_march\\_2011.pdf](http://www.globalr2p.org/media/files/libya_time_for_decision_14_march_2011.pdf).

<sup>61</sup> Louise Arbour, ‘Open Letter to the UN Security Council on the Situation in Libya’, *International Crisis Group*, 16 March 2011, accessed 31 May 2015, <http://www.crisisgroup.org/en/publication-type/media-releases/2011/open-letter-UNSC-libya.aspx>

population. Leading international relations and legal scholars echoed these arguments - stressing the potential dangerous repercussions of intervention<sup>62</sup>.

### **A Rare Confluence of Factors**

Even within states pushing for intervention, consensus was highly limited with emphasis placed on regional support, an authorized mandate, and interestingly, the limited strategic value of Libya that provided policymakers room to maneuver without risking major national interests or sparking wider international conflict<sup>63</sup>. The decisive and timely response in Libya was widely heralded for its clinical accuracy in halting the bloodbath in Benghazi and Qaddafi's forces cleansing further rebel cities. As the revolution in Libya evolved, the clear potential for mass atrocities and negative spillover-effects of continued instability meant that nonintervention was argued as an illegitimate international response. Throughout the crisis, protection measures were contested through justifications and behaviour centred on egregious violations of human rights and worsening situation on the ground – necessitating progressively severe measures to halt violence against unarmed protesters and ultimately an imminent mass slaughter<sup>64</sup>. The threat of imminent atrocities was exceptionally clear, not only due to the range of reports closely following the crisis, but the direct statements of the Libyan regime. Reminiscent of the Hutu Radio broadcasts in Rwanda prior to the 1994 genocide, Qaddafi threatened the purification of Libyan 'cockroaches' that would be hunted down with 'rivers of

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<sup>62</sup> Michael Walzer, 'The case against our attack on Libya', *New Republic*, 20 March 2011, accessed 15 June 2015, <http://www.newrepublic.com/article/world/85509/the-case-against-our-attack-libya>; Richard Falk, 'Libya: Will we ever learn? Kicking the intervention habit', *Voltaire Network*, 11 March 2011, accessed 14 June 2015, <http://www.voltairenet.org/article168826.html>.

<sup>63</sup> Stephen D. Krasner, 'New Terrains: Sovereignty and Alternative Conceptions of Power' in Martha Finnemore and Judith Goldstein (eds.), *Back to Basics: State Power in a Contemporary World* (New York: Oxford University Press, 2013), p. 339.

<sup>64</sup> Jason W. Davidson, 'France, Britain and the intervention in Libya: An integrated analysis', *Cambridge Review of International Affairs* 26(2) (2013), 310-329.

blood'<sup>65</sup>. By directly threatening and carrying out violence with an estimated 1,000 to 10,000 killed prior to resolution 1973, the regime presented itself as manifestly culpable with international actors successfully arguing that intervention was required to halt an imminent and clear threat of mass atrocity crimes<sup>66</sup>.

The humanitarian crisis had developed within weeks to an articulated threat to wider regional and international stability through 'migration, economic interests, and terrorism logics' pegged to egregious violations of international humanitarian and human rights norms<sup>67</sup>. Although even the most ardent supporters for coercive action such as France and the UK were initially cautious, by mid-March, both embraced a radically proactive stance in support of intervention against loyalist forces poised to strike Benghazi<sup>68</sup>. British Prime Minister David Cameron outlined that coercive actions were pegged to 'demonstrable need, regional support, and a clear legal basis', which in the case of Libya was underwritten by an immediate threat: "Forces have attacked peaceful protesters, and are now preparing for a violent assault on a city of a million people that has a history dating back 2,500 years"<sup>69</sup>. The time frame provided an important factor. To the Security Council on 17 March, France's Foreign Minister Alain Juppé asserted, "every day, every hour that passes tightens the vice of the forces of repression on the liberty-loving civilian population, notably the population of Benghazi"<sup>70</sup>. Outlining the threat of the regime inflicting punishment door to door with deaths of 'over a thousand people in a single

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<sup>65</sup> Zifcak, 'The Responsibility to Protect after Libya and Syria', 60; Kareem Fahim and David D. Kirkpatrick, 'Qaddafi's grip on the capital tightens as revolt grows', *The New York Times*, 22 February 2011, accessed 27 May 2015, [http://www.nytimes.com/2011/02/23/world/africa/23libya.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2011/02/23/world/africa/23libya.html?pagewanted=all&_r=0).

<sup>66</sup> James Pattison, 'The ethics of humanitarian intervention in Libya', *Ethics and International Affairs* 25(3) (2011), 272.

<sup>67</sup> Davidson, 'France, Britain and the intervention in Libya'.

<sup>68</sup> Ibid.

<sup>69</sup> UK Government, 'Prime Minister statement on the UN Security Council Resolution on Libya', 18 March 2011, accessed 5 June 2015, <https://www.gov.uk/government/news/prime-minister-statement-on-the-un-security-council-resolution-on-libya>.

<sup>70</sup> UN Security Council, UN Doc. S/PV.6498.

day’, US President Barack Obama argued, “If we waited one more day, Benghazi, a city the size of Charlotte, could suffer a massacre that would have reverberated across the regional and stained the conscious of the world. It was not in our national interest to let that happen”<sup>71</sup>. The principal Western leaders involved in the intervention emphasized the protection of civilians as the key causal factor in ultimate intervention and its work to build international consensus surrounding the vote for Resolution 1973<sup>72</sup>. Having imposed coercive diplomatic and economic measures without substantive impact, the immanency and clarity of the threat was seen to weaken arguments for a more gradual or diplomatic approach proposed by actors such as Russia and the AU<sup>73</sup>.

Throughout the Middle East, Africa, and Western world, Qaddafi’s long history of foreign adventurism and support of terrorist movements meant that the Libyan regime was ‘uniquely reviled, and uniquely disposable’ with few strategic partnerships abroad<sup>74</sup>. Libya’s defecting foreign Ambassadors and UN Mission also calling for intervention along with the NTC further isolated the regime while giving further credibility to Libyan calls for protection measures. Libya’s relatively weak military, air defense network, and geographic position in North African with its small population concentrated along with coastline meant that foreign carriers and bases in Europe could carry out air strikes within relatively easy reach – an often under-emphasized operational advantage. Regional calls for action, speed of the humanitarian crisis within wider Arab Spring context, NATO’s involvement which allowed for a diffused command structure, strategic bargaining

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<sup>71</sup> The White House, Office of the Press Secretary, ‘Remarks by the President in Address to the Nation on Libya’, 28 March 2011, accessed 5 June 2015, <https://www.whitehouse.gov/the-press-office/2011/03/28/remarks-president-address-nation-libya>.

<sup>72</sup> Barack Obama, David Cameron and Nicolas Sarkozy, ‘Libya’s pathway to peace’, *The New York Times*, 14 April 2011, accessed 9 June 2015, [http://www.nytimes.com/2011/04/15/opinion/15iht-edlibya15.html?\\_r=0](http://www.nytimes.com/2011/04/15/opinion/15iht-edlibya15.html?_r=0)].

<sup>73</sup> Eric A. Heinze and Brent J. Steele, ‘The (D)evolution of a Norm: R2P, the Bosnia Generation and Humanitarian Intervention in Libya’ in Aiden Hehir and Robert Murray (eds.), *Libya: The Responsibility to Protect and the Future of Humanitarian Intervention* (London: Palgrave Macmillan, 2013), p. 152.

<sup>74</sup> Philip Gourevitch, ‘The Arab Winter’, *The New Yorker*, 28 December 2011, accessed 25 June 2015, <http://www.newyorker.com/news/daily-comment/the-arab-winter>.

surrounding international authorization, and the alignment of state interests with human rights protections meant that the crisis presented a ‘perfect storm’ for actors to implement R2P<sup>75</sup>. As American President Barack Obama asserted:

In this particular country – Libya – at this particular moment, we were faced with the prospect of violence on a horrific scale. We had a unique ability to stop that violence: an international mandate for action, a broad coalition prepared to join us, the support of Arab countries, and a plea for help from the Libyan people themselves. We also had the ability to stop Qaddafi’s forces in their tracks without putting American troops on the ground<sup>76</sup>.

While several critics noted the strategic importance of Libya along the Mediterranean with large oil reserves, the justifications for force projection and actions of those intervening did not as Stephen Krasner outlines, fit a ‘neat realist narrative’<sup>77</sup>. Several states spent over a billion USD on the operation, while NATO powers carrying out the protection mandate by April ran low on munitions highlighting extensive material costs<sup>78</sup>. Many of the powers projecting force including the US and UK had little ‘confidence in, or much knowledge about, the nature of the Libyan opposition’, furthermore, “Nothing that happens in Libya will change the international balance of power”<sup>79</sup>. Illustrating an unusual confluence of factors, the protection of civilians was emphasized by global actors as the principle element driving coercive sanction in the face of nonintervention – even if

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<sup>75</sup> Timothy Dunne and Jess Gifkins, ‘Libya & R2P: Norm consolidation or perfect storm?’, *The Interpreter*, 14 April 2011, accessed 31 May 2015, <http://www.lowyinterpreter.org/post/2011/04/14/Libya-R2P-Norm-consolidation-or-perfect-storm.aspx?COLLCC=1925744585&>.

<sup>76</sup> The White House, Office of the Press Secretary, ‘Remarks by the President in Address to the Nation on Libya’.

<sup>77</sup> Krasner, ‘New Terrains’, pp. 339.

<sup>78</sup> Karen DeYoung and Greg Jaffe, ‘NATO runs short on some munitions in Libya’, *The Washington Post*, 15 April 2011, accessed 15 June 2015, [http://www.washingtonpost.com/world/nato-runs-short-on-some-munitions-in-libya/2011/04/15/AF307E1D\\_story.html](http://www.washingtonpost.com/world/nato-runs-short-on-some-munitions-in-libya/2011/04/15/AF307E1D_story.html).

<sup>79</sup> Krasner, ‘New Terrains’, pp. 339.



the ultimate result would yield unknown or potentially negative political and economic costs for individual states intervening<sup>80</sup>.

### **Political Will and Nonintervention**

Affirmation of the norm of nonintervention should be caveated to the extent that limited discourse argued that the Libyan regime had a right to carry out such atrocities free from international sanction – illustrating R2P’s salience as a means of restructuring the terms of international debate. Furthermore, shallow support for intervention may have also reflected the pragmatic interests of states to avoid material costs of protracted military investment or other contextual alliance or regional dynamics specific to Libya. However, arguments still encircled the extent to which the international community may respond – particularly the use of military force, and even how those forces could be potentially projected. Through this lens, the norm of nonintervention served as a normative factor embraced by China and other major powers underwritten by arguments that while non-direct military actions such as sanctions, embargoes or perhaps no-fly zones may be acceptable in those most extreme cases, the projection of force against domestic actors should not be carried out as a general rule, particularly against a standing regime faced with domestic insurrection.

While widely affirmed as a success for the norm of R2P and its implementation in world politics, the consensus underwriting intervention remained limited with the norm of nonintervention playing a substantive role. This dynamic was partially illustrated by the lack of contributions from powers with unique capabilities to intervene as well as NATO alliance interests at stake. Poland, Germany, the Netherlands and Italy all have ground attack capabilities including munitions and technology for suppression of enemy air

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<sup>80</sup> Bellamy and Williams, ‘The new politics of protection?’, 844.

defense (SEAD)<sup>81</sup>. Yet even as some of the few international powers able to take these roles paired with a UN mandate, Germany and Poland both principally opposed the humanitarian intervention, while Italy and the Netherlands critically limited their roles or relegating their forces to air policing<sup>82</sup>. Ultimately, only 14 of the 28 NATO states contributed any resources, while only six European countries (Britain, France, Belgium, Italy, Norway and Denmark) contributed to the strike mission<sup>83</sup>. The United States made large initial contributions and sustained roughly 70 percent of the air refueling and the majority of the Intelligence, Surveillance, and Reconnaissance (ISR), however the United States distanced itself from direct combat roles following initial weeks<sup>84</sup>. Few Middle Eastern powers provided military resources and none initially carried out the strike mission. Neither neighboring Egypt nor Tunisia made military contributions, while those most vocal – Qatar and the UAE – represent roughly one percent of the Arab world<sup>85</sup>. These elements illustrated the weak regional interests in intervention, and generally limited international consensus underwriting the projection of force.

The initial draft resolution for 1973 was openly opposed by various NATO allies and ‘regarded with considerable caution by the United States’<sup>86</sup>. The US decision to intervene was widely framed by White House officials as a last-minute decision in which President Obama decided to push for intervention to halt imminent atrocities, but with the ability to relinquish command to NATO and keep the intervention highly air-oriented in order to hinder an international perception of US meddling in a further Middle Eastern state after ten years of regime change and war in Iraq and Afghanistan. Defense Secretary Robert

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<sup>81</sup>Christian F. Anrig, ‘Allied air power over Libya: A preliminary assessment’, *Air & Space Power Journal* 25(4), 92.

<sup>82</sup> Ibid., 93.

<sup>83</sup> Ellen Hallams and Benjamin Schreer, ‘Towards a “post-American” alliance? NATO burden-sharing after Libya’, *International Affairs* 88(2) (2012), 322.

<sup>84</sup> Anrig, ‘Allied air power over Libya’, 92.

<sup>85</sup> Walzer, ‘The case against our attack on Libya’.

<sup>86</sup> Bellamy and Williams, ‘The new politics of protection?’, 840.

Gates and National Security Advisor Jacob Heibrunn among others challenged the efficacy of any intervention, economic costs, and potential for military overstretch, and lack of national interests in Libya<sup>87</sup>. Yet, intervention was also critically promoted by a number of close advisors including Secretary of State Hilary Clinton, UN Ambassador Susan Rice, and National Security Director for Multilateral Affairs and Human Rights, Samantha Power, ‘arguing for limited military action in Libya against the noninterventionist inclinations’<sup>88</sup>. In the UK and France, both actors affirmed the necessity to intervene based on the implications of Libya descending into further chaos with economic, immigration, and terror implications. However, the projection of force was still argued as an unnecessary exertion initially in France, and throughout the UK’s parliamentary debate. Conservative MP Bob Stewart, a former army officer and UN Commander in Bosnia commented, “What can we do to help? We cannot invade, we cannot assassinate – it is up to the Libyans to decide what to do... We cannot do it. Nobody knows the end game – we all realize that”. The skeletons of Iraq and Afghanistan were also evidently clear, with Labour MP Yasmin Qureshi:

We in this country and this House do not really understand the Middle East and North Africa. We are meddling in things that we should not meddle in, because there are so many uncertainties. In the past 10 to 12 years, America, ourselves and others have spent trillions of dollars on being involved in conflict in the Middle

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<sup>87</sup> Mary Ellen O’Connell, ‘How to Lose a Revolution’ in *The Responsibility to Protect: Challenges and Opportunities in Light of the Libyan Intervention*, e-International Relations, November 2011, <http://www.e-ir.info/wp-content/uploads/R2P.pdf>, p.15-17.

<sup>88</sup> Ramesh Thakur, ‘R2P, Libya and International Politics as the Struggle for Competing Normative Architectures’, in *The Responsibility to Protect: Challenges and Opportunities in Light of the Libyan Intervention*, e-International Relations, November 2011, <http://www.e-ir.info/wp-content/uploads/R2P.pdf>, p.12-14.

East, and what have we left? We have not resolved any of the situation involved or made countries any better than when we went into them<sup>89</sup>.

These arguments highlight the tentative nature of international consensus for any projection of coercive force within Libya. A degree of international and regional support was also seen as a prerequisite for both France, and particularly the UK's involvement<sup>90</sup>. While the UN authorization and regional support played critical roles in providing a legal basis and domestic support for action in several Western states, both rested on nominal political foundations. Without UN approval, the intervention most assuredly would not have occurred<sup>91</sup>. Yet, the regional support for intervention was highly Arab-centred rather than embraced by African elites with a history of support for such humanitarian roles through the Constitutive Act of the AU. This is in part attributed to the investments of Libya in sub-Saharan Africa, with South African officials publically commenting that it 'doubted whether the AU panel would be impartial'<sup>92</sup>.

Members of the OIC, GCC, and Arab League, promoted the no-fly zone with statements supporting coercive measures as a means to force a ceasefire towards political reconciliation, ensuring the regime's air force couldn't operate in specific areas – while all regional actors generally or specifically denounced foreign ground forces that would be seen as an 'illegitimate occupation force'<sup>93</sup>. Under the vocal support of Lebanon representing the Arab League in the UNSC, delegates highlighted that Western powers succeeded in shaping discourse to reflect a moral imperative for intervention – a no-fly

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<sup>89</sup> UK Houses of Parliament, 'United Nations Security Council Resolution 1973', House of Commons Debate Column 700, 21 March 2011, accessed 12 June 2015, <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110321/debtext/110321-0001.htm#1103219000001>.

<sup>90</sup> Davidson, 'France, Britain and the intervention in Libya', 316-317.

<sup>91</sup> Aidan Hehir and Anthony Lang, 'The Impact of the Security Council on the Efficacy of the International Criminal Court and the Responsibility to Protect', *Criminal Law Forum* 26(1) (2015), 166.

<sup>92</sup> Sudan Tribune, 'AU's opposition to military intervention in Libya ignored by UNSC, Obama'.

<sup>93</sup> Council of the League of Arab States, Res. No. 7360, 12 March 2011, para. 1.

zone and military mandate to ensure that no Srebrenica situation re-emerged under a more limited mandate that precluded forces from military targeting those on the ground threatening the civilian population<sup>94</sup>. Any level of consensus undergirding the intervention arguably was placed on the conception that a no-fly zone would be minimally destructive of regime force directly in the civil war, and more based on a coercive means to bring about a ceasefire and political transition. At both domestic as well as international levels, this dynamic illustrated a lack of operational requirement knowledge of what a no-fly zone substantively entailed – including arguments surrounding the utility of a strict no-fly zone that precluded the targeting of ground forces that were carrying out atrocities – particularly as the intervention evolved towards regime change.

While Qaddafi's air force had been pivotal in supplying loyalist troops and maintaining regime bases, the greatest threat to civilians by mid-March remained ground forces – which left unchecked, could continue to attack civilian positions and rebel forces. Very early in the drafting process following the request of the Arab League, the US mission was uncomfortable with a no-fly zone mandate due to its inability to shape the situation on the ground. When the Obama Administration did signal its ultimate support, greater consensus was built around the resolution through a compromise introduced by Lebanon which outlined 'no foreign occupation' on the ground, which helped quell Russia's argument against the resolution and the United States concern that it needed a more expansive mandate allowing for the removal of air defenses and targeting ground forces which threatened civilian areas<sup>95</sup>. Coalition countries supporting intervention widely recognized that loyalist ground forces targeting civilians would need to be militarily challenged – requiring more than aerial denial. Within the US domestically, defense

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<sup>94</sup> Rebecca Adler-Nissen and Vincent Pouliot, 'Power in practice: Negotiating the international intervention in Libya', *European Journal of International Relations* 20(4) (2014), 901.

<sup>95</sup>Ibid.

secretary Robert Gates outlined, “there’s a lot of frankly, loose talk about some of these military options, and lets just call a spade a spade. A no-fly zone begins with an attack on Libya to destroy the air defenses. That’s the way you do a no-fly zone”<sup>96</sup>. Further discussed in UK’s parliament, sentiment was seen to revolve around a ‘romantic notion of a no-fly zone’, which as several members of parliament noted, really serves as a ‘euphemism for war’ requiring denial of air defenses that place coalition aircraft at risk while actual protection of the population would ultimately require striking loyalist targets on the ground including tanks, artillery, and personnel carriers threatening civilian locations. Within Resolution 1973, the expansive statement of ‘all necessary measures’ including the protection of ‘civilian populated areas under threat of attack’ was accepted in part due to the Ambassador of Bosnian and Herzegovina’s statement in the UNSC, “I know what the airstrikes can do, I was there, but eventually it did not bring peace”<sup>97</sup>. However, while several Western powers seemed to interpret the Arab League’s call as a desire for the coercive projection of force, evidence from the time suggests the no-fly zone was largely interpreted regionally as a coercive means to bring about a ceasefire rather than targeting regime forces or directly contributing to the civil war. Aligned with the norm of nonintervention, once the intervention began, diverging conceptions of what the civilian protection measures entailed through the no-fly zone showed their fissures, with the seeming support for military measures from the Arab League and other regional and international actors quickly dissipating.

Although the Arab League and other regional actors played a major role in securing Resolution 1973, their support was ultimately tentative and emphasized that the role of the no-fly zone was to bring about a political solution. Within hours of the first coalition airstrikes, the President of the Arab League Amr Moussa called for a ‘genuine ceasefire’

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<sup>96</sup> Elise Labott, ‘U.S. mulling military options in Libya’, *CNN*, 3 March 2011, accessed 28 January 2011, [http://edition.cnn.com/2011/US/03/02/libya.military.options/index.html?\\_s=PM:U.S..](http://edition.cnn.com/2011/US/03/02/libya.military.options/index.html?_s=PM:U.S..)

<sup>97</sup> Adler-Nissen and Pouliot, ‘Power in practice’, 901.

that including coalition forces. “What is happening in Libya differs from the aim of imposing a no-fly zone, and what we want is the protection of civilians and not the bombardment of more civilians... You can’t have a decisive ending. Now is the time to do whatever we can to reach a political solution”<sup>98</sup>. As the African Union would vocally challenge in the month following initial strikes: “there is a growing acknowledgement with the international community, including prominent civilian and military officials from key countries of the coalition contributing to the NATO operation in Libya, that there is no military solution to the current crisis in Libya”<sup>99</sup>. Furthermore, both Chinese and Russian leaders felt ‘duped’ that the force projection was proving expansive and ultimately contributing towards the civil war and regime change. Chinese President Hu Jintao met with French President Nicholas Sarkozy days after the first strikes, asserting, “Dialogue and other peaceful means are the ultimate solutions to problems... If military action brings disaster to civilians and causes humanitarian crisis, then it runs counter to the purpose the UN resolution”<sup>100</sup>. Russian Prime Minister Vladimir Putin outlined, NATO “violated the UN Security Council resolution on Libya, when instead of imposing the so-called no-fly zone over it they started bombing it too”<sup>101</sup>. This element emphasizes the limited regional and wider international support for intervention, which quickly became apparent following initial strikes.

## **Conclusion: Libya’s Legacy**

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<sup>98</sup> Ian Traynor, ‘Arab League chief admits second thoughts about Libya air strikes’, *The Guardian*, 21 March 2011, accessed 31 May 2015, <http://www.theguardian.com/world/2011/jun/21/arab-league-chief-libya-air-strikes>.

<sup>99</sup> African Union Peace and Security Council, ‘Report of the Chairperson of the Commission on the Activities of the AU High Level Ad Hoc Committee on the Situation in Libya’, PSC/PR/2(CCLXXV), 26 April 2011, accessed 27 May 2015, <http://www.peaceau.org/uploads/275reportonlibyaeng.pdf>.

<sup>100</sup> Wang Yan, ‘Chinese President meets French counterpart, saying force is no solution to the Libyan issue’, *Xinhua*, 30 March 2011, accessed 10 June 2015, [http://news.xinhuanet.com/english2010/china/2011-03/30/c\\_13805658.htm](http://news.xinhuanet.com/english2010/china/2011-03/30/c_13805658.htm).

<sup>101</sup> Alan J. Kuperman, ‘Obama’s Libya debacle’, *Foreign Affairs* 94(2) (2015), 66-77.

What makes Libya an exceptional case in relation to R2P was the speed of international response, decisiveness of institutional calls for action including the Arab League and UNSC mandate for ‘all necessary measures’, but also as the only case of military force projection authorized without regime consent. Politically and ethically meaningful, international aversion to human rights atrocities led to a level of consensus in support of forcible military projection for humanitarian purposes in the face of nonintervention. While the Libyan intervention has been framed as a self-interested pursuit of states to remove a uniquely reviled autocrat, patron of international terror, and petroleum source right across the Mediterranean, the decision to intervene reflected a wide body of normative and material factors. At the time intervention was initiated, intelligence was widely framed as pointing towards impending mass atrocities. While we will never know what the ultimate impact would have been, several Western state actors made the decision to intervene under a unique set of circumstances, which facilitated protection measures. Both the speed of international responses, robustness of the authorized measures, and authorization without the target state consent does mark an important precedent for R2P as a norm. In stark contrast to Sri Lanka, the international community placed ‘human rights up front’ with widespread activism. When a level of consensus for international civilian protection existed in response to anticipated mass atrocity crimes, the international community responded with substantive military investments. Under a UNSC authorized mandate based on the strategic bargaining of key actors, Libya illustrated what Thomas Weiss frames as a ‘high water mark’ for the support of R2P<sup>102</sup>. The direct invocation of R2P within consecutive UNSC resolutions and regional institutional calls underwrote an international perception that inaction would have yielded further civilian deaths and mass atrocities in the city of Benghazi.

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<sup>102</sup> Thomas G. Weiss, ‘After Syria, Whither R2P?’, in Robert W. Murray and Alasdair McKay (eds.), *In the Eleventh Hour: R2P, Syria, and Humanitarianism in Crisis* (Bristol, UK: E-International Relations, 2014), p. 34-37.



This chapter highlights that while the intervention's legitimacy and justifications were pegged to Security Council authorization and the protection of civilians from widespread atrocities, the norm of nonintervention still played a role in the aversion of China and Russia, but also the principled assertions of non-permanent member states that interventionary practice under R2P does not exist as an accepted standard of behavior yielding humanitarian outcomes. Thus, while a rare confluence of factors underwrote intervention, "the implementation of the sharp, military end of Pillar Three of R2P in Libya in 2011 shows that the global consensus on R2P is tenuous and fragile rather than robust and resilient"<sup>103</sup>. The international context following the Sri Lankan crisis, greater discussion of R2P globally, and with Western powers ending their decade long wars in Iraq and Afghanistan, the immediacy and clarity of the threat posed by the regime illustrated a rare confluence of operational and international political factors. While France, the UK, and US bore the brunt of force projection, the transition toward impartiality with special operations support, military advisors, funding, and armaments streaming to the rebels from international actors, the support for intervention evaporated.

Although the projection of force is inherently non-neutral in its impact to those targeted, the coalition intervention proved decisive and turned the tide domestically from a waning revolution, to stalemate, and ultimately coalition-sponsored air, ground, and intelligence war against the Qaddafi regime. The UNSC authorization was predicated on short-term gains through the immediacy of mass atrocities in Benghazi and regional support for a seemingly un-authoritarian no-fly zone for area denial. While the military force projection was widely framed as a "successful application of R2P because the military campaign succeeded in protecting Libyan citizens... Even the most ardent international advocates of R2P had acknowledged that the mandate was stretched to breaking point

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<sup>103</sup> Thakur, 'R2P, Libya and International Politics as the Struggle for Competing Normative Architectures'.

and maybe beyond it”<sup>104</sup>. Although the removal of Qaddafi’s air force, air defense network, and those ground forces nearing Benghazi could have been argued as legitimate targets to limit the potential for mass atrocity crimes, the transition in NATO’s aims towards deposing the regime ultimately backfired for R2P through its rhetorical and political attachment to the intervention<sup>105</sup>. Arguably tied to regime-change and its relationship to R2P, the Libyan case highlighted arguments for nonintervention as a firm standard of behavior due to the long-term and potentially detrimental repercussions of humanitarian intervention against standing regimes faced with domestic insurrection.

Following Libya’s revolution, the NTC moved towards its outlined plan of institution building within a constitutional government based around secular democracy – a seemingly successful result and stark contrast to Qaddafi’s four decades of rule. Holding elections in July 2012, government power successfully transferred to a General National Congress in August. However, in the wake of democratic reforms, there has been an inability to consolidate greater security – perpetuating domestic turmoil and wider regional insecurity. By 2014, two rival governments have appeared with the internationally recognized regime based in eastern city of Tobruk, and a rival government based in Tripoli under a loose coalition of largely Islamist militant groups known as ‘Libya Dawn’<sup>106</sup>. Taking advantage of the power vacuum left from the intervention and weak political institutions left in Qaddafi’s wake, the country exists in a state of anarchy, with tribal militia and jihadist groups gaining a substantive foothold. As Brazil’s President Dilma Rouseff argued in the UNSC:

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<sup>104</sup> Zifcak, ‘The Responsibility to Protect after Libya and Syria’, 70.

<sup>105</sup> Gareth Evans, ‘Interview: The R2P Balance Sheet After Libya’. in *The Responsibility to Protect: Challenges and Opportunities in Light of the Libyan Intervention*, e-International Relations, November 2011, <http://www.e-ir.info/wp-content/uploads/R2P.pdf>, p.34-42.

<sup>106</sup> Ruth Sherlock, ‘Libya slipping toward all-out civil war after peace talks delayed in Morocco’, *The Telegraph*, 11 March 2015, accessed 12 June 2015, <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/11465785/Libya-slipping-toward-all-out-civil-war-after-peace-talks-delayed-in-Morocco.html>.

Attention must be paid to the fact that the world today suffers the painful consequences of intervention that have aggravated existing conflict, allowed terrorism to penetrate into places where it previously did not exist, given rise to new cycles of violence and increased the vulnerability of civilian populations<sup>107</sup>.

Criticism has focused on the failure of NATO and other international actors to effectively secure the country and aid in the process of reconstruction and statebuilding. However, the lessons learned from this intervention may not be that similar cases require more expansive post-conflict statebuilding, but rather that the intervention's aim and repercussions should have been more heavily scrutinized. As one study outlined, based on the Libyan crisis' progression and trajectory prior to intervention, had intervention not occurred, the poorly organized and trained rebels would have lasted an estimated six weeks and 1,100 of the population would have been killed<sup>108</sup>. In contrast, the coalition intervention ultimately contributed to thirty-six weeks of bombing, with foreign funding, military advisors, and weapons from Sudan and Qatar among others leading to decisive victory with the regime's weapons and fighters trickling throughout the region – inciting both domestic instability and violence in neighboring countries.

Immediately following rebel victory, militia groups carried out widespread reprisal killings, torture, and detainment of suspected Qaddafi loyalists<sup>109</sup>. Targeted violence particularly against the population from Sub-Saharan Africa believed to be 'mercenaries'

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<sup>107</sup> UN General Assembly and UN Security Council, 'Letter dated 9 November 2011 from the Permanent Representative of Brazil to the United Nations addressed to the Secretary-General', 66<sup>th</sup> Sess., UN Doc. A/66/551-S/2011/701, 11 November 2011, para. 10.

<sup>108</sup> Kuperman, 'A model humanitarian intervention?'

<sup>109</sup> Kareem Fahim, 'Accused of fighting for Qaddafi, A Libyan town's residence face reprisals', *The New York Times*, 24 September 2011, accessed 12 June 2015, [http://www.nytimes.com/2011/09/24/world/africa/accused-of-fighting-for-qaddafi-tawerga-residents-face-reprisals.html?\\_r=0](http://www.nytimes.com/2011/09/24/world/africa/accused-of-fighting-for-qaddafi-tawerga-residents-face-reprisals.html?_r=0).

reached such extensive levels that within months of declared victory, Human Rights Watch asserted that abuses “appear to be so widespread and systematic that they may amount to crimes against humanity”<sup>110</sup>. Furthermore, Malian ethnic Tuareg fighters left Libya with newly acquired weapons, launching a rebellion in northern Mali that contributed to a further French intervention. The power vacuum in Libya has led to a fractured territorial division with Islamist groups claiming large areas of territory. Perhaps most alarming, despite a Western-led ‘buyback’ program of particular advanced weaponry, much of Libya’s stockpiles remain unaccounted for – including as many as 15,000 man-portable surface-to-air missiles (MANPADs), which can shoot down civilian airliners and military aircraft<sup>111</sup>. While some have been recovered in neighboring Egypt and Niger, radical Islamic groups such as Boko Haram and fighters in Syria and Iraq reportedly now hold many of these weapons<sup>112</sup>.

While widely framed as successful due to its relative humanitarian ‘purity of motive’ and humanitarian impact in saving those in Benghazi from imminent slaughter and the wider Libyan population from further crimes against humanity, stability has still not come to Libya. Although this may be framed as something that will impact the way intervention is carried out, Libya as a negative case study for regime stability may serve to negatively impact the legitimacy of R2P’s third pillar in future cases of *de facto* civil war situations similar to Libya in which the regime does not give consent. This dynamic illustrates the ongoing contestation of the efficacy and impact of humanitarian intervention particularly in cases of *de facto* regime change - challenging R2P’s substantive meaning and utility

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<sup>110</sup> Human Rights Watch, ‘Libya: Wake-up call to Misrata’s leaders: Torture, killings may amount to crimes against humanity’, 8 April 2012, accessed 5 June 2015, <http://www.hrw.org/news/2012/04/08/libya-wake-call-misrata-s-leaders>.

<sup>111</sup> Rod Nordland and C. J. Chivers, ‘Heat-seeking missiles are missing from Libyan arms stockpile’, *The New York Times*, 8 September 2011, accessed 16 January 2015, <http://www.nytimes.com/2011/09/08/world/africa/08missile.html?pagewanted=all>.

<sup>112</sup> David Ignatius, ‘Libyan missiles on the loose’, *The Washington Post*, 29 April 2009, accessed 16 January 2015, [http://www.washingtonpost.com/opinions/libyan-missiles-on-the-loose/2012/05/08/gIQA1FCUBU\\_story.html](http://www.washingtonpost.com/opinions/libyan-missiles-on-the-loose/2012/05/08/gIQA1FCUBU_story.html).

not only in terms of what behaviors under Pillar III may be acceptable or viable, but questions as to what constitutes ‘manifest failure’ of existing political communities to protect their populations. “Humanitarian emergencies in Syria and elsewhere have prompted new calls for humanitarian intervention, but the controversies of the Libya mission continue to loom large in such discussions”<sup>113</sup>. Nonintervention as a norm has thus been recurrently contested and in the case of Libya, emphasized as an important counter-point to those arguing for intervention’s humanitarian impact through R2P in further humanitarian crises.

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<sup>113</sup> Roland Paris, ‘The “Responsibility to Protect” and the structural problems of preventive humanitarian intervention’, *International Peacekeeping* 21(5) (2014), 570.

## Chapter 5: The Syrian Arab Republic

At the time of writing, an estimated 220-250,000 have died in four years of Syrian conflict with half the population of twenty million either internally displaced or foreign refugees spilling into neighboring countries<sup>1</sup>. The regime's lethal targeting of the civilian population, far from repressing the widespread uprising, has fueled the conflict and exposed sectarian cleavages – creating the vacuum from which jihadist and Islamic extremists have hijacked the civil war and regionalized the crisis. The UN Human Rights Council-mandated Independent Commission of Inquiry has published ongoing reports since 2011, concluding that the Syrian government has 'manifestly failed to protect the population from mass atrocities' with government forces as a matter of state policy carrying out 'widespread attacks on the civilian population, committing murder, torture,

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<sup>1</sup> Somini Sengupta, 'U.N. finds its voice on Syria's "Transition"', *The New York Times*, 17 August 2015, accessed 18 August 2015, [http://www.nytimes.com/2015/08/18/world/middleeast/un-finds-its-voice-on-syrias-transition.html?ref=world&\\_r=1](http://www.nytimes.com/2015/08/18/world/middleeast/un-finds-its-voice-on-syrias-transition.html?ref=world&_r=1).

rape and enforced disappearances as crimes against humanity'<sup>2</sup>. While all sides have been responsible for human rights atrocities, the government's culpability has been disproportionate and recurrently documented through siege tactics, the use of artillery, barrel bombs, rockets, and alleged chemical weapons against civilian populations paralleling the obstruction of food, water, and medical aid<sup>3</sup>.

Similar to the subsequent cases of Sri Lanka and Libya, Syria has been widely framed as a test case for the Responsibility to Protect – exposing the operational and normative fissures surrounding the projection of force for humanitarian purposes. With internationally recognized atrocities, calls for coercive measures under R2P have been echoed throughout the crisis, which include no-fly zones, area denial or safe havens, as well as forcible intervention to protect the population. However, the Syrian case illustrates again the normative persistence of nonintervention and even its resurgence within world politics through the backlash of Libya<sup>4</sup>. This chapter first charts the domestic progression of the crisis and civil war surrounding internal actors and the nature of atrocities. The chapter then shifts to outline international responses and UN institutional measures – exposing international and regional cleavages surrounding the Syrian crisis relative to R2P and the norm of nonintervention. What this analysis highlights is the interplay between the complex set of 'proxy and alliance interests' and diverging normative visions of global order, manifesting in a strong position against the projection of force for humanitarian purposes due to not only the backlash from the Libyan intervention, but principled rationale affirming that intervention would be a misapplication of civilian protection in Syria. From this perspective, not only can actors

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<sup>2</sup> UN Human Rights Council, 'Report on the work of the Commission of Inquiry on the situation in the Syrian Arab Republic', UN GAOR, 27<sup>th</sup>Sess., A/HRC/28/69, 5 February 2015.

<sup>3</sup> Raymond Hinnebusch and Tina Zintl, 'The Syrian Uprising and Bashar al-Asad's First Decade in Power' in Raymond Hinnebusch and Tina Zintl (eds.), *Syria from Reform to Revolt, Volume 1* (Syracuse: Syracuse University Press, 2015), p. 305.

<sup>4</sup> Justin Morris, 'Libya and Syria: R2P and the spectre of the swinging pendulum', *International Affairs* 89(5) (2013), 1265-1283.

be seen to not intervene due to alignment with the norm of nonintervention, but also the calculated analysis of what intervention would accomplish and politically or materially cost. Thus, while R2P has been embraced as an important lens by a wide body of international actors, a complex set of geopolitical interests mirror articulations that humanitarian intervention in Syria would not bring stability long-term and could potentially lead to further suffering.

### **Historical Background and the Progression of Conflict**

Syria's Assad regime came to power in 1970 through a period of economic and political turmoil with the current President Bashar Al-Assad's father, Hafez, building a wide base of political support through educational reforms and infrastructure modernization. On the fault lines of Kurdish nationalism, Israeli-Arab peace, and Lebanese stability, the regime has been able to build a nominally secular and nationalist Syrian identity with a political elite dominated by the Alawite minority – a Shia offshoot of Islam. To better understand the internal political dynamics, it is important to identify the sectarian divisions with roughly 65 percent Sunni Arab, 13 percent Alawite, 10 percent Kurdish, nine percent Christian, and three percent Druze<sup>5</sup>. Constitutionally a Socialist Popular Democratic Republic, Syria has existed as an authoritarian state for more than four decades with past elections having yielded 99 percent 'yes-no' referenda in favor of the Assad government<sup>6</sup>. In 2000, the death of Hafez led to the rise of his son Bashar – a soft spoken and western-educated ophthalmologist. Having carried out a decade of social and economic restructuring since taking power, by 2011 Bashar Al-Assad was seen by many

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<sup>5</sup> Christopher Phillips, 'Sectarianism and conflict in Syria', *Third World Quarterly* 36(2) (2015), p. 357.

<sup>6</sup> Raymond Hinnebusch and David W. Lesch, 'Syrian Arab Republic' in David E. Long, Bernard Reich and Mark Gasiorowski (eds.), *The Government and Politics of the Middle East and North Africa* (Boulder: Westview Press, 2011), p. 279.



domestically and internationally as a liberal-minded reformer, with Syria likely to avoid the fate of Egypt or Tunisia's regime<sup>7</sup>.

While relatively latent in its development, Syria's revolution ultimately mirrored regional uprisings within the Arab Spring. Beginning in smaller and medium-sized cities across Syria's 'periphery', Syria's youth bulge and high unemployment rate helped fuel an uprising propelled by disenfranchised youths with little vested in the status quo - seeking greater involvement in their system of government<sup>8</sup>. The southern city of Dar'a was one of the first to spark in March with protests surrounding the release of political prisoners – with government violence drawing wider protests across the country including the cities of Homs, Hama, and the capital Damascus by early April 2011<sup>9</sup>. Protesters initially advocated more local social and political reforms surrounding issues such as poverty, freedom of speech restrictions, and democracy promotion rather than calling for Assad's removal. Closely watching regional developments with the collapse of Egypt's and Tunisia's presidents, and NATO intervention underway in Libya, Assad embraced an overtly martial solution of violent repression met with nominal political reforms likely influenced by regime hardliners that were present for Hafez's response to the uprising in Hama in the early 1980s which killed between ten and forty thousand civilians. Calculated as a decisive means to end the demonstrations and deny the opposition any territorial base that would provide an opening for foreign intervention, loyalist forces pursued a punitive strategy of repression and area denial, with the military, intelligence forces, and pro-regime *shabbiha* militia (Arabic 'ghosts') moving into agitating cities<sup>10</sup>.

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<sup>7</sup> David W. Lesch, *Syria: The Fall of the House of Assad* (New Haven: Yale University Press, 2012), pp. 38-54.

<sup>8</sup> Raymond Hinnebusch and Tina Zintl, 'The Syrian Uprising and Bashar al-Asad's First Decade in Power', p. 285.

<sup>9</sup> UN Human Rights Council, 'Report of the independent international commission of inquiry on the Syrian Arab Republic', UN GAOR, 17<sup>th</sup> Special Sess., A/HRC/S-17/2/Add.1, 23 November 2011, p. 8.

<sup>10</sup> Raymond Hinnebusch, 'Syria: From "authoritarian upgrading" to revolution?', *International Affairs* 88(1) (2012), 109.

In parallel, the regime announced the formation of a new government cabinet, repeal of a state of emergency law that had been in effect since 1963, release of political prisoners, and later the creation of a new constitution<sup>11</sup>. Widely labeled as ‘too little too late’, the months following initial protests yielded desertions from government forces largely along sectarian lines and compounded already existent reliance on minority Alawite and Christian dominated security forces<sup>12</sup>. Conflict ultimately permeated across the state, with bands of armed revolutionaries striking regime forces, military compounds and claiming population centers with continued regime violence against civilians perpetuating sectarian cleavages morphing from a call for greater popular governance and legal reforms on the periphery into a fractured civil war.

Opposition forces emerged through localized operations and command, in many cases organically to defend their own homes and cities. A number of rebel militias led by Sunni Syrian army defectors formed a loose coalition of armed groups in July 2011 under the Free Syrian Army (FSA). However, their inability to gain foreign military aid or form a nationally cohesive strategy has hindered military advancement towards a territorial foothold, with continued domestic insecurity fracturing their ranks and providing an opening for more religious extremists and foreign jihadists<sup>13</sup>. The group Jabhat Al-Nusra as an affiliate of Al-Qaeda was established early in 2012 with foreign arms and funding – claiming territorial gains from the regime through a mixture of suicide terror and conventional tactics<sup>14</sup>. Since 2013, Kurdish groups concentrated along the northern

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<sup>11</sup> Bassem Mroue, ‘Syria forms new cabinet; President releases hundreds of detainees’, *The Huffington Post*, 11 April 2011, accessed 29 June 2015, [http://www.huffingtonpost.com/2011/04/14/syria-new-government\\_n\\_849266.html](http://www.huffingtonpost.com/2011/04/14/syria-new-government_n_849266.html).

<sup>12</sup> Nicholas Blanford, ‘Repeal of hated emergency law is “too little, too late”’, *The Times*, 22 April 2011, accessed 29 June 2015, <http://www.thetimes.co.uk/tto/news/world/middleeast/article2995371.ece>.

<sup>13</sup> Brian Michael Jenkins, ‘The dynamics of Syria’s civil war’ (Santa Monica, CA: RAND Corporation, 2014), accessed 7 July 2015, <http://www.rand.org/pubs/perspectives/PE115.html>, p. 8.

<sup>14</sup> Ruth Sherlock, ‘Inside Jabhat al Nusra – The most extreme wing of Syria’s struggle’, *The Telegraph*, 2 December 2012, accessed 8 July 2015, <http://www.telegraph.co.uk/news/worldnews/middleeast/syria/9716545/Inside-Jabhat-al-Nusra-the-most-extreme-wing-of-Syrias-struggle.html>.

borders with Iraq and Turkey have also been active including members of the People's Protection Units (YPG), holding semi-autonomous areas and drawing regional support from neighboring Kurdish populations including the Peshmerga from Iraq. In April 2013, the leader of Al-Qaeda in Iraq (AQI) Abu Bakr al-Baghdadi announced the creating of the Islamic State of Iraq and Al-Sham (ISIS or the Islamic State) which has been widely successful, gaining territory in the power vacuum of Syria and in the Sunni-dominated west of Iraq. By 2014, ISIS had shown a more brutal dimension of the Syrian conflict while also expanding influence across North Africa, Nigeria, and even Western states. Adhering to strict Islamist ideology and Sharia Law in the pursuit of an Islamic Caliphate, ISIS has carried out its own atrocities including mass executions, enslavement, sexual abuses, and torture. However, its ideological position has gained widespread following with tens of thousands of foreign Muslims emigrating to join the movement paralleled by jihadists, religious extremists, and financial flows. The group's successes have claimed wide swaths of territory across both Iraq and Syria - establishing de-facto control and subverting post-colonial territorial constructs – with the stated aim of dismantling the Sykes-Picot Agreement, which established many of the modern Middle Eastern Borders during the First World War<sup>15</sup>. While the various opposition groups have all fought against the Syrian regime, rebel in-fighting has been widely documented since 2013, with ISIS, Jabhat Al-Nusra, Kurdish forces, and the 'kaleidoscope' of other rebel groups fighting amongst themselves<sup>16</sup>.

The complexity of Syrian rebel groups and their inability to form a unified front against the regime has meant that they have lacked the cohesion and means necessary to challenge the regime as a credible rival authority that could bring stability. With international support, and largely filled with Syrian exiles of the Muslim Brotherhood, a

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<sup>15</sup> Graeme Wood, 'What ISIS really wants', *The Atlantic*, March 2015, accessed 27 April 2015, <http://www.theatlantic.com/features/archive/2015/02/what-isis-really-wants/384980/>.

<sup>16</sup> Jenkins, 'The dynamics of Syria's civil war', p. 8.

Syrian National Council announced its establishment in Istanbul in August 2011 loosely based on the National Transition Council (NTC) in Libya. However, with the inability to shape the conflict domestically through gained military aid or wider international political recognition, the Council was incorporated into a further umbrella organization of opposition groups including the FSA to form the National Coalition for Syrian Revolutionary and Opposition Forces in 2012. Gaining a substantial level of international diplomatic recognition as the ‘legitimate representative of the Syrian people’, the Syrian National Coalition has struggled to consolidate a singular command or voice amongst disparate and heterogeneous armed groups within the country<sup>17</sup>. As David Lesch highlights, the Syrian opposition is “divided inside and outside the country, and each opposition group has vulnerabilities and weaknesses in the eyes of others that have prevented any single group from gaining legitimacy and general acceptance necessary to offer a viable alternative to the regime”<sup>18</sup>. Disparate in ideology and authority, opposition authorities have proven unwilling or unable to negotiate a solution in which Assad retains power. Conversely, the regime’s targeting of unarmed protesters and counter-insurgency strategy has resulted in mass atrocities, which have degraded the regime’s legitimacy perhaps irreparably. However, as Stephen Starr and others have documented, despite Western and Gulf-State media reports to the contrary, the Assad regime continues to retain a substantial basis of territorial control and popular support amongst diverse sectarian populations particularly in the most populated regions in the West<sup>19</sup>. Not without basis, Assad has repeatedly claimed that the regime’s collapse would lead to a Syrian failed state with continued fighting amongst opposition militias and extremists, perpetuating further atrocities against minority Alawites and Christians.

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<sup>17</sup> Stefan A. G. Talmon, ‘Recognition of opposition groups as the legitimate representative of a people’, *Chinese Journal of International Law* (2013), 219-253.

<sup>18</sup> Lesch, *Syria: The Fall of the House of Assad*, pp. 172-173.

<sup>19</sup> Stephen Starr, *Revolt in Syria: Eye-Witness to the Uprising* (London: Hurst Publishing, 2012).

At the center of the ongoing conflict has been a largely unheralded humanitarian crisis, with the civilian population bearing the impact of the violence from all sides. By June 2013, an estimated 100,000 of the population had been killed, doubling by August 2014 to 191,000 with tens of thousands of non-combatant deaths<sup>20</sup>. Both the regime's siege tactics and use of indiscriminant weaponry, and conversely brutal tactics of anti-regime forces have led to the displacement of nearly half the population of roughly 22 million, with over an estimated four million pouring into neighboring countries as refugees<sup>21</sup>. However, while non-government aligned factions such as ISIS, Jabhat al-Nusra, and the FSA have brutally targeting regime-supporters, loyalist areas, and committed massacres of their own, the Syrian government has claimed a disproportionate responsibility for both perpetuating the conflict through violence against initial protests, and continued state policies resulting in mass civilian atrocities<sup>22</sup>. Government aligned forces have pursued a trademark strategy widely referred to as *tansheef al bakhar* meaning 'draining of the sea to kill the fish' through its impact in driving out the civilian population to kill insurgents<sup>23</sup>. This consistent practice involves the siege of population centers – cutting off humanitarian and media access, medical aid, food, and often water and electricity then bombardment of areas with heavy artillery, rocket fire, and aircraft attacks including the use of barrel bombs with the active targeting of medical facilities and personnel<sup>24</sup>. A number of chemical weapons attacks have also been recorded, including the 21 August 2013 strike in Ghouta killing an estimated 1,400 civilians widely attributed to the

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<sup>20</sup> See: Megan Price, Adnita Gohdes and Patrick Ball, 'Updated statistical analysis of documentation of killings in Syrian Arab Republic', *Human Rights Data Analysis Group*, August 2014, accessed 18 July 2015, <https://hrdag.org/wp-content/uploads/2014/08/HRDAG-SY-UpdatedReportAug2014.pdf>.

<sup>21</sup> Sam Jones and Kareem Shaheen, 'Syrian refugees: Four million people forced to flee as crisis deepens', *The Guardian*, 9 July 2015, accessed 22 July 2015, <http://www.theguardian.com/global-development/2015/jul/09/syria-refugees-4-million-people-flee-crisis-deepens>.

<sup>22</sup> UN Human Rights Council, 'Report on the work of the Commission of Inquiry on the situation in the Syrian Arab Republic', 20.

<sup>23</sup> *Ibid.*, 4.

<sup>24</sup> Annie Sparrow, 'Syria's assault on doctors', *The New York Review*, 3 November 2013, accessed 8 July 2015, <http://www.nybooks.com/blogs/nyrblog/2013/nov/03/syria-assault-doctors/>.

regime<sup>25</sup>. As Raymond Hinnebusch and Tina Zintl highlight, “When one level of violence failed to stop the uprising, the regime’s steady escalation – to tanks, fighter planes, missiles, barrel bombs, and finally chemical weapons – showed that it was ready to overstep all red lines”<sup>26</sup>. While the regime’s counter-insurgency strategy has served a practical purpose of area denial with limited troop contributions or door-to-door tactics that would result in much heavier casualties to already depleted loyalist forces, it has resulted in the leveling of many Syrian cities, refugee crisis, and the decimation of state infrastructure with immeasurable civilian suffering.

### **International and Institutional Responses**

A wide number of international, regional, and global actors have echoed their condemnation of the regime’s targeting of unarmed civilians and counterinsurgency tactics throughout the crisis. These calls have paralleled diplomatic measures, economic sanctions, and a host of UN institutional resolutions designed to shape the regime’s behavior surrounding civilian atrocities<sup>27</sup>. The Security Council first addressed the worsening crisis in late April 2011, with the UN’s Under-Secretary-General for Political Affairs, B. Lynn Pascoe briefing that credible sources within Syria were “consistently reporting the use of artillery fire against unarmed civilians; door-to-door arrest campaigns; the shooting of medical personnel who attempt to aid the wounded; raids against hospitals, clinics and mosques and the purposeful destruction of medical supplies and arrest of medical personnel”<sup>28</sup>. With continued violence against unarmed protesters,

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<sup>25</sup> Joby Warrick, ‘More than 1,400 killed in Syrian chemical weapons attack, U.S. says’, *The Washington Post*, 30 August 2013, accessed 4 August 2015, [https://www.washingtonpost.com/world/national-security/nearly-1500-killed-in-syrian-chemical-weapons-attack-us-says/2013/08/30/b2864662-1196-11e3-85b6-d27422650fd5\\_story.html](https://www.washingtonpost.com/world/national-security/nearly-1500-killed-in-syrian-chemical-weapons-attack-us-says/2013/08/30/b2864662-1196-11e3-85b6-d27422650fd5_story.html).

<sup>26</sup> Raymond Hinnebusch and Tina Zintl, ‘The Syrian Uprising and Bashar al-Asad’s First Decade in Power’, 285-305.

<sup>27</sup> See Table 1: UNSC Resolutions/Drafts on Syria, p. 199.

<sup>28</sup> UN Security Council, UN SCOR, 66<sup>th</sup> Sess., 6524<sup>th</sup> Mtg., UN Doc. S/PV.6524, 27 April 2011, p. 2.

EU member states, the US, and other Western powers placed economic and other smart sanctions on Syrian regime by May 2011, while the UN Secretary General and Joint Special Advisors on R2P and the Prevention of Genocide began what would become consistent statements recalling the Syrian government's 2005 obligations to protect its population<sup>29</sup>. The UNHRC followed with a number of Special Sessions, initiating an Independent International Commission of Inquiry (CoI) beginning in August 2011.

Following seven months of violence, the first draft UNSC resolution was debated on 4 October 2011. Introduced by France, Germany, Portugal and the UK, the draft resolution strongly condemned 'the continued grave and systematic human rights violations and the use of force against civilians by the Syrian authorities', demanding an immediate end to all violence and intention to review the resolution's implementation in 30 days to determine the potential need for Article 41 measures relating to coercive non-military sanctions<sup>30</sup>. Although relatively un-contentious in substance and with every member of the Security Council echoing their concern and recognition of civilian atrocities, the draft resolution was vetoed by China and Russia with the abstentions of Lebanon, Brazil, South Africa, and India<sup>31</sup>.

As the civilian death toll mounted and refugee flows began in large numbers into Turkey, Jordan, Lebanon, and Egypt in particular, the domestic crisis became increasingly fractured and regionalized. In a major shift, the GCC and Arab League transitioned from what many saw as marked passivity to suspending Syrian membership on 16 November 2011 with the threat of economic and diplomatic sanctions under the implementation of a Plan of Action – demanding a end to all violence, release of political prisoners, withdrawal of Syrian armed forces from civilian areas, freedom of peaceful

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<sup>29</sup> Ibid., 8.

<sup>30</sup> UN Security Council, UN Doc. S/2011/612, 4 October 2011.

<sup>31</sup> UN Security Council, UN SCOR, 66<sup>th</sup> Sess., 6627<sup>th</sup> Mtg., UN Doc. S/PV.6627, 4 October 2011, p. 4.

demonstration, and unhindered access to the League of Arab States observer mission<sup>32</sup>. Soon after marked the first published report from the independent international Commission of Inquiry, concluding that the Syrian government was responsible for the commission of crimes against humanity<sup>33</sup>. Despite condemnation and sanctions from many global powers, the regime continued its repression through early 2012, driving increasing civilian atrocities and militarized opposition groups.

Drawing from the Arab League's Plan of Action, a second draft resolution was negotiated in the Security Council on 4 February 2012. Introduced by Morocco and supported by a number of Middle Eastern powers, the resolution condemned the regime's attacks against civilians, and demanded adherence to the plan of action with full cooperation for the Commission of Inquiry and delivery of humanitarian aid<sup>34</sup>. While the evening prior to the Resolution's vote, on 3 February, saw perhaps the heaviest civilian casualties to date with regime bombardment of Homs, the Resolution received thirteen positive votes, failing with the veto's cast by Russia and China. The debate in the Council has been highlighted as one of the most 'acrimonious debates' since the Cold War, with France, the UK, US, and Germany bitterly opposing 'unmoved' Russian and Chinese delegations<sup>35</sup>. In a largely unheralded motion, the substance of the second vetoed Syrian draft resolution was taken to the UNGA, with *Resolution 66/253* passing with a majority support of 137 members, 12 against, and 17 abstentions, condemning violence from

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<sup>32</sup> Jack Shenker and Peter Beaumont, 'Arab League votes to suspend Syria if it doesn't end violence against protesters', *The Guardian*, 12 November 2011, accessed 4 July 2015, <http://www.theguardian.com/world/2011/nov/12/syria-arab-league-bashar-assad>.

<sup>33</sup> UN Human Rights Council, 'Report of the independent international commission of inquiry on the Syrian Arab Republic', p. 100, 107.

<sup>34</sup> UN Security Council, UN Doc. S/2012/77, 4 February 2012.

<sup>35</sup> Spencer Zifcak, 'The Responsibility to Protect after Libya and Syria', *The Melbourne Journal of International Law* 13 (2012), 74.



Syrian authorities and demanding that the government protect its population and ‘put an end to all human rights violations and attacks against civilians’<sup>36</sup>.

After a number of failed UNSC draft resolutions, regional actors took further steps in February 2012, appointing prior UN Secretary-General Kofi Annan as the first Joint Special Envoy of the United Nations and League of Arab States to Syria. Charged with working across parties to assist in the negotiations for an inclusive political settlement, Annan drew from international input and the Arab League’s plan releasing a Six-Point Proposal that has continued to serve as the international basis for a transitional authority and political resolution to the conflict, calling on the Syrian government to:

- (1) Work with the Envoy in an inclusive Syrian-led political process;
- (2) Stop the fighting and achieve urgently an effective United Nations supervised cessation of armed violence in all of its forms by all;
- (3) Ensure a timely provision of humanitarian assistance to all areas affected by the fighting;
- (4) Intensify the pace and scale of release of arbitrarily detained persons;
- (5) Ensure freedom of movement throughout the country for journalists and non-discriminatory visa policy for them;
- (6) Respect freedom of association and the right to demonstrate peacefully as legally guaranteed<sup>37</sup>.

Under international pressure, the Syrian government on 25 March 2012 agreed to implement the Proposal, calling for a ceasefire to begin on 10 April<sup>38</sup>. In a rare moment

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<sup>36</sup>UN General Assembly, ‘Resolution 66/253’, UN GAOR, 66<sup>th</sup> Sess., UN Doc. A/RES/66/253, 16 February 2012.

<sup>37</sup> See: Joint Special Envoy of the United Nations and the League of Arab States, ‘Six-Point Proposal of the Joint Special Envoy of the United Nations and the League of Arab States’, 14 April 2012, accessed 6 June 2015, [http://www.un.org/en/peacekeeping/documents/six\\_point\\_proposal.pdf](http://www.un.org/en/peacekeeping/documents/six_point_proposal.pdf).

of consensus, the UNSC passed successive Resolutions 2042 and 2043 (2012) with the first on 14 April explicitly backing Annan's Six-Point Proposal and then 21 April establishing a UN Supervision Mission in Syria (UNSMIS) of 300 unarmed observers to monitor compliance<sup>39</sup>. However, a tit for tat resurfacing of conflict emerged with reports that neither side was upholding the ceasefire with fragmented rebel compliance continuing to launch strikes and government-aligned militias massacring over 100 civilians in Houla in late May<sup>40</sup>. With continued atrocities, the first international peace conference was held in Switzerland know as 'Geneva I' in late June 2012. The conference's purpose was to build support surrounding principles and a framework for a transitional government 'that could include members of the present government and the opposition and other groups and shall be formed on the basis of mutual consent'<sup>41</sup>. Although a level of consensus was reached, neither Syrian regime or opposition forces were present, with Iran and Saudi Arabia as important regional powers also absent. While the resulting Geneva Communiqué has continued to serve as the basis for Syrian peace negotiations at the international level, renewed fighting within Syria left UNSMIS impotent on the ground.

With a revived opposition campaign and continued government atrocities, several international powers on the UNSC pushed for more coercive measures against the regime. A third vetoed resolution was introduced by the UK, US, France, Germany, and Portugal negotiated on 19 July 2012. The Resolution deplored the regime's use of heavy

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<sup>38</sup> Ian Black, 'Syrian ceasefire plan still alive, says Kofi Annan after deadline passes', *The Guardian*, 10 April 2012, accessed 4 August 2015, <http://www.theguardian.com/world/2012/apr/10/syrian-ceasefire-plan-alive-annan>.

<sup>39</sup> Alex J. Bellamy, 'From Tripoli to Damascus: Lesson learning and the implementation of the Responsibility to Protect', *International Politics* 51(1) (2014), 29.

<sup>40</sup> Stephanie Nebehay, 'Most Houla victims killed in summary execution', *Reuters*, 29 May 2012, accessed 4 July 2015, <http://www.reuters.com/article/2012/05/29/us-syria-un-rights-idUSBRE84S0DS20120529>.

<sup>41</sup> Nick Meo, 'Geneva meeting agrees "transition plan" to Syria unity government', *The Telegraph*, 30 June 2012, accessed 15 July 2015, <http://www.telegraph.co.uk/news/worldnews/middleeast/syria/9367330/Geneva-meeting-agrees-transition-plan-to-Syria-unity-government.html>.

weaponry including tanks and helicopters, as well as strikes against population centers contrary to Resolution 2043, threatening measures under Article 41 with the Syrian authorities having ten days to implement the Six-Point Proposal<sup>42</sup>. Azerbaijan, India, and Guatemala were among those supportive of the resolution, while Pakistan and South Africa abstained, and China and Russia again casting their vetoes.

Lack of international cooperation and unwillingness in the UNSC to mandate more coercive measures led to Annan's resignation as the Joint Special Envoy, with Algerian diplomat Lakhdar Brahimi appointed in September 2012 – pushing for an end to the conflict and peaceful political transition through a further round of negotiations<sup>43</sup>. Through late 2012 and early 2013, violence continued to spiral and draw foreign extremists with increasing civilian casualties. A major turning point emerged in the summer of 2013, with reported uses of chemical weapons against civilian population centers. Following tense negotiations and Russian bargaining, the UNSC unanimously adopted Resolution 2118 on 27 September 2013, which under threat of further Chapter VII measures mandated the removal and destruction of Syria's chemical weapons arsenal led by a joint UN-Organization for the Prohibition of Chemical Weapons (OPCW) initiative from October 2013 to June 2014. However, the regime's targeting of civilians through siege tactics and indiscriminant weaponry persisted with further regionalization of conflict under growing ISIS, Jabhat al Nusra, and extremist faction presence.

Following the use of chemical weapons, and reflective of international concern surrounding the growing threat of Islamic extremism spreading from the crisis, Brahimi pushed for further international peace negotiations. With the use of chemical weapons

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<sup>42</sup> UN Security Council, UN Doc. S/2012/538, 19 July 2012.

<sup>43</sup> Rick Gladstone, 'Resigning as envoy to Syria, Annan casts wide blame', *The New York Times*, 2 August 2012, accessed 9 August 2015, <http://www.nytimes.com/2012/08/03/world/middleeast/annan-resigns-as-syria-peace-envoy.html>.

and extremist expansion, 2014 marked the bloodiest year to date, with international actors taking a more active position in Syria. Proposed as a more expansive and inclusive conference among Syrian and international actors, ‘Geneva II’ took place in January and February 2014 while failing again to reach any conclusive plan of action. Working against extremists as well as forcible measures to alleviate domestic humanitarian conditions, the UNSC unanimously approved Resolution 2139 in February 2014, citing the rapid deterioration of the situation in Syria and death of over 10,000 children for a demanded lift of sieges, end to civilian atrocities, and urgent allowance of humanitarian aid convoys across the country<sup>44</sup>. Shortly following, a fourth vetoed UNSC draft resolution emerged in May 2014. Sixty-five member states supported a resolution calling for the crisis in Syria to be referred to the International Criminal Court (ICC). The draft condemned ‘widespread violation of human rights and international humanitarian law committed by the Syrian authorities and pro-government militias, as well as the human rights abuses and violations of international humanitarian law by non-State armed groups’<sup>45</sup>. While receiving 13 of the 15 UNSC votes, China and Russia again vetoed the resolution – drawing condemnation from a wide body of states<sup>46</sup>. However, the most overtly coercive measures met with UNSC consensus against the regime followed, “Reaffirming the primary responsibility of the Syrian authorities to protect the population of Syria”<sup>47</sup>. Under reports of continued failure to allow the flow of humanitarian aid across international and internal boundaries controlled by different factions, the UNSC unanimously adopted two further resolutions 2165 and 2191 (2014), authorizing the delivery of humanitarian aid without the consent of the government and then extending its mandate.

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<sup>44</sup> UN Security Council, ‘Resolution 2139’, 7118<sup>th</sup> Mtg., UN Doc. S/RES/2139, 22 February 2014.

<sup>45</sup> UN Security Council, UN Doc. S/2014/348, 22 May 2014.

<sup>46</sup> Ian Black, ‘Russia and China veto UN move to refer Syria to international criminal court’, *The Guardian*, 22 May 2014, accessed 25 July 2015, <http://www.theguardian.com/world/2014/may/22/russia-china-veto-un-draft-resolution-refer-syria-international-criminal-court>.

<sup>47</sup> UN Security Council, ‘Resolution 2165’, 7216<sup>th</sup> Mtg., UN Doc. S/RES/2165, 14 July 2014.

Although the Assad regime's targeting of civilians helped precipitate the rise of Islamic extremists, their arrival has perversely aided the regime's narrative<sup>48</sup>. In response to the rise of ISIS and other extremist factions with regionalization of the crisis, military intervention has been carried out including air strikes, creation of an 'ISIS Free Zone', and special operations support, training, and arming of opposition forces in Syria<sup>49</sup>. Since 2014, a coalition of partner states including Bahrain, Jordan, Morocco, Qatar, Saudi Arabia, United Arab Emirates, United States, Canada, and Turkey, have all conducted air strikes against ISIS targets in Syria. Subverting the territorial integrity of the state boundaries across Iraq and Syria, the atrocities of ISIS and continued territorial gains have been widely framed as a threat to regional and international security. As Charles Glass highlights, "the Syrian war has produced an opposition to Assad so repellent and so antagonistic to Western allies in the region that when the air intervention came, it arrived in the guise of the regime's ally in all but name"<sup>50</sup>. As of mid-2015, Turkey has taken a more pro-active role fighting ISIS and working with coalition allies to create a 'No-ISIS and humanitarian safe-zone' into Syrian territory both as a front to target Kurdish militants cast as unfriendly to the Turkish regime and continued Syrian insecurity. Regional actors including Saudi Arabia, Qatar, and UAE have funded and armed increasingly extremist groups to counter the regime and ISIS, while Western powers have trained and armed more 'moderate' secular forces, which have fought against the regime and amongst other non-government factions including ISIS and Jabhat Al-Nusra. However, the moral problem persists that without a political resolution of

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<sup>48</sup> Gopal Ratnam and John Hudson, 'Kerry: Assad and ISIS have symbiotic relationship', *Foreign Policy*, 17 November 2014, accessed 22 June 2015, <http://foreignpolicy.com/2014/11/17/kerry-assad-and-isis-have-symbiotic-relationship/>.

<sup>49</sup> Kareem Shaheen and Constanze Letsch, 'Turkey agrees plan for "Isis-free zone" along Syrian border', *The Guardian*, 27 July 2015, accessed 5 August 2015, <http://www.theguardian.com/world/2015/jul/27/turkey-isis-free-zone-syrian-border-us>.

<sup>50</sup> Charles Glass, 'In the Syria we don't know', *The New York Review*, 6 November 2014, accessed 8 July 2015, <http://www.nybooks.com/articles/archives/2014/nov/06/syria-we-dont-know/>.

disputes either through internal negotiations, or foreign intervention, civilian casualties will likely continue.

Foreign alliance and proxy interests from the regional and international levels have been as diverse as the factions fighting within Syria. While thousands of Iranian military advisors were already in Syria at the beginning of the crisis, by the end of 2013, that number had jumped to an estimated 10,000 including ‘Quds Force’ special operations units, commanders, and other ground contingents directly supporting loyalist divisions along with billions in financial aid and credit<sup>51</sup>. This aid has been transferred directly, but also through Hezbollah and Iraqi Shia militias against oppositional forces with tens of thousands of Lebanese-Hezbollah soldiers fighting to reclaim government cities along the Lebanese-Syrian border with forces deployed as far north as Aleppo and embedded with government units across the country<sup>52</sup>. More recently, Russia has also provided direct aid through troops and aircraft fighting alongside regime force within Syria. Playing a pivotal role since the beginning of the uprising, Russia has “armed Assad, shielded him at the UN Security Council, agreed to take Syria’s crude oil in exchange for refined oil products to sustain the country’s military and economy, and provided loans to stave off Syrian bankruptcy”<sup>53</sup>. These countries holistically have served as the principle support to the Assad regime through providing diplomatic cover, arms, and financial means to subsist.

### **Civilian Protection under the Responsibility to Protect**

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<sup>51</sup> Ruth Sherlock, ‘Iran boosts support to Syria’, *The Telegraph*, 21 February 2014, accessed 15 July 2015, <http://www.telegraph.co.uk/news/worldnews/middleeast/iran/10654144/Iran-boosts-support-to-Syria.html>.

<sup>52</sup> Julian Borger, ‘Iran and Hezbollah “have built 50,000 strong force to help Syrian regime”’, *The Guardian*, 14 March 2013, accessed 28 July 2015, <http://www.theguardian.com/world/2013/mar/14/iran-hezbollah-force-syrian-regime>.

<sup>53</sup> Anna Borshchevskaya, ‘Russia’s many interests in Syria’, *The Washington Insititute*, 24 January 2013, <http://www.washingtoninstitute.org/policy-analysis/view/russias-many-interests-in-syria>.

Throughout the crisis, R2P has permeated international discourse and contributed positively towards actions for civilian protection. International pressure has resulted in a momentary ceasefire, UN supervision mission, removal and destruction of Syria chemical weapons arsenal, a number of UN aid appeals to support displaced Syrian populations, and the forcible cross-border delivery of humanitarian aid. Invoking R2P as a lens and call for action, global civil society, the UN Secretary General and Joint Special Advisors on the Prevention of Genocide and Responsibility to Protect helping to fuel UN institutional resolutions with a steady stream of information surrounding civilian atrocities. In March 2014, Adama Dieng, the UN's Special Advisor on the Prevention of Genocide to the Human Rights Council, asserted that the international community had already failed in its duty to prevent atrocities in Syria, in which emphasis must now be placed on the international response<sup>54</sup>. Following the fourth vetoed UNSC resolution, the Assistant Secretary General Jan Eliasson asserted:

The Security Council has an inescapable responsibility... For more than three years, this Council has been unable to agree on measures that could bring an end to this extraordinarily brutal war.... If members of the Council continue to be unable to agree on measures that could provide some accountability for the ongoing crimes, the credibility of this body and the entire Organization will continue to suffer<sup>55</sup>.

These statements have articulated clear obligations of the international community to address the situation. In its most recent report in March 2015, the CoI concluded: "In

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<sup>54</sup> UN Office of the High Commissioner for Human Rights, 'Human Rights Council discusses the prevention of genocide', 7 March 2014, accessed 24 July 2015, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=14334&LangID=E>.

<sup>55</sup> UN Secretary-General, 'Deputy Secretary-General's remarks, on behalf of the Secretary-General, to the Security Council on Syria', 22 May 2014, accessed 5 August 2015, <http://www.un.org/sg/dsg/statements/index.asp?nid=528>.

light of the manifest failure of the Government to protect its population from gross human rights abuses, the international community, through the United Nations, bears the responsibility of protecting the Syrian population from such crimes”<sup>56</sup>. Under R2P, terms such as ‘manifest failure’ and international assertions that the regime is culpable for carrying out ‘mass atrocity crimes’ have not been without political and legal significance.

These assertions surrounding the responsibility to protect have been echoed throughout the crisis, within UN resolutions across institutional organs, regional organizations, and individual states. UK Parliamentary debates in 2013 saw the explicit invocation of the ‘doctrine of responsibility to protect’ and the obligation it places on international actors to respond<sup>57</sup>. Following the imposition of economic sanctions in response to Syrian atrocities, European Parliamentary President Jerzy Buzek asserted on 15 Sept 2011, ‘We Europeans must assume our responsibilities to protect civilians’<sup>58</sup>. Adopted by consensus, UNSC presidential statements have referred directly to the Syrian regime’s ‘responsibility to protect’<sup>59</sup>, while more recent UNSC Resolutions 2139 and 2165 (2014) also adopted by consensus have invoked the R2P norm. The first of which demands ‘that all parties take all appropriate steps to protect civilians, including members of ethnic, religious, and confessional communities, and stresses that, in this regard, the primary responsibility to protect its population lies with the Syrian authorities’<sup>60</sup>. This was also articulated in arguably the most coercive resolution adopted to date, which mandated the

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<sup>56</sup> UN Human Rights Council, ‘Report on the work of the Commission of Inquiry on the situation in the Syrian Arab Republic’, p. 20.

<sup>57</sup> UK Houses of Parliament, ‘House of Commons debate on Syria’, 30 August 2013, accessed 15 July 2015, <http://www.parliament.uk/business/news/2013/august/commons-debate-on-syria/>.

<sup>58</sup> European Parliament, ‘Syria’s Assad must go, and Libya’s resources must benefit all Libyans, says MEPs’, Press Release, 15 September 2011, accessed 25 June 2015, <http://www.europarl.europa.eu/news/en/news-room/content/20110915IPR26710/html/Syria's-Assad-must-go-and-Libya's-resources-must-benefit-all-Libyans-say-MEPs>.

<sup>59</sup> UN Security Council, 7039<sup>th</sup> Mtg., UN Doc. S/PRST/2013/15, 2 October 2013.

<sup>60</sup> UN Security Council, ‘Resolution 2139’.



forcible delivery of humanitarian aid in Syria, ‘Reaffirming the primary responsibility of the Syrian authorities to protect the population’<sup>61</sup>.

**Table 1: UNSC Resolutions/Drafts on Syria**

Date	UNSC Resolution	Content	Passed?
4-Oct-11	Draft-S/2011/612	<ul style="list-style-type: none"> <li>• Calls for cessation of the use of force by the government on civilians, and compliance with international laws on human rights.</li> <li>• Allow access to international bodies to deliver humanitarian aid.</li> </ul>	No. 9-2-4. Veto: China, Russian Federation. Abstentions: Brazil, India, Lebanon, South Africa.
4-Feb-12	Draft-S/2012/77	<ul style="list-style-type: none"> <li>• Calls for Syrian government to end violence against civilians and the violations of human rights.</li> <li>• Notes that all parties can be held accountable for violence.</li> <li>• Calls for government to protect its population.</li> <li>• Supports shift in the country to democratic system.</li> </ul>	No. 13-2-0. Veto: Russian Federation and China
14-Apr-12	S/RES/2042	<ul style="list-style-type: none"> <li>• Establishes a United Nations supervision mission, and send unarmed personnel to monitor and report on the situation in Syria, focusing on bringing about the end of all violence.</li> <li>• Impresses the responsibility of the government to allow the mission to complete their work.</li> </ul>	Yes. In favor: 15. Abstentions: 0. Vetoes: 0.
21-Apr-12	S/RES/2043	<ul style="list-style-type: none"> <li>• Establishes United Nations Supervision Mission in Syria (UNSMIS).</li> <li>• Deployment of 300 unarmed personnel to continue to observe and report the developments of the cessation of violence previously called upon in line with the Envoy's six-point proposal.</li> </ul>	Yes. In favor: 15. Abstentions: 0. Vetoes: 0.
19-Jul-12	Draft-S/2012/538	<ul style="list-style-type: none"> <li>• Outlines a deteriorating situation in Syria with UNSMIS presence extension for 45 more days.</li> <li>• Requires the government of Syria to allow access to the UN Independent International Commission of Inquiry.</li> <li>• Reminds those carrying out human rights violations and attacks on UN personnel of their accountability and responsibility.</li> </ul>	No. Veto: China, Russian Federation. Abstentions: Pakistan, South Africa.
20-Jul-12	S/RES/2059	<ul style="list-style-type: none"> <li>• Agrees to keep UNSMIS in place for a further 30 days.</li> <li>• Stipulates that the mandate will only be renewed in future if the violence has decreased to a level that the UNSMIS can safely carry out their tasks.</li> </ul>	Yes. In favor: 15.
27-Sep-13	S/RES/2118	<ul style="list-style-type: none"> <li>• Condemns the Damascus chemical weapons attack on 21st August as a breach of international law.</li> <li>• Bans any production or use of chemical weapons in Syria.</li> <li>• Aids the Organisation for the Prohibition of Chemical Weapons (OPCW) in the destruction of chemical weapons and provide UN personnel in Syria to aid the OPCW.</li> <li>• Promotes other Member States who have the ability to also provide resources and assistance. Instigate an international conference regarding the situation in Syria.</li> </ul>	Yes. In favour: 15.
22-Feb-14	<b>S/RES/2139 R2P Invoked*</b>	<ul style="list-style-type: none"> <li>• Condemns the blocking of humanitarian aid.</li> <li>• Requires an end to all violence, especially that targeted at civilians.</li> <li>• Requests that access to humanitarian aid be allowed without resistance.</li> <li>• Demand that attacks on Homs and other populated areas be stopped.</li> </ul>	Yes. In favour: 15.
22-May-14	Draft-S/2014/348	<ul style="list-style-type: none"> <li>• Passes on the situation in Syria to the International Criminal Court, and press the Syrian government to work with the ICC.</li> <li>• Also request non-State parties to cooperate with the ICC.</li> </ul>	No. Veto: China, Russian Federation. Abstentions: 0. In favour: 13.
14-Jul-14	<b>S/RES/2165 R2P Invoked*</b>	<ul style="list-style-type: none"> <li>• Cites the death of 150,000 people as a consequence of the violence in Syria.</li> <li>• Condemn that Resolution 2139 was ignored, and that humanitarian aid is still being prevented reaching civilians.</li> <li>• Allows humanitarian aid agencies to use any route to enable the delivery of aid to reach civilians, including crossing conflict boundaries.</li> <li>• Launches a monitoring mechanism to ensure that all equipment and aid travelling across borders into Syria is legitimate.</li> </ul>	Yes. In favour: 15. Abstentions: 0. Vetoes: 0.
17-Dec-14	S/RES/2191	<ul style="list-style-type: none"> <li>• Renews the access of aid set out in Resolution 2165 to continue for a further year, until 10 January 2016, to be reviewed after six months.</li> </ul>	Yes. In favour: 15. Abstentions: 0. Vetoes: 0.

<sup>61</sup> UN Security Council, ‘Resolution 2165’.

While R2P has been framed as having failed with lack of consensus within the UNSC surrounding more substantive protection measures, the absence of force projection for civilian protection reflects a wide set of complex factors including regional alliance and proxy interests met with assertions that intervention would be a misapplication of civilian protection and would only enflame the domestic crisis. As Luke Glanville highlights, ‘Sometimes norms are trumped by the interests of powerful states. This does not mean that the norm may not have a powerful impact in other cases’<sup>62</sup>. Tracing the assertions of international actors through recurrent UNSC vetoed resolution and calls for civilian protection illustrate the tension between calls for greater civilian protection and those supportive of nonintervention.

### **Syria’s Spider Web – Alliances, Proxies, and Islamists**

While any progression towards intervention has been blocked in the UNSC, the argument could be made that actors could still intervene for humanitarian purposes outside of the legitimacy provided by a UNSC mandate and justified their actions in terms of principled violation. However, wide sentiment has emphasized the severity of the humanitarian situation, but continue to hold a seeming aversion to military projection in Syria’s civil war for humanitarian purposes. While this could be cast as a material-drive calculation or reflective of the backlash of Libya, it has also mirrored articulations that military force projection would not likely alleviate humanitarian suffering and could potentially make it worse – allusions to a limited utility of military force to bring about stability within Syria and as a rule across humanitarian cases.

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<sup>62</sup> Luke Glanville, ‘Syria Teaches Us Little About Questions of Military Intervention’, in Robert W. Murray and Alasdair McKay (eds.), *In the Eleventh Hour: R2P, Syria, and Humanitarianism in Crisis* (Bristol, UK: E-International Relations, 2014), p. 45.

Western actors with the capability to intervene have cited that force projection for civilian protection could encompass a wide spectrum from area denial, no-fly zone, air strikes, or full ground invasion. A number of international and regional actors began to arm rebel groups more expansively from 2012-13 including vetting and training what they defined as ‘moderate’ Syrian forces<sup>63</sup>. However, as US President Barack Obama asserted in mid-2013, any direct military intervention against Assad could yield mission-creep – with air strikes or limited surgical operations having nominal impact, citing that “90 percent of the deaths that have taken place haven’t been because of air strikes by the Syrian Air Force”<sup>64</sup>. While Assad was widely argued as having lost legitimacy through continued mass atrocities against his own population, Western actors seemed to place hope for stability and an end to violence against civilians in the plea for a moderate secular opposition group. Without a viable political opposition and wide number of violent armed groups in Syria, any intervention from foreign actors would like not change the outcome of the civil war. In a 2013 letter to Congress, Chairman of the US Joint Chiefs of Staff General Martin Dempsey stated:

Syria today is not about choosing between two sides, but rather about choosing between one among many sides choosing. It is my belief that the side we choose must be ready to promote their interests and ours when the balance shifts in their favor. Today, they are not... It is a deeply rooted, long-term conflict among multiple factions, and violent struggles for power will continue after Assad’s rule ends<sup>65</sup>.

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<sup>63</sup> Sibylle Scheipers, ‘Auxiliaries at war in the Middle East’, *Survival* 57(4) (2015), 121-138.

<sup>64</sup> Sam Stein, ‘Obama on Syria: Wary of ‘slip-slide’ into commitments’, *The Huffington Post*, 18 June 2013, accessed 5 August 2015, [http://www.huffingtonpost.com/2013/06/17/obama-syria\\_n\\_3456243.html](http://www.huffingtonpost.com/2013/06/17/obama-syria_n_3456243.html).

<sup>65</sup> Martin E. Dempsey, (Chairman of the Joint Chiefs of Staff), ‘Letter to the Honourable Carl Levin’, *Department of Defence*, 19 July 2013, accessed 10 July 2015, <http://freebeacon.com/wp-content/uploads/2013/07/Dempsey-Letter.pdf>.

The US, UK and Germany among other Western actors have limited advanced arms sales in the fear that they could fuel continued instability or enter extremist' hands – closely monitoring munitions to vetted 'moderate' opposition militias<sup>66</sup>. The rise of ISIS has posed a further challenge to regional and greater international security. With the group in-part fueled by a decade of Western occupation, Iraq's call for military support provided intervening powers with Article 51 basis surrounding collective self-defense, with ISIS' de-facto territorial control and bases to launch attacks into Iraq used as legal justification for airstrikes in Syria. Regarding any argued international lack of military resources, international and regional actors have been more than able and willing to commit troops to fight ISIS and other factions within and surrounding Syria, but have not been willing to engage regime forces for explicitly humanitarian purposes, seemingly placing the crux of any decision to intervene as a matter of political resolve. Interestingly, as Henry Kissinger outlines, Syria's decade of support of Hezbollah, Iran, and militias countering US interests in Iraq are enough to highlight Syria as where 'humanitarian and strategic intervention merge'<sup>67</sup>. This emphasizes Western involvement in Syria as a potential means to subvert Russian, Iranian, and Hezbollah's interests in Syria, strengthening Israeli and Iraqi stability while paralleling wider regional interests of many powers such as the US or UK. However, even with both strategic and humanitarian interests at stake, Western powers have refrained from intervention for civilian protection.

A high point for potential intervention emerged following the chemical weapons attacks in 2013. However, even those most outspoken actors for intervention and supportive of R2P highlighted the necessity for potential strikes to be 'very limited, very targeted, very

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<sup>66</sup> Elad Benari, 'Clinton: Arming Syrian rebels is supporting Al-Qaeda', *Israel National News*, 28 February 2012, accessed 4 August 2015, <http://www.israelnationalnews.com/News/News.aspx/153233#.VcxuCksx9uY>.

<sup>67</sup> Henry A. Kissinger, 'Syrian intervention risks upsetting global order', *The Washington Post*, 1 June 2012, accessed 15 June 2015, [http://www.washingtonpost.com/opinions/syrian-intervention-risks-upsetting-global-order/2012/06/01/gJQA9fGr7U\\_story.html](http://www.washingtonpost.com/opinions/syrian-intervention-risks-upsetting-global-order/2012/06/01/gJQA9fGr7U_story.html).

short term' and explicitly "targeted at the use of chemical weapons rather than one that sought more broadly to secure the protection of the Syrian population"<sup>68</sup>. Previously supportive of intervention under R2P in Libya, then-US Secretary of State Hillary Clinton in 2012 outlined, even with 'immense human suffering' after a year of atrocities with civilian casualties in the thousands, 'sometimes, overturning brutal regime's takes time and costs lives. I wish it weren't so'<sup>69</sup>. Or as then-Deputy UK Prime Minister Nick Clegg outlined in 2013, confidence that such action holds regional and international support with UN approval is critical, without which there must be clear humanitarian grounds. In Syria, "the UN is divided and we have judged the risk too high that direct military intervention by us or our allies would lead to another Iraq-style imbroglio. Above all, it has not been sufficiently clear that intervention would improve the humanitarian situation"<sup>70</sup>. This can be framed as a pragmatic application of R2P due to the nature of domestic crisis, with intervention arguably resulting in regime change and a costly protracted conflict amongst a fractured and ethnically divided Syrian population mirroring past experiences in Iraq and particularly Libya. As a US intelligence official commented, "By the time Syria had progressed into a crisis in which intervention may have been considered, I think the resulting instability in Libya was seen by many in the administration as a reason to not get involved"<sup>71</sup>.

While Russian and Chinese vetoes may in part reflect more conservative adherence to the norm of nonintervention, the international condemnation towards the Syrian regime,

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<sup>68</sup> Jonathan Karl, 'John Kerry Promises "Unbelievably Small" U.S. Strike Against Syria', *ABC News*, 9 September 2013, accessed 5 October 2015, <http://abcnews.go.com/blogs/politics/2013/09/john-kerry-promises-unbelievably-small-u-s-strike-against-syria/>. Luke Glanville 'Syria Teaches Us Little About Questions of Military Intervention', in Robert W. Murray and Alasdair McKay (eds.), *In the Eleventh Hour: R2P, Syria, and Humanitarianism in Crisis* (Bristol, UK: E-International Relations, 2014), p. 46.

<sup>69</sup> Wyatt Andrews, 'Clinton: Arming Syrian rebels could help al Qaeda', *CBS News*, 27 February 2012, accessed 4 August 2015, <http://www.cbsnews.com/news/clinton-arming-syrian-rebels-could-help-al-qaeda/>.

<sup>70</sup> Nick Clegg, 'If Iraq taught us anything, it's this...', *The Independent*, 17 March 2013, accessed 28 August 2015, <http://www.independent.co.uk/voices/comment/if-iraq-taught-us-anything-its-this-8537496.html>.

<sup>71</sup> Zachary Reinstein, interview by the author, 17 May 2015.

international activism in terms of non-military protection measures, and number of proposed UNSC resolutions highlight widespread arguments that state authorities do not have the right to carry out large scale human rights atrocities free from international sanction. Thus, the action of non-intervention in the case of Syria also reflects the pragmatic application of an intervention norm articulated through R2P. In this respect, R2P has not been weak or without influence, but its third pillar has not been applied due to a complex set of alliance and proxy interests with international powers unwilling to project force without wider international consensus and in a case in which intervention may not have a long-term humanitarian outcome. Addressing the arguments of wider BRICS powers and those on the UNSC amongst Western circles highlights further dynamics surrounding the nonintervention norm in Syria.

From the very outset, Syria's regional and international alliances matched with its position as the 'the cornerstone of the Middle East security architecture' meant that an expansive set of norms would be at play<sup>72</sup>. Largely framed in terms of the Shia crescent stretching from Iran across to Lebanon, Syria has remained Iran's most enduring regional ally retaining close economic and military linkages while serving as a conduit for access to Hezbollah. Similarly, Syria's decades of military occupation through Lebanon's civil war and reconstruction have built close ties, with tens of thousands of Hezbollah's forces fighting to reclaim government cities along the Syrian border with forces deployed as far north as Aleppo and embedded with government units across the country<sup>73</sup>. Lebanon's central position as the only Middle Eastern power and Arab League member on the Security Council in 2011 played a pivotal role in securing authorization for Resolution 1973 in Libya and in hindering coercive measures against Syria, with its contrasting response explicitly highlighting the politicization of the UNSC. However, while these

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<sup>72</sup>UN Security Council, UN Doc. S/PV.6524, p. 5.

<sup>73</sup> Borger, 'Iran and Hezbollah "have built 50,000 strong force to help Syrian regime"'.

actors since 2011 have continued to support Assad militarily and financially, Russia and China have been cast as the primary ‘spoilers’ of further coercive measures with Western powers seemingly averse to intervene without the legitimacy of a UNSC mandate<sup>74</sup>.

Moscow’s aversion to coercive measures against Syria have been widely framed as based on strategic and material linkages, with the Cold War alliance, economic ties, elite affinities, and military partnership with Russia’s last Mediterranean naval base at Tartus<sup>75</sup>. Through economic and military aid, watering down the wording within repeated Geneva Communiqués and shielding Syria from recurrent UNSC resolutions, has been seen as going to extreme efforts - with Moscow cast as ‘manifestly realpolitik-driven’<sup>76</sup>. However, as a number of policy analysts and scholars have outlined, these material and alliance factors alone are insufficient to explain Russia’s diplomatic stance<sup>77</sup>.

Highlighting diverging influence of individual statesmen, in August 2011, then-Russian President Medvedev, whom had played a central role in the Russian abstention in Resolution 1973, echoed that there were limits to his willingness to shield Assad, emphasizing that the Syrian regime was ‘in for a grim fate’ if a change in government strategy and reforms weren’t carried out<sup>78</sup>. While Libya was cited as a moment of contention between Medvedev and then-Prime Minister Vladimir Putin, early 2012 marked elections seeing Putin replace Medvedev as President with seeming divergent views surround forcible intervention for civilian protection. Russia’s position has echoed

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<sup>74</sup> Bellamy, ‘From Tripoli to Damascus’.

<sup>75</sup> Borshchevskaya, ‘Russia’s many interests in Syria’.

<sup>76</sup> Gareth Evans, ‘The Consequence of Non-Intervention in Syria: Does the Responsibility to Protect Have a Future?’ in Robert W. Murray and Alasdair McKay (eds.), *In the Eleventh Hour: R2P, Syria, and Humanitarianism in Crisis* (Bristol, UK: E-International Relations, 2014), p.18-25.

<sup>77</sup> Roy Allison, ‘Russia and Syria: Explaining alignment with a regime in crisis’, *International Affairs* 89(4) (2013), 795-823; Derek Averre and Lance Davies, ‘Russia, humanitarian intervention and the Responsibility to Protect: The case of Syria’, *International Affairs* 91(4) (2015), p. 820; Samuel Charap, ‘Russia, Syria and the doctrine of intervention’, *Survival* 55(1) (2013), 35-41.

<sup>78</sup> Allison, ‘Russia and Syria: Explaining alignment with a regime in crisis’, p. 799.

a ‘loathing’ of externally applied standards of legitimacy surrounding regime type, with the conflict in Syria reflecting for Putin a secular versus Islamist hew, with Assad’s collapse seen as spreading Sunni extremism with very real security implications for Russia in Central Asia and the North Caucasus<sup>79</sup>. As Derek Averre and Lance Davies highlight surrounding Syria, “Moscow argued that both international order and justice rely on preserving the legal basis of sovereignty and nonintervention”<sup>80</sup>. Viewing Western assertions along the ‘Shia-Sunni’ axis to empower regional allies including Saudi Arabia and Gulf States against Iran have been cited for Russian skepticism of further Western intentions of regime change<sup>81</sup>. But as Roy Allison highlights, a broad range of ideological and structural factors impact Russian position on Syria, which “underscores the centrality of deeply held principles, not concrete regional interests”<sup>82</sup>. As Moscow’s broader ‘foreign policy concept’ published in February 2013 affirms a pluralist conception of global order while challenging the legitimacy of forcible intervention outside of UNSC mandate even for humanitarian purposes. Directly referring the ‘responsibility to protect’, the text asserts:

Some concepts that are being implemented are aimed at overthrowing legitimate authorities in sovereign states under the pretext of protecting civilian population. The use of coercive measures and military force bypassing the UN Charter and the UN Security Council is unable to eliminate profound socioeconomic, ethnic and other antagonisms that cause conflicts. Such measures only lead to the

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<sup>79</sup> Charap, ‘Russia, Syria and the doctrine of intervention’, p. 37; Julia Ioffe, ‘In Russia, even Putin’s critics are OK with his Syria policy’, *The New Republic*, 23 July 2012, accessed 24 June 2015, <http://www.newrepublic.com/article/105281/russia-even-putins-critics-are-ok-his-syria-policy>.

<sup>80</sup> Averre and Davies, ‘Russia, humanitarian intervention and the Responsibility to Protect’, p. 824.

<sup>81</sup> Charap, ‘Russia, Syria and the doctrine of intervention’.

<sup>82</sup> *Ibid.*, p. 37.



expansion of the conflict areas, provoke tensions and arms race, aggravates interstate controversies and incite ethnical and religious strife<sup>83</sup>.

While Russia has not been opposed to civilian protection or R2P in principle, its very beginning stance in Syria has reflected a narrative emphasizing Syria as a domestic crisis that must be addressed through an inclusive internal process without outside interference. As S. Neil McFarland highlights from a historical perspective, “Russia’s view of order and justice in international relations remains statist, traditional, and conservative”<sup>84</sup>. Asserting that civilian protection is best ensured through regime stability, Russia has opposed any overtly condemnatory resolution drafts against the Syrian regime. Echoing a moral equivalence assertion of the atrocities committed and fuelled by opposition factions, Russian officials have highlighted that atrocities would continue to occur if not increase under regime collapse, with even worse potential repercussions for regional security. Directly linked to Libya and its impact in hindering more coercive R2P measures in Syria, David Lesch highlights,

Russian leaders do not want to see any repeat of this in Syria, and that is why they have been so sensitive to the specific of the language in proposed UN resolutions condemning Syria. They – and the Chinese – also do not want to see any UN resolution that might authorize or lead to military intervention or economic sanction based on human rights abuse (as has been consistently proposed in the

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<sup>83</sup> The Ministry of Foreign Affairs of the Russian Federation, ‘Concept of the Foreign Policy of the Russian Federation’, 12 February 2013, accessed 30 June 2015, [http://www.mid.ru/brp\\_4.nsf/0/76389FEC168189ED44257B2E0039B16D](http://www.mid.ru/brp_4.nsf/0/76389FEC168189ED44257B2E0039B16D).

<sup>84</sup> S. Neil MacFarlane, ‘Russian perspectives on order and justice’ in Rosemary Foot, John Lewis Gaddis and Andrew Hurrell (eds.), *Order and Justice in International Relations* (Oxford: Oxford University Press, 2003), p. 206.

case of Syria). In this regard, Beijing and Moscow do not want to see precedent set that might possibly be used against them in the future<sup>85</sup>.

Similarly, China has also served as a principle ‘spoiler’ in the UNSC through four recurrent vetoes against any progression towards coercive measures under R2P. While Beijing has been cited as largely following Moscow – unlikely to stand alone as the sole veto power in the face of human suffering – China has been more than willing to distinguish itself apart from Russia surrounding issues such as Ukraine and Yemen<sup>86</sup>. China’s abstention for Resolution 1973 centered on the importance of regional support, while other military projections surrounding Cote D’Ivoire and others have been supported – seemingly resting on regime consent. China’s justifications and statements surrounding R2P then do not highlight aversion to sovereign responsibility, but reflect a seemingly firm stance against humanitarian intervention “based on the irreducible core of the inviolability of national sovereignty”<sup>87</sup>. Syria has minimal oil reserves and nominal trade exports or imports with China<sup>88</sup>. As several researchers on Chinese policy surrounding R2P have noted “both the government and academia are quite conservative about military intervention”<sup>89</sup>. The justifications provided by Chinese officials and Ambassadors in the UN have affirmed this interpretation of R2P whereby the use of force serves as a last-resort only through approval from the UNSC in response to humanitarian crisis in which military force would not further incite the instability, which it purports to alleviate. Focusing on the root causes of instability rather than projection of military force

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<sup>85</sup> Lesch, *Syria: The Fall of the House of Assad*, p. 138.

<sup>86</sup> UN Security Council, UN SCOR, 7426<sup>th</sup> Mtg., UN Doc. S/PV.7426, 14 April 2015; UN Security Council, UN SCOR, 7498<sup>th</sup> Mtg., UN Doc. S/PV.7498, 29 July 2015.

<sup>87</sup> Rana Mitter, ‘An Uneasy Engagement: Chinese Ideas of Global Order and Justice in Historical Perspective’ in Rosemary Foot, John Lewis Gaddis and Andrew Hurrell (eds.), *Order and Justice in International Relations* (Oxford: Oxford University Press, 2003), p. 230.

<sup>88</sup> Palash Ghosh, ‘What is China’s role in Syria?’, *International Business Times*, 8 February 2012, accessed 2 August 2015, <http://www.ibtimes.com/what-chinas-role-syria-214021>.

<sup>89</sup> Tiewa Liu and Haibin Zhang, ‘Debates in China about the Responsibility to Protect as a developing international norm: A general assessment’, *Conflict, Security and Development* 14(4), p. 419.

constitutes international responsibility. The ethical problem remains for the international community that if there isn't an outside intervention, mass atrocities will continue<sup>90</sup>.

### **Four Vetoed Resolutions and the Libyan Precedent**

From the beginning of civilian atrocities in Syria, every member of the Security Council expressed deep concern for the use of lethal force against protesters – emphasizing the regime's responsibility to protect peaceful demonstrators. However, the contention within the Council by a number of powers was not that draft resolutions were substantively illegitimate, but that they reflected what Russia's delegation framed as a 'philosophy of confrontation' aimed at military intervention that would only worsen the potential for a resolution of crisis and long-term protection of civilians through addressing the root causes of conflict<sup>91</sup>. This illustrated the initial Libyan blowback, but also principled arguments against intervention that would continue to be echoed in the face of R2P through the remainder of the crisis.

Comparably latent in its development to Libya, as conflict in Syria sparked more fully in the summer of 2011, NATO's stretching the boundaries of Resolution 1973 from civilian protection in Benghazi to the active targeting of government forces seemed to shape international responses. Hardening positions against more coercive R2P measures, the Libyan precedent normatively strengthened nonintervention and helped politically enabled arguments for inaction. As Jennifer Welsh outlines, it is difficult to explain international positions against protection measures in Syria "without understanding the impact of the Council's second resolution with respect to Libya" relating to Resolution

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<sup>90</sup> Zifcak, 'The Responsibility to Protect after Libya and Syria', p. 91.

<sup>91</sup> UN Security Council, UN Doc. S/PV.6627, p. 4.

1973's ultimate application towards regime change<sup>92</sup>. China, Russia, and IBSA partner countries (India, Brazil, and South African) in particular through UNSC vetoes and as 'influential abstainers' in Syria echoed feelings of being duped through their authorization of all necessary measures to protect civilians and civilian areas under threat in Libya, which was expanded to include active targeting of government forces and regime change<sup>93</sup>. Moscow and Beijing had come to believe the intention was to safeguard civilian lives in Libya, with the liberal interpretation embraced by Western actors to overthrow Qaddafi seen as a negative case study<sup>94</sup>. As Jason Ralph and Adrian Gallagher highlight, "the failure to maintain consensus over Libya made international society's challenge in Syria more difficult"<sup>95</sup>. This was openly apparent through subsequent negotiations surrounding UNSC draft resolutions and statements of member states predominantly in the months immediately following operations in Libya<sup>96</sup>.

The impact of Libya was particularly evident in the first draft resolution in October 2011 based in part on the Council's composition and continuation of NATO operations in Libya. While negotiations surrounding the non-coercive draft resolution on Syria took place seven months after initial reports of civilian atrocities, a number of ambassadors emphasized the Libyan precedent, fueling skepticism underlying Western intentions. Directly highlighting Libya, Vitaly Churkin asserted:

Our proposals for wording on the non-acceptability of foreign military intervention were not taken into account, and, based on the well-known events in

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<sup>92</sup> Jennifer M. Welsh, 'What a difference a year makes', *Canadian International Council*, 5 February 2012, accessed 25 June 2015, <http://opencanada.org/features/syria-un/>.

<sup>93</sup> Gareth Evans, 'Responding to Mass Atrocity Crimes: The "Responsibility to Protect" After Libya', speech given at Chatham House, London, 6 October 2011, <http://www.chathamhouse.org/events/view/177949>.

<sup>94</sup> Lesch, *Syria: The Fall of the House of Assad*, p. 138.

<sup>95</sup> Jason Ralph and Adrian Gallagher, 'Legitimacy faultlines in international society: The responsibility to protect and prosecute after Libya', *Review of International Studies* 41(3) (2015), 570.

<sup>96</sup> Morris, 'Libya and Syria: R2P and the spectre of the swinging pendulum'.

North Africa, that can only put us on our guard... The situation in Syria cannot be considered in the Council separately from the Libyan experience. The international community is alarmed by statements that compliance with Security Council resolution on Libya and the NATO interpretation is a model for the future actions of NATO in implementing the responsibility to protect<sup>97</sup>.

Echoing their skepticism surrounding potential underlying motives and disproportionate condemnation of the regime – seemingly based on a predilection towards aggression and regime change already echoed across Western states for Assad to step down, the South African Ambassador further outlined:

With the regard to the draft resolution (S/2011/612) before us, South Africa was concerned about the sponsors' intention to impose punitive measures that would have pre-judged the resolution's implementation. We believe that these were designed as a prelude for further actions. We are concerned that this draft resolution not be part of a hidden agenda aimed at once against instituting regime change, which has been an objective clearly stated by some. We are thus concerned about the fact that sponsors of this draft resolution rejected language that clearly excluded the possibility of military intervention in the resolution of the Syrian crisis. We maintain that the Security Council should proceed with caution on Syria lest we exacerbate an already volatile situation<sup>98</sup>.

The international context which framed norm contestation in Syria influenced how these norms were interpreted and applied. Nonintervention outlines a rule against military force projection without regime consent, with international actors not averse to protection

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<sup>97</sup> UN Security Council, UN Doc. S/PV.6627, p. 4.

<sup>98</sup> Ibid., p.11.

measures, but rather against the authorization of force that would ultimately target a recognized regime. These objections to resolutions surrounding civilian protection in Syria reflected a more firm commitment to nonintervention, asserting that any coercive measures would create seeming precedence towards the projection of force<sup>99</sup>. However, as Alex Bellamy highlights, while the blowback of Libya was evident in initial UNSC discourse following NATO operations, there is little evidence to suggest the Libyan precedent played a sustained role to ‘delegitimize RtoP and the associated politics of protection’<sup>100</sup>. Outside of the Syrian crisis, the UNSC has been more willing to invoke R2P in wider context after Libya, with states that have been critical of the Libyan intervention including Brazil, Pakistan, and India, all supporting following resolutions on Syria vetoed by Russia and China<sup>101</sup>. Thus, while the stretched Chapter VII mandate under NATO and continued instability in Libya may serve as a negative case study, its impact has been in part of a wide number of factors influencing wider contestation of nonintervention and assertions than any coercive UNSC resolutions could set precedence toward further instability.

While several Western powers including the US, France, and the UK pushed for a more condemnatory response and assertions that those responsible must be held accountable, Russia, China, and IBSA partner countries (India, Brazil, and South African) maintained that the crisis was a domestic issue that would only be negatively impacted by foreign interference<sup>102</sup>. While South Africa’s abstention from the first draft resolution outlined skepticism surrounding Western intentions and the Libyan precedent, Indian Ambassador Hardeep Singh Puri seemingly weighed the regime’s responsibility for civilian protection

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<sup>99</sup> Zifcak, ‘The Responsibility to Protect after Libya and Syria’, p. 87.

<sup>100</sup> Bellamy, ‘From Tripoli to Damascus’, p. 26.

<sup>101</sup> See: UN Security Council, ‘Security Council, Appalled at Deteriorating Humanitarian Situation in Syria, Urges Eased Access for Relief Workers, Including Across Conflict Lines’, Meetings Coverage SC/11138, 2 October 2013, accessed 4 August 2015, <http://www.un.org/press/en/2013/sc11138.doc.htm>.

<sup>102</sup> UN Security Council, UN Doc. S/PV.6524, p. 5.

with its responsibility to retain order: “While the right of people to protest peacefully is to be respected, States cannot but take appropriate action when militant groups – heavily armed – resort to violence against state authority and infrastructure”<sup>103</sup>. Noting the complexity of the domestic crisis and importance of Syria in wider regional political context, the Chinese Ambassador never directly cited the Libyan precedent, from the very first draft resolution emphasizing:

Whether the Security Council takes further action on the question of Syria should depend upon whether it would facilitate the easing of tension in Syria, help to defuse differences through political dialogue and contribute to the maintenance of peace and stability in the Middle East. Most important, it should depend upon whether it complies with the Charter of the United Nations and the principle of noninterference in the internal affairs of states – which has a bearing upon the security and survival of developing countries, in particular small and medium-sized countries, as well as on world peace and stability<sup>104</sup>.

Marking a period of transition from humanitarian crisis towards civil war, a number of regional and international actors embracing a more critical approach to the regime’s targeting of civilians into 2012. Following the Arab League’s observer mission and then UNSMIS, periods of consensus surrounding Annan’s Six Point Proposal and ceasefire were shadowed by a second and third vetoed draft resolution placing diplomatic pressure on Syrian authorities. While introduced by regional actors and affirming strong commitment to nonintervention, Russian and Chinese vetoes on the second draft resolution on 4 February 2012 reflected skepticism surrounding Western intentions and the one-sided nature of condemnation against multiple sides complicit in violence.

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<sup>103</sup> UN Security Council, UN Doc. S/PV.6627, p. 6.

<sup>104</sup> UN Security Council, UN Doc. S/PV.6627, p. 5.

China's Ambassador asserted, "to put undue emphasis on pressuring the Syrian Government for a prejudged result of dialog or to impose any solution will not help resolve the Syrian issue. Instead, that may further complicate the situation"<sup>105</sup>. While Russian Ambassador Vitaly Churkin emphasized, the draft resolution:

"did not take into account our proposed amendments to the draft resolution to the effect that the Syrian opposition must distance itself from extremist groups that are committing act of violence, and calling on States and all those with any relevant opportunity to use their influence to stop those groups committing acts of violence. Nor has account been taken of our proposals that along with the withdrawal of the Syrian armed forces from the cities, there should be an end to attacks by armed groups on State institutions and neighborhoods"<sup>106</sup>.

Following the failure of UNSMIS and a level of international consensus underwriting the first Geneva Communiqué, the third vetoed resolution on 19 July 2012 was a progressive step to identifying the continuation of civilian atrocities and necessity for coercive measures towards forcing actors towards a political settlement or at least shaping the nature of domestic conflict away from directly targeting civilian population centers. South Africa and Pakistan's abstentions emphasized the necessity of a united UNSC front, and skepticism surrounding an 'unbalanced approach' with coercive measures that threaten the government 'without realistically allowing any action to be taken against the opposition'<sup>107</sup>. Russia's Ambassador Vitaly Churkin argued that the vote shouldn't have occurred at all, asserting "we simply cannot accept a document under Chapter VII of the Charter of the United Nations that would open the way for the pressure of sanctions and

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<sup>105</sup> UN Security Council, UN SCOR, 6711<sup>th</sup> Mtg., UN Doc. S/PV/6711, 4 February 2012, p. 9.

<sup>106</sup> Ibid.

<sup>107</sup> UN Security Council, UN SCOR, 6810<sup>th</sup> Mtg., UN Doc. S/PV.6810, 19 July 2012, p. 6, 12.



later for external military involvement in Syrian domestic affairs”<sup>108</sup>. Arguing that the resolution was biased given the range of opposition forces, terrorist groups, and their parallel atrocities, Churkin further asserted that “the threats of sanctions were leveled exclusively at the Government of Syria. That runs counter to the spirit of the Geneva document and does not reflect the realities in the country today”<sup>109</sup>. China again echoed principled moral arguments surrounding the potential externalities of Chapter VII pressure on the regime as it sought stability - echoed that the draft’s:

“[U]nbalanced content seeks to put pressure on only one party. Experience has shown that such a practice would not help resolve the Syrian issue, but would only derail the matter from the political track. It would not only further aggravate the turmoil, but also cause it to spread to other countries in the region, undermine regional peace and stability, and ultimately harm the interests of the people of Syria and other regional countries... sovereign equality and non-interference in the internal affairs of other countries are the basic norms governing inter-State relations... We have consistently maintained that the future and fate of Syria should be independently decided by the Syrian people, rather than imposed by outside forces<sup>110</sup>.

With regional support, the League of Arab States issued a resolution calling for the international community to take ‘all necessary measures’ but held short of identifying specific measures under a lack of regional consensus<sup>111</sup>. The US, UK, and France among others all echoed intent to launch punitive strikes to either deny the Syrian regime part of

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<sup>108</sup> Ibid., p. 8.

<sup>109</sup> Ibid., p. 9.

<sup>110</sup> Ibid., p. 13.

<sup>111</sup> David D. Kirkpatrick, ‘Arab League endorses international action’, *The New York Times*, 1 September 2013, accessed 4 August 2015, [http://www.nytimes.com/2013/09/02/world/middleeast/saudi-arabia-syria-military-action.html?\\_r=0](http://www.nytimes.com/2013/09/02/world/middleeast/saudi-arabia-syria-military-action.html?_r=0).

its chemical capability, or impact its calculus surrounding their use. Violating international norms surrounding the use of chemical weapons paralleled R2P as a seemingly egregious example of the regime's 'manifest failure' to protect its population<sup>112</sup>. However, in both the US and UK legislative debates, the Iraq precedent and inability to shape the humanitarian conditions long term in Syria through a limited military intervention loomed large, signaling mixed political resolve surrounding the projection of force<sup>113</sup>. Resolution 2118 (2013) which removed and destroyed Syria's chemical weapons stockpiles then served as a reasoned policy – removing Syrian chemical weapons and their potential to fall into extremist hands if the regime were to collapse while punitive strikes would have likely had limited impact on the regime's calculus surrounding the use of such strategy or removal of the weapons themselves.

Aversion to any precedent towards intervention remained even in terms of the reference of the situation to the International Criminal Court in May 2014 through the fourth vetoed resolution by China and Russia with the thirteen other members supportive of a resolution supported by 64 states. Citing the coercive nature of the reference surrounding international criminal accountability, Russia again linked the resolution to forcible intervention, asserting "the draft resolution rejected today reveals an attempt to use the ICC to further inflame political passions that lay the ultimate groundwork for eventual outside military intervention"<sup>114</sup>. While members of the UNSC have not been averse to civilian protection and R2P as a lens to address the crisis, its potential utility in terms of the third pillar has been argued as a potentially dangerous provocation of instability and further atrocities.

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<sup>112</sup> Adrian Gallagher, 'What constitutes a "Manifest Failing"? Ambiguous and inconsistent terminology and the Responsibility to Protect', *International Relations* 28(4) (2014), 428-444.

<sup>113</sup> Kathleen Hennessey and Sergei L. Loiko, 'Obama finds limited support on Syria', *The LA Times*, 7 September 2013, accessed 8 July 2015, <http://articles.latimes.com/2013/sep/07/world/la-fg-us-syria-20130907>.

<sup>114</sup> UN Security Council, UN SCOR, 7180<sup>th</sup> Mtg., UN Doc. S/PV.7180, 22 May 2014, p. 13.

## Conclusion

With inability to halt continued atrocities in Syria, several scholars have outlined the erosion or failure of R2P as a norm<sup>115</sup>. However, the international community has taken substantive protection measures, in many ways unheralded through the level of dialogue and continued involvement across UN organs, regional actors, and individual states. Repeated UNSC vetoes by Russia and China and a number of vocal abstentions by non-permanent powers have explicitly highlighted principled assertions drawing from moral argument that intervention would set a dangerous precedent and potentially enflame rather than alleviate civilian suffering. Even scholars and policymakers in Western capitals have cited that military projection could aggravate the humanitarian crisis, with agents seemingly unwilling to countenance intervention for civilian protection without UNSC mandate. Tracing the recurrent UNSC vetoes throughout the Syrian crisis highlights international contestation of nonintervention in the face of R2P. This illustrates objections to forcible intervention through not only the backlash of Libya and negative political or military costs incurred by potential intervening countries, but also diverging normative conceptions of how to address Syria in terms of R2P and regime stability. From this approach, while R2P has played an enormous political and moral role in the crisis, the norm of nonintervention has served as a salient counterpoint.

Many states in the international community have taken substantive steps towards civilian protection in Syria through condemnation of the regime, diplomatic recognition of opposition coalition, humanitarian aid contributions, and promotion of protection

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<sup>115</sup> See: John Western and Joshua S. Goldstein, 'R2P after Syria: To save the doctrine, forget regime change', *Foreign Affairs* 26 March 2013, <https://www.foreignaffairs.com/articles/syria/2013-03-26/r2p-after-syria>; Elliott Abrams, 'R2P, R.I.P.' *Council on Foreign Relations* 8 March 2012, accessed 14 June 2015, <http://blogs.cfr.org/abrams/2012/03/08/r2p-r-i-p>.

measures through UN institutional bodies articulated through R2P. However, the complex set of alliance and proxy interests have underwritten contestation of R2P and international aversion to the projection of force for humanitarian purposes. Brent Steele and Eric Heinze have highlighted that ‘embodying the R2P norm for interventionary purposes’ may at times be a flawed approach in that the legitimacy of such action would be mixed with the impact of such action even detrimental<sup>116</sup>. In cases such as Syria, this has been argued by states throughout the crisis, challenging any momentum towards intervention. As Zack Beauchamp argues:

Military intervention in Syria would not only be a misapplication of R2P, but would radically weaken the doctrine’s role in building both a better Middle East and a better world. Our responsibility to protect both Syrians and the R2P doctrine itself demands that we stay out of it<sup>117</sup>.

Targeting Assad to coercively impact his calculus surrounding civilian atrocities would weaken the regime’s position relative to extremists and potentially enflame civilian atrocities, particularly against minority populations if the regime were to fall. This argument has paralleled a strong normative position of states such as China aligned with a more firm application of nonintervention globally. Syria highlights that when regimes target their own civilian populations, they are subject to international scrutiny and protection measures articulated through R2P. The norm of R2P has then served to condition international actors and institutions – moving towards greater political pressure and activism to alleviate civilian suffering in Syria which highlights its salience as an emerging norm. However, while international debate provides examples of more

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<sup>116</sup> Eric A. Heinze and Brent J. Steele, ‘The (D)evolution of a Norm: R2P, the Bosnia Generation and Humanitarian Intervention in Libya’ in Aiden Hehir and Robert Murray (eds.), *Libya: The Responsibility to Protect and the Future of Humanitarian Intervention* (London: Palgrave Macmillan, 2013), p. 159.

<sup>117</sup> Zack Beauchamp, ‘Syria’s crisis and the future of R2P’, *Foreign Policy*, 16 March 2012, accessed 15 June 2015, <http://foreignpolicy.com/2012/03/16/syrias-crisis-and-the-future-of-r2p/>.

pragmatic application of the R2P norm, there is still evidence to suggest that nonintervention has to date retained a high level of salience relative to R2P and been articulated through the legitimating arguments by member states through UNSC vetoes and assertions that humanitarian intervention would not bring greater stability to Syria or a wider international order through normative diffusion of the third pillar.

## Conclusion

Tracing social discourses through recurrent cases of egregious human rights abuses at the international level provides a lens to address how nonintervention has persisted through periods of mass atrocities with force projection argued as a practice that would not yield positive humanitarian outcomes or secure wider international order. Through the norm of nonintervention's role in informing the decisions of state and conditioning the behavior of actors, the decision to not-intervene illustrates more than international apathy to human rights or the failure of normative structures and ethics to influence state policies. This concluding chapter takes a wide-angle approach to themes and cases addressed earlier in this thesis. First, this chapter emphasizes the importance of norms within international relations and contestation as a foundational framework for further research. Second, addressing the interaction between the norm of R2P and nonintervention outlines how the norms construct a normative order and have shaped the boundaries of legitimate behavior. Third, reviewing the three case studies, each provides an empirical example of the complex normative and non-normative factors influencing international responses to

egregious human rights abuses and mass atrocities. The three cases addressed in this thesis, separately, and holistically, provide insight into how the norm of nonintervention has continued to persist and inform the decisions of international actors in the face of R2P.

### **International Order and a Critical Approach to Norm Contestation**

The evolution of a normative architecture provides insight into change at the international level, and how shifts in international beliefs, values, and practices may influence state behavior. Agents pursue policies aligned with their subjective understanding of situations and interests that are not statically defined, but derived from social and historical context. As a theoretical pursuit, this work has challenged the claimed irrelevance of international law and normative structures on the decision-making calculations of states within the discipline of international relations. Rather, norms play a strategic role in constraining and empowering behavior as resources for international actors, which dynamically shape the interest and identities of actors. Furthermore, as this thesis has emphasized, there is a very real connection between state actions and justifications – highlighting the perceived necessity of states to legitimate their behavior through prevailing norms. Norms then serve to define the boundaries of debate and normative action, conditioning the behaviors of states as they evolve and are maintained. Whether Iraq in 2003 or Libya in 2011, norms can be seen as resources to actors in which agents make reasoned calculations and justify their actions as a functional means of legitimation – a strategic articulation of values and beliefs according to intersubjective standards of behavior. It is from the alignment between behavior and norm, as well as contextual social and historic salience of individual norms that behavior is appraised and consequences are derived.

As a framework of exploration in the field of IR, norm contestation plays a central role in areas of global policy in which outcomes have been deemed illegitimate from contextually applied norms or within specific cases, within which subjective interpretations of different actors deviate from each other and articulated intersubjective standards. However, as Antje Wiener has outlined, there has been a ‘loss of conceptual precision’ surrounding contestation, as well as its ‘meta-organizing’ utility through bridging the legality-legitimacy gap<sup>1</sup>. Norms are not directly causal, nor can their substance or argued utility be derived outside of their contextual ‘meaning-in-use’<sup>2</sup>. Through periods of contestation, actors apply their own understandings of norms in unique situations as they pursue their relative interests within a political environment. While external and intersubjective, different actors have at times diverging subjective appraisals of norm’s meanings as well as understandings of how they should be applied. Furthermore, the level of salience of various norms including nonintervention vary by actors and contextual situations amongst various state, regional, and international orders, in which actors make decisions with agency reflecting interests that include normative and non-normative considerations. Identifying the various material, alliance, and wider-normative interests within empirical in-depth approaches then provide greater clarity surrounding the various complex factors that can be outlined as ‘at play’ in any particular situation. As periods of ‘strategic social construction’ between subjective appraisals and intersubjective normative structures<sup>3</sup>, periods of contestation illuminate norm’s applied meanings and influence – providing insight into how particular norms inform the behaviors of international actors. Taken over multiple comparative cases may provide insight into the boundaries of specific norms and how they are maintained, changed, or displaced. This approach seems to serve as an under-utilized methodological framework

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<sup>1</sup> Antje Wiener, *A Theory of Contestation* (London: Springer, 2014), p. 3.

<sup>2</sup> Antje Wiener, ‘Enacting Meaning-In-Use: Qualitative Research on Norms and International Relations’, *Review of International Studies* 35(1) (2009), 175-193.

<sup>3</sup> Nicola P. Contessi, ‘Multilateralism, Intervention and Norm Contestation: China’s Stance on Darfur in the UN Security Council’, *Security Dialogue* 41(3) (2010), 323-344.



to address the influence of norms within particular global policy issue areas in which normative structures conflict.

The contestation of nonintervention in the face of R2P serves as a particularly relevant lens to address the evolution of norms from a theoretical standpoint, but with practical implications for the projection of force at the international level. This highlights the continued salience of nonintervention as an argued means to ensure international order across recent cases of mass atrocities through limiting the potential for wider international conflict as well as an argued means to protect the population itself. Crucially, not all arguments against intervention in cases of large scale human rights atrocities reflect the salience of nonintervention as a norm. With R2P's increased promotion as an emerging norm, state policymakers have argued against intervention for pragmatic rationale aligned with potential political or material costs. Addressing the wider normative context and complex factors within specific humanitarian crises then provides greater insight into how these norms are interpreted and applied – particularly across sequential cases. This approach highlights how R2P has been increasingly engrained within the international political lexicon as a framework to address human rights atrocities. However, the norm of nonintervention has still been invoked as a means to ensure that political community's institutions reflect domestic legitimacy, which humanitarian intervention would fail to secure. R2P's Third pillar articulation that nonintervention serves as an illegitimate response in the most severe cases of mass atrocity crimes pits the normative structures against each other in which actors with different subjective interpretations of meanings and their contextual application contest the most legitimate response at the international level as the manifestation of conflicting interpretations of how to best secure international order. What this lens provides to wider scholarship is the normative promotion of a non-action, as well as a deeply embedded norm contested by emerging structures. This outlines how a prohibitive norm as an action

may still be argued at an international level as an action, illustrating more than international apathy devoid of carrot and stick material gains or losses. Rather, a prohibitive norm may be promoted as the legitimate norm under calculated reasoning.

Far from a-political, the practice of nonintervention may have profound consequences promoted by international actors in an effort to foster their own conceptions of international order and shape articulations of emerging norms such as R2P. Addressing the transformation or even erosion of a firmly settled or internalized norm provides insight into how norms may be unsettled and reduced in salience through history.

### **Interaction between Non-Intervention and R2P**

Drawing from the normative context of the 1990s, mass refugee flows, economic loss, and the debilitating effects to regional and international infrastructure were cited as paralleling intra-state humanitarian crises, with conflict and instability permeating regional boundaries. Civil war, state failure, and large-scale atrocities through state inability to retain order were increasingly argued as detrimental to wider stability, and more readily emphasized through globalized media and an expansion of global civil society. Arguably legitimate interventionary practices and failure to better address protection measures in Rwanda and Kosovo drove support for norm entrepreneurs to introduce R2P. The concept's expansive articulation of a responsibility to prevent, react, and rebuild served as type of normative catchall – which while contentious, meant that it could draw from the wider promotion of universal human rights, peacekeeping, and state building. Through contestation leading to the SOD, a level of consensus supported arguments that egregious human rights abuses should be identified and prevented, aided through wider global and international institutions, and halted in those most severe cases of genocide, ethnic cleansing, war crimes and crimes against humanity through the

UNSC.

This conception of international society, which provides the space for normative change, illuminates how shifts in values and beliefs surrounding international order can shape the interests and behavior of international actors. Through the norm's emergence, it has served as a manifestation of normative context, while providing a permissive environment for civilian protection globally. Skeptics could argue that international behavior is detached from any normative development aligned with R2P. From this perspective, because R2P continues to be contested, it has nominal utility and cannot substantively shape the behavior of international actors. At most, R2P would serve only as a means to politically launder self-interested behavior that would occur regardless. However, following R2P's introduction as a complex norm or doctrinal framework in 2001, its projection at the international level has been matched with advocacy, gaining a foothold in international political rhetoric, institutional developments within states, regional, and international institutions, and been reflective through state voting records in the UN paralleled with resource contributions – engraining itself within the normative architecture of international order. Through this progression, R2P has been embedded in the normative articulations of states and institutional actors including the UN Secretary General's report on 'Implementing the Responsibility to Protect', growing body of UNSC resolutions, as well as in individual states such as the United States' 2010 National Security Strategy<sup>4</sup>. State actors, regional bodies, and institutions have more recently began developing strategies and operational planning for civilian protection purposes that previously didn't exist. Through more targeted economic sanctions, increased diplomatic pressure placed on lower systematic atrocities, expanding global civil society activism, and peacekeeping initiatives informed by R2P, the norm has sufficiently diffused to serve as normative resource that actors use to legitimate their behavior and promote advocacy

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<sup>4</sup> The White House, *National Security Strategy*, May 2010, accessed 18 October 2015, [https://www.whitehouse.gov/sites/default/files/rss\\_viewer/national\\_security\\_strategy.pdf](https://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf), p. 48.

for the protection of populations<sup>5</sup>.

Throughout these humanitarian crises, R2P has permeated international discourse, and made a substantive contribution to civilian protection through its ability to shape debate as a resource international actors use. In short, R2P has not gone away, but rather embedded itself within the wider framework of international norms. Ongoing contestation and implementation of the norm's precepts have served to better clarify the norms meaning aligned with the SOD, reflective of a seeming solidarist acceptance that states have a responsibility to protect their populations from egregious abuses, with the international community able to legitimately respond in the most severe cases through the UNSC. Instead of an inviolable rule of international law and practice, states have been forced to increasingly justify their noninterventions in cases of mass human rights atrocities. However, these recurrent cases of mass atrocity crimes have highlighted how support for intervention under R2P has been limited and constrained by the persistence of nonintervention. As Jennifer Welsh highlights,

Arguably, RtoP was born in an era when assertive liberalism was at its height, and sovereign equality looked and smelled reactionary. But as the liberal moment recedes, the distribution of power shifts globally, the principle of sovereign equality may enjoy a comeback. If so, it could very well dampen the new climate of expectations around the responsibility to protect<sup>6</sup>.

Despite R2P's normative diffusion, the norm of non-intervention has continued to impact R2P's emergence and use. While the principle of sovereign equality is distinct from nonintervention, the salience of nonintervention through recurrent cases of recent mass

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<sup>5</sup> Alex J. Bellamy, 'A chronic protection problem: The DPRK and the Responsibility to Protect', *International Affairs* 91(2).

<sup>6</sup> Jennifer M. Welsh, 'Implementing the "Responsibility to Protect": Where Expectations Meet Reality', *Ethics and International Affairs* 24(4) (2010), 425.

atrocities illustrates the norm's persistence as an intersubjective standard of behavior that continues to serve as a normative barrier to interventionary practice for humanitarian purposes. The ongoing contestation of nonintervention highlights recurrent arguments that intervention for humanitarian purposes may not actually protect conceptions of human dignity or wider international order that it purports to address. "Despite the popularity of good governance rhetoric, traditional sovereignty norms have displaced remarkable inertia and resistance to change – at least in the sensitive area of military intervention"<sup>7</sup>. In order to establish and maintain a level of domestic order may at times require violence through civil war or to suppress domestic insurrection. Along ethno-national fissures or revolutionary uprisings, these conflicts may have a hue of ethnic cleansing or genocide, with the use of human shields and other tactics by non-state actors resulting in a level of civilian deaths through the government's plea to re-establish domestic stability. As Brad Roth highlights, "A regime's need to establish legitimacy is rooted not in aspirational norms, but in the practical difficulties of exercising power... a political system cannot be built without the loyalty of a critical mass of members of the political community"<sup>8</sup>. As this thesis has outlined, state governments have jealously guarded their political autonomy, reflective of continued salience of nonintervention. Many in the global South, G77, NAM, as well as major powers and permanent members of the UNSC continue to play a conservative role towards intervention outside of state consent or self-defense. This contestation is evident through the "desire of sovereign states not to see diminution of their sovereign authority. The tenacity of the attachment can be seen to this day in the reluctance that has been evidence in the Security Council"<sup>9</sup>. How this norm of nonintervention has been contested provides a lens to address constraints on the projection of force at the international level.

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<sup>7</sup> Theresa Reinold, *Sovereignty and the Responsibility to Protect* (New York: Routledge Press, 2013), p. 151.

<sup>8</sup> Brad R. Roth, *Governmental Illegitimacy in International Law* (Oxford: Oxford University Press, 2000), p. 41.

<sup>9</sup> Gareth Evans, 'When is it right to fight?', *Survival* 46(3) (2004), 69.

Following the institutionalization of R2P in the 2005 SOD, many in the global south articulated the fear of an expansive normative development of interventionary practice for its potential to yield a hierarchical order – with powerful states more apt to target those smaller or weaker constructs plagued by ethno-nationalist violence, insurgencies, or civil war struggling to retain domestic legitimacy. While in contrast, those more powerful states challenged an conception that placed expansive obligation to intervene in cases with high human and economic costs to secure global populations. Both of these arguments have sound moral basis, with political community’s sometimes dissolving into civil war or other domestic insurrection requiring autonomy to build and sustain political orders. Externally however, the projection of force for humanitarian purposes must be addressed with a sufficient level of caution. Interventionary practice involves killing and also being killed – a costly and morally challenging decision that risks the loss of military members and resources while imposing a level of civilian hardship through an unavoidable level of collateral damage. As Eric Heinze and Brent Steele outline, the generation of populations and policymakers that experienced the failures of inaction in the 1990s may have built a level of consensus around humanitarian intervention, and lost site of the moral basis for its legal proscription. Because the legitimacy of norms is also impact by appraised results, the continuation of policy’s promoting intervention for humanitarian purposes may have a deteriorating impact on the norm of R2P.

That is, what tends to open up the critical space is a policy action which goes disastrously wrong, creating a rupture and an opening whereby a norm, and the generation invoking it, gets delegitimized. This occurs not only because of the

action's consequences, but because of the generation's inability to see any fault in the worldview which led to the policy action<sup>10</sup>.

Rather than a lack of military capability or politicized decisions of the UNSC fueling pragmatic international responses, the interaction between R2P and the norm of nonintervention serves as an important lens to address ongoing state international behavior, with increased global activism for human rights protection, diplomatic pressure, and peacekeeping activism, but limited interventionary practice mirroring R2Ps invocation. R2P's third pillar has challenged the boundaries of nonintervention, promoting expansive areas where force could be more legitimately applied to include responses to mass cases of genocide, ethnic cleansing, war crimes, and crimes against humanity authorized by the UNSC – “bending the meaning of ‘international threats to the peace’ as defined by the Council under Chapter VII”<sup>11</sup>. However, where R2P has arguably had limited influence is through its Third pillar in regard to intervention for humanitarian purposes, highlighting limited consensus at the international level surrounding the legitimacy of intervention in concrete cases. While a wide body of international actors have affirmed that populations should be protected from egregious abuses with support from the international community, the projection of international force has been argued by a number of critical world powers as a practice that may not serve to beneficially secure the domestic population, and would be a potentially divisive practice for international order. Tracing these cases of mass atrocities at the international level paralleled with invocations of R2P have highlighted the norm of nonintervention's continued influence as a resource. States embracing R2P may implement nonintervention for pragmatic reasons, or come to the rational conclusion that the international projection

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<sup>10</sup> Eric A. Heinze and Brent J. Steele, ‘The (D)evolution of a Norm: R2P, the Bosnia Generation and Humanitarian Intervention in Libya’ in Aiden Hehir and Robert Murray (eds.), *Libya: The Responsibility to Protect and the Future of Humanitarian Intervention* (London: Palgrave Macmillan, 2013), p. 153.

<sup>11</sup> Michael W. Doyle, ‘International ethics and the Responsibility to Protect’, *International Studies Review* 13(1) (2011), 82.

of force would not serve to positively impact a humanitarian crisis. However, wider international context and norm contestation between R2P and nonintervention serves as an important lens to address the persistence of nonintervention, informing actors of the utility and consequences of projecting force for humanitarian purposes while outlining the boundaries of R2P in an evolving international normative order.

### **A Review of Empirical Cases**

Sri Lanka illustrated the salience of nonintervention through its position as the default norm. Failing to even formally address the crisis within UN bodies, consensus was not reached until the final weeks in the UNHRC, with the Special Session occurring after the civil war had ended with a resolution explicitly affirming the norm of nonintervention. With limited access following the removal of most international NGO and UN staff from the northern Vanni in late 2008, what constrained institutional access was available diminished by early 2009 as the government's campaign and civilian deaths spiked. Faced with conflicting interests on the ground between protection advocacy and access to the conflict zone and expanding population within the IDP camps, UN organs in Sri Lanka withheld information. Institutional failures further limited exposure of information to international media, member states, or the nature of atrocities with government culpability under international law not emphasized within UN institutional bodies. Furthermore, the LTTE's persistent terrorist tactics under the post-9/11 international environment limited its political support from foreign powers. This also meant that diaspora populations that could have played a critical role in rallying support for protection measures were treated with suspicion for their political and financial backing of a recognized terrorist organization. Illustrating the influence of liberal human rights norms and international advocacy for civilian protection, a number of regional and wider international powers did decrease their nominal trade and military aid with the Sri



Lankan government following its failed peace process from roughly 2004-2006. However, this had the effect of driving the government politically towards regional powers including India, China, and Pakistan – the same actors that politically shielded the regime’s later actions from formal consideration at the UN. Highlighting the influence of norm localization at the regional level, regional powers seemed explicitly skeptical of R2P with nonintervention retaining a deeply internalized role. Furthermore, despite limited initial knowledge of the scale or nature of atrocities, even Western actors seemed to limit their condemnation and remain normatively conditioned to nonintervention due to an articulated unwillingness to take coercive measures against the regime in a de facto civil war which would have perpetuated the domestic struggle and likely contributed to the further survival of the LTTE, even under recognized mass atrocities with civilians caught between belligerent lines. While R2P had emerged with institutional recognition and was invoked by member states and NGOs, a lack of understanding of what the norm obligated international institutions and actors to do limited international consensus, with the norm of nonintervention playing a substantive role in affirming the regime’s authority to pursue domestic order at the expense of human rights protection for a segment of its population.

However, the articulated illegitimacy of the Sri Lankan regime’s actions that emerged months and years following served as an outcry for greater human rights protection and accountability. The norm of R2P’s influence was then reflected through its use as a structure to appraise the actions of the regime and failures to international actors to properly address the crisis. Recurrent UN institutional reports, international media productions, and assertions of international actors for greater accountability cast Sri Lanka as a negative case study for international protection – with institutional changes including greater emphasis on ‘human rights up front’ for UN organs and R2P convening mechanisms for Under-Secretary Generals emphasizing a necessity to address future

crises through a protection lens. Sri Lanka as a case study then served as a data point in the wider normative context leading into international debate following the Secretary General's Report on 'Implementing the Responsibility to Protect' in the summer following Sri Lanka's humanitarian crisis with subsequent UNGA debate more firmly articulating the SOD's three-pillar framework leading into further cases addressed in this thesis.

When Libya emerged several years later, very different factors were at play. Catching the international community largely off-guard, the wave of revolutions in the Arab Spring from Tunisia and Egypt to Libya dominated international media attention from the beginning stages of uprising. Qaddafi's track record of foreign adventurism and support of terrorism meant that the authoritarian regime was uniquely reviled despite its decade of weapon disarmament and cooperation with western actors through the GWOT. When the uprising sparked, reports of airstrikes and mass atrocities in the thousands ignited international calls for protection measures. If R2P could fit an implementation framework, Libya would uniquely match it with a linear sequence of international condemnation through UNSC press statements, met with formal consideration and two UNSC Resolutions – first with economic sanctions and ICC referral, and subsequent Resolution 1973 authorizing 'all necessary measures' to protect the population<sup>12</sup>.

Building a progressive international response including military force under an explicit threat of mass atrocities, the international community invoked R2P and moved towards decisive protection. While a level of confirmed atrocities and explicit intent to cleanse Benghazi provided considerable political leverage, the speed and decisiveness of the response to a case of imminent (rather than confirmed ongoing) mass atrocities provides a particular precedent for R2P. Furthermore, in 1990s cases in which authorized

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<sup>12</sup> Robert W. Murray, 'Humanitarianism, Responsibility or Rationality? Evaluating Intervention as State Strategy' in Aidan Hehir and Robert Murray (eds.), *Libya: The Responsibility to Protect and the Future of Humanitarian Intervention* (New York: Palgrave Macmillan, 2013), p. 30.

interventions under humanitarian auspices did take place, there were implicit citations in resolutions of the ‘exceptional’ or ‘unique’ circumstances arguably to avoid *opinio juris* precedence – devoid in the Libyan resolution<sup>13</sup>. This was centered by the fact that delegations clearly articulated the imminent threat of mass atrocities in Benghazi, with inaction in the council widely recognized to result in a bloodbath of thousands.

Aligned with critical constructivism and theoretical assumptions undergirding my research, R2P through this case in relation to nonintervention was interpreted with a variance of subjective meanings across actors. Canadian government officials voiced support for R2P as a means of promoting democracy in Libya<sup>14</sup>. While the United Kingdom is perhaps one of the very few to articulate that intervention for humanitarian purposes may be ‘legal’ without UNSC approval<sup>15</sup>. The African Union articulated the crisis as firmly within its regional sphere of influence, with intervention an illegitimate response. In comparison, the Arab League and Gulf Cooperation Council pushed for a more decisive response and echoed a call for Security Council authorization for intervention. Despite a level of economic and military ties, the Chinese delegation in the UNSC affirming the importance of the Arab League’s regional support, and Russia skeptically articulating the necessity for action under considerable reservations with neither was willing to block Resolution 1973. The Libyan case then served to clarify the boundaries of R2P in terms of the SOD applying only to those four mass atrocity crimes of ethnic cleansing, crimes against humanity, genocide, and war crimes through UNSC authorization. However, while there was widespread articulation of the illegitimacy of

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<sup>13</sup> Sir Adam Roberts, ‘The United Nations and Humanitarian Intervention’ in Jennifer M. Welsh (ed.), *Humanitarian Intervention and International Relations* (Oxford: Oxford University Press, 2004), 79.

<sup>14</sup> Kim Richard Nossal, ‘The Use – and Misuse – of R2P: The Case of Canada’ in Aidan Hehir and Robert Murray (eds.), *Libya, the Responsibility to Protect and the Future of Humanitarian Intervention* (Basingstoke, UK: Palgrave Macmillan, 2013), 116.

<sup>15</sup> See: UK Government, ‘Chemical Weapon Use By Syrian Regime- UK Government Legal Position’, 29 August 2013, accessed 15 July 2015, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/235098/Chemical-weapon-use-by-Syrian-regime-UK-government-legal-position.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235098/Chemical-weapon-use-by-Syrian-regime-UK-government-legal-position.pdf).

Libyan actions against unarmed protesters fueling measures and accountability in Libya, the legitimacy of any intervention was comparably thin, and critically assumed to limit the immediate threat of civilian atrocities in Benghazi and play an air-policing rather than active role towards regime change.

Even with a clearly articulated threat to cleanse Benghazi, consistent reports of civilian atrocities, a number of BRICS powers – all of whom were on the UNSC in 2011 – echoed the failure to exhaust political measures and that such military force projections would not limit civilian suffering or address root causes of the crisis or contribute to a peaceful end of domestic disputes. Germany on the UNSC, with NATO alliance interests at stake, opposed military action, asserted that intervention could cause further suffering for the population while other regional and coalition actors with unique resources for the Libyan conflict refrained from action or providing weak support following initial contributions. Furthermore, illustrating the fragility of consensus underwriting intervention, as soon as strikes took place, the Arab League president called for an immediate end to the military action, with Russia, China, India, Brazil, and number of other international actors quick to outline that such expansive target sets were not authorized or helpful with the norm of nonintervention serving as a salient lens to frame international discourse and behavior.

Where Libya perhaps played the most notable role surrounding the contestation of nonintervention relates to the impact of protection measures and international assertions of illegitimacy surrounding how the humanitarian protection operations were conducted, as well as long-term repercussions of the functional regime change. Illustrating the cyclical nature of norms in particular foreign policy issue areas, the resulting regime change and failed rump state of Libya driving wider regional instability has been framed as a negative case study for R2P by a wide number of major international actors

including China, India, Brazil, as well as Western powers with officials in the US highlighting the unfortunate inability of Libyan actors to consolidate a legitimate national authority following the 2011 revolution. Outside of any contention surrounding R2P's influence, as Justin Morris outlines, "Libya served as a highly significant backdrop for the UNSC debates over how to respond to the situation in Syria. In this context it soon became clear that the shadow it cast was a dark one, both for the people of Syria and for the concept of R2P"<sup>16</sup>. Libya's dissolution into chaos was perhaps an unavoidable consequence of a power vacuum within a political poorly developed state construct. However, the power vacuum left from Qaddafi's ouster was artificially decisive with NATO-led air support. Russia Foreign Minister Sergey Lavrov argued that in future humanitarian crises, Russia "would never allow the Security Council to authorize anything similar to what happened in Libya"<sup>17</sup>. India's Permanent Representative to the UN, Hardeep Singh Puri, commented, 'Libya has given R2P a bad name'<sup>18</sup>. As the unwillingness to address the case of Sri Lanka within international bodies can be seen to have highlighted the illegitimacy of the international response, the Libyan case reflected a different conclusion in which the norm of nonintervention can be seen to have strengthened in relation to R2P through the argued way it was carried out, but also the failure of intervention under R2P to address the root causes of instability which lead to mass atrocities – cyclically influencing normative assertions in following cases. What the Libya case also highlights are distinct arguments for nonintervention as a salient and legitimate norm across wider cases, particularly of civil war or interventions that would functionally impose regime-change. International consensus for intervention to save unarmed protesters was shaped towards overt partiality, which was ultimately argued as

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<sup>16</sup> Justin Morris, 'Libya and Syria: R2P and the spectre of the swinging pendulum', *International Affairs* 89(5) (2013), 1274.

<sup>17</sup> Alan J. Kuperman, 'Obama's Libya debacle', *Foreign Affairs* 94(2) (2015), 66-77.

<sup>18</sup> Philippe Boloignon, 'After Libya, the question: To protect or depose?', *The LA Times*, 25 August 2011, accessed 14 June 2015, <http://articles.latimes.com/2011/aug/25/opinion/la-oe-boloignon-libya-responsibility-t20110825>.

an illegitimate action and representative of a practice that fails to address the root causes of instability. This example has served as a salient-counter point to R2P's invocation in Syria.

While slower to devolve, Syria as a unique uprising of the Arab Spring also faced a revolution met with government violence and ultimately mass atrocities. The Assad regime's pursued strategy of nominal political reform and violent repression spun what was a call for political reforms into a full-scale civil war. While alleging to wage war against domestic extremists, these claims ultimately evolved into a self-fulfilling prophecy, with Islamic extremists from across the globe flooding into Syria. Unable to build an effective opposition authority outside or within the country, anti-government forces now exist on a spectrum from the nominally secular Free Syrian Army, Kurdish populations in the north, the Al-Qaeda aligned Al-Nusra Front, and extremist Islamic State amongst a wider kaleidoscope of opposition groups fighting with pro-government forces as well as amongst themselves. However, while opposition groups have carried out mass executions and other widespread atrocities, the Syrian government's pursued counter-insurgency strategy has played a disproportionate role in human suffering. Designed to reduce insurgent territorial control through displacement of the civilian population from areas of its control, pro-government forces have sieged rebelling or insurgent-held population centers, targeted doctors and medical facilities while stemming international access, medical aid, food, and water. Using indiscriminant and widespread weaponry against these areas, tens of thousands of non-combatants have perished in cases of mass atrocity crimes with recognized government culpability. In 2013, the alleged use of chemical weapons by government forces killed over 1,000 in a single set of strikes. Tracing the contestation of nonintervention through the Syrian case from the beginning of violence in 2011 until mid-2015, illustrates how the norm has informed the decisions of actors.

While UN organs and bodies have recurrently addressed the Syrian case with a number of resolutions invoking R2P, lack of consensus in the Security Council has halted any precedence towards humanitarian intervention. While faced with explicit vetoes in the UNSC from Russia and China, even Western actors have been unwilling to project force through articulations that the projection of force in Syria may not bring humanitarian consequences with intervention devoid of UNSC authorization for humanitarian purposes lacking necessary legitimacy. What this reflects may be tied to a number of complex considerations within a web of proxy and alliance interests with tens of state and hundreds of domestic factions involved in the ongoing crisis. Contextually, with a substantial air defense network and advanced standing military, any action against the regime would be violently challenged from within, and by strong international political partnerships from Russia, Iran, and Hezbollah abroad. And although humanitarian atrocities are carried out on mass scales, the root causes of instability within Syria are complex domestic political matters tied to a plurality of actors and considerations in which the projection of military force for humanitarian purposes may not play a clearly beneficial role, and could negatively impact the humanitarian crisis. Syria has thus highlighted the complexities of international and regional political and operational fissures surrounding R2P, with Syria illustrating a case of manifest failure with the deaths of tens of thousands of civilians and the regime's unwillingness to countenance foreign interference. Syria differs from many cases applicable to R2P in that the recognized authorities of Cote d'Ivoire, the Central African Republic, and Democratic Republic of the Congo all provided a level of regime-consent to foreign interference. In contrast, the Assad regime has decried any foreign involvement with 'insistence on absolute sovereignty and readiness to prolong the conflict without negotiating with the

opposition'<sup>19</sup>. Like Libya and Sri Lanka, the implementation of R2P in Syria places in conflict diverging normative conceptions or international order, with Syria as an important case study for norm contestation in relation to R2P and nonintervention.

No Syrian actor within or outside has been able to build a unified opposition to stitch the country back together. While continued conflict has resulted in a factitious state of various pockets of authority, the projection of force for humanitarian purposes has been contested internationally as an policy choice that may not have an impact on the regime's counter-insurgency strategy and could likely bring about further suffering for the minority Alawite and Christian populations. Although the regime is culpable for mass atrocity crimes, its collapse would herald what many have framed as a Libya repeat. Since 2013, the conflict has increasingly regionalized, with Iranian, Lebanese-Hezbollah, and now Russian units directly fighting alongside pro-government forces. On the opposing spectrum, Qatar, the UAE, and Saudi Arabia have funded and armed progressively more extremists opposition groups. Furthermore, the rise of ISIS has been recognized as international threat to international peace and security, gaining wide swaths of territory from government control in both Syria and Iraq. Thus, under a web of various competing interests and actors globally, nonintervention and R2P have served as normative resources, but of various considerations contributing to limited consensus supportive of humanitarian intervention. The high level of international activism, non-military protection measures and invocation of R2P suggests that R2P may in fact not be a weak or meaningless international norm in relation to nonintervention, but has been trumped by contextual rationale and complexities underwriting the crisis in Syria.

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<sup>19</sup> Derek Averre and Lance Davies, 'Russia, humanitarian intervention and the Responsibility to Protect: The case of Syria', *International Affairs* 91(4) (2015), 833.



Within the modern international normative order, these cases highlight a seeming erosion of nonintervention relative to R2P in that international actors most firmly in the UNSC no longer consider nonintervention as absolute norm relative to egregious human rights abuses. Furthermore, from a theoretical standpoint, the action of nonintervention does not necessarily reflect its salience as a norm. Wider international context such as the GWOT, availability of international forces from major powers, geographic factors, and the wider pragmatic material or alliance of interests of states interact within the lattice of international norms - greatly impact their invocation and implementation.

### **Implications for Intervention**

Intervention and its impact on domestic political orders is more complex than many policymakers are willing to recognize. External actors may not fully understand the character or scope of intra-state atrocities or the grievances that underwrite domestic crises. Intervention may fail to bring internal stability, with the complexities of domestic political orders illuminating the boundaries of what foreign intervention can accomplish. In response to mass atrocities, the projection of force has been seen as a tool to either coercively impact the calculations of domestic actors carrying out specific behaviors or as a means of denial of area or resources to commit such atrocities. More research must be accomplished surrounding those types of interventionary practices that might be able to change the calculus of intra-state actors and protect populations. In Syria, denial was articulated through a potential no-fly zone or removal of chemical through strategic strikes. However, coercion provides a separate conception of the projection of force to induce a shift in behavior – targeting specific actors as a means to halt particular atrocities. The history of intervention’s ability to accomplish these goals is decidedly mixed, with wider interventionary practice in Afghanistan, Iraq, and Libya exposing the economic costs and complexities in securing domestic order through foreign intervention.

Rather than reinforcing the practice of humanitarian intervention under R2P's Third pillar, recent cases of large-scale human rights abuses committed by state actors have in many ways reaffirmed the norm of nonintervention. While blatant cases of genocide, ethnic cleansing, war crimes, or crimes against humanity were well documented through these cases, the sad reality is that the human dignity that humanitarian intervention is meant to protect may not actually be secured through the external projection of force. If intervention fails to halt atrocities, drives wider international conflict, or lead to further civilian suffering, humanitarian interventions may be deemed illegitimate – constraining further practice. Of those cases addressed in this thesis, the only currently stable country of the three remains Sri Lanka, which has since 2009 carried out democratic elections and some progression towards reconciliation. This stands in stark contrast with Libya, which while highlighted as a 'textbook case' of decisive intervention, has yielded continued atrocities with regional and even international instability through the flow of weapons and fighters. This has seemingly mirrored wider cases of intervention and statebuilding in Iraq and Afghanistan, highlighting that no matter the size of the military or peacekeeping forces projected internally, if the intra-state political community cannot build legitimate institutions to secure order, the stability will likely be unsustainable and violently challenged.

The three cases addressed in this thesis were selected based on the recognition of imminent or ongoing mass atrocities crimes pegged with invocation of R2P through the recent post-2005 international political context. Carrying out atrocities as a means to regain order, territorial integrity, or monopoly on the use of force served as the basis for conflict that resulted in the deaths of thousands of civilians. While not specifically selecting for cases of civil war, each reflected domestic actors challenging the authority of existing regimes. Within wider context, military force projection with recognized host-

state authority consent has been politically less contentious as the cases of Mali, the Democratic Republic of the Congo, among others have recently attested. However, international actors have recurrently challenged the potential for humanitarian purposes in these cases, with projection of external force arguably weighing heavily on domestic disputes and potential outcomes, while also creating warped incentives for belligerents to draw international attention and support. Non-intervention as a political action in these cases of mass atrocities then benefits the government's military pursuits as the Sri Lankan victory, or conversely Qaddafi's regime collapse, highlights. Research on the relationship between R2P, intervention, and civil war may provide insights into limits of intervention's utility.

This illustrates nonintervention's persistence through articulations that intervention even in cases of mass atrocities is illegitimate due to its inability to address root causes. Embracing more pluralist conceptions of international society, state governments constantly struggle to maintain legitimacy and order which may at times lead to internal political disputes and conflict. In order to maintain order, which any conception of justice is based, government's must be free to address internal crises without the threat of external intervention in support of terrorist or revolutionaries in the name of human rights protection.

How nonintervention impacts the behavior of states is through its influence as a resource that guides or conditions the interests and appraisals of behavior at the international level. Forming a type of path-dependence, the projection of force devoid of regime consent, UNSC mandate, or act of self-defense is recognized as a subversion of an existing norm of legitimate conduct. State actors then appraise contextual cases in relation to normative and non-normative considerations such as the availability of military resource, and appraised political or material costs of specific behaviors. This does not mean that states

are forced to not intervene when their perceived interests align with particular behaviors which challenge existing norms, but rather that they serve as one reference point of many which vary in contextual and historical influence as social constructions.

The contestation of nonintervention as a lens has profound implications for military planners and foreign policymakers at the international level in that any projection of force for humanitarian purposes may not have the necessary legitimacy to accomplish its political aims, with interventions even negatively impacting the very humanitarian crises they are meant to halt. In this respect, the undergirding normative architecture of international society fulfills an important role in delineating those behaviors, which are seen to promote or negatively influence conceptions of international order and justice. Nonintervention's enduring salience then reflects its moral and practical utility and serves as an important constraint on state behavior. While Rwanda and Kosovo exposed this 'legitimacy gap' between UNSC decisions and international values and beliefs surrounding the projection of force for humanitarian purposes, it is still unclear if a normative architecture which provides a permissive environment for such interventionary practice would better secure international order.

## **Conclusion**

The continued salience of nonintervention within the normative architecture of the international order provides a substantive guard to the foreign aggression of states, but also reflects values and beliefs tied to the conception that international political communities require the authority to resolve domestic political disputes that may at times lead to a high level of casualties. Tied to conceptions of popular sovereignty and self-determination, the legitimacy of domestic government requires a critical mass of support, which may yield domestic conflict or greater civil war in the most severe cases of dispute

or perceived illegitimacy by a segment of the population. Because of the nature of insurgencies, terrorist movements, or other political uprisings, civilian costs may be high. As domestic crises or conflict yield civilian deaths, or the distinction between combatant and noncombatants becomes greyed, the political community retains the authority to ensure security without foreign interference. While these domestic atrocities to secure domestic order and legitimacy may violate international values and beliefs undergirding the normative architecture of international order, how nonintervention has maintained salience highlights its persistence and utility through the seeming inability of foreign intervention to resolve intra-state political disputes.

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